

Recapturing and Renewing the Vision of the Family Court

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Dedication

This report is dedicated to the memory of James McLeod, LLB, LLM (1947–2005), good friend, colleague, and Professor of Law at the University of Western Ontario. He began this project with us and shared many of his expert and creative ideas. His vision for a caring and effective family court remains with us and is embedded in many of our recommendations.

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EXECUTIVE SUMMARY

This study was undertaken to review service delivery and court operations at five of Ontario's Superior Courts of Justice, Family Court Branch (FC). The sites were selected by the Ministry of the Attorney General (MAG) as a representative sample, and included Cornwall, Ottawa, Barrie, Hamilton, and Oshawa. The study was divided into two phases. The first phase was an evaluation of the ancillary services attached to the FC. The second phase involved a review of the operations of the court, including recommendations for consistent best practices identified by the judiciary to ensure meaningful appearances, administrative practices, the impact of ancillary services on the progress of cases, identification of factors to be considered in determining judicial complement, and an assessment of the impact of the liaison and resource committees on court operations.

The data reflected in this report were obtained from four major sources: interviews and focus groups; an on-line survey completed by partners within the justice system; file reviews from three FC sites; and system data provided by MAG. Using the interviews and focus groups, the research team identified best practices as well as challenges facing participants within the justice system. The on-line survey asked stakeholders to report their experiences and views related to ancillary services and the operations of the court. The file reviews explored a random sample of family court files for a more in-depth analysis of factors related to the progress of cases through the system. System data provided by MAG included data about use of services and court-related information, such as the number of hearings. As well, the study did not focus on the child welfare component of the FC (Child & Family Services Act cases).

The research team developed numerous detailed recommendations in terms of mediation services, family law information centres (FLIC), parent education programs, resource and liaison committees, administrative practices, judicial complement, and enhancing the number of meaningful court appearances. These recommendations are based on the data reviewed and build on promising practices currently in place or being developed. Wherever possible, we offer possible ways of implementing these recommendations. The system strengths and challenges identified by the FC justice partners provided an important context for the recommendations. Nothing in our recommendations should be interpreted as intending to be an infringement of the inherent authority of the Chief Justice over the court and the independence of the judiciary.

Eleven major themes and overarching recommendations create a framework for the detailed recommendations outlined in the report. These recommendations include:

1. There is a need to recapture and revitalize the vision of the family court.

The Senior Family Court Justice, as the representative of the Chief Justice of the Superior Court of Justice, should take on a leadership role in revitalizing the vision of the FC across the province. The Senior Family Court Justice, in collaboration with MAG, should design a process for this revitalization to ensure that the specific objectives of the FC are met. For our review, the objectives of the FC are those articulated by the two levels of government when the court was expanded in 1995 beyond the pilot project in Hamilton. These objectives relate to jurisdiction, an experienced judiciary, and early intervention and non-adversarial resolution of appropriate cases.

2. Independent of the need to recapture and revitalize the vision of the FC, a systematic and comprehensive review looking at the delivery of family justice in Ontario is needed.

The research team is cognizant that even after addressing the needs of the FC, the province will still have a patchwork of provincially- and federally-appointed judges presiding over family law matters. The fragmented delivery of family court services creates inequity for families and children throughout the province. Therefore, we urge the Attorney General to undertake a comprehensive review of the family justice system. Ideally, this review must be conducted with full support and participation of the federal government.

3. The crisis in the shortage of judicial complement needs to be addressed immediately.

The provincial and federal governments, together with the Chief Justices of the province, need to jointly develop an immediate crisis management plan to address the problem of inadequate judicial complement. This plan should include implementing a process for short-term and long-term solutions based on an objective model of determining the appropriate judicial resources in each site.

4. To enhance continuity of service for litigants, it would be beneficial to have experienced, knowledgeable, motivated, and skilled generalist judges who are committed to sitting in the FC for extended periods of time.

The research team anticipates that even with an increase in the judicial complement in the FC and the implementation of efficiencies in the system, the family court will never have a sufficient number of “core” judges to deal justly with all of its duties. Realistically, it will still be necessary to assign generalist judges to sit in the family court. To ensure consistency, continuity, and competence in the court, it would be beneficial to have judges from the Superior Court with the knowledge, skill, and commitment to sit in the court for extended periods of time. To make the case management system work effectively, a court assignment should be for a period of months. In addition, we fully respect and understand that the assignment of judges is within the sole prerogative of the Chief Justice of the Superior Court and her/his designate.

5. The Family Law Information Centre (FLIC) should be the entry point into the family court system for the vast majority of cases.

The FLIC should be the essential entry point into the system. This approach would ensure that litigants are made aware of the range of services and processes available in the court and the community. MAG should recognize the importance of the FLIC by appointing a full-time IRC (information resource coordinator) at every site.

6. Mediation services need to realize their full potential.

The delivery of mediation services as part of the court should be revamped so it provides more local input and autonomy. This will increase the judges’ and lawyers’ confidence in the skills of mediators. This will also ensure that funding is based on local needs and priorities. The benefits of alternative dispute resolution strategies should be promoted directly to the public, judges, and

lawyers. Mediation should be incorporated as an essential step in the court process for appropriate cases.

7. The court needs to adapt to the new reality of self-represented litigants.

The Family Court Steering Committee should address the critical issue of self-represented litigants as part of their overall examination of effective and efficient family court services and operations.

8. Domestic violence and high conflict cases need to be handled in a differential manner.

There are differing perspectives on how effectively the FC handles domestic violence cases and high conflict cases. The court should develop a comprehensive plan for screening and assessing risk in cases of domestic violence and promote policies, practices, and community collaborations that recognize safety and accountability as paramount.

9. Enhanced case management is a priority for the system to function properly.

An enhanced commitment to case management will ensure that cases receive the appropriate level of service required by the needs of the litigants. Assigning a case manager at every site will allow finite judicial resources to be used by parties in an efficient and coordinated fashion.

10. Promising practices need to be shared across the province.

MAG needs to create opportunities for FC sites to share promising practices and to give local community and liaison statutory committees the authority to implement those practices in their respective jurisdiction.

11. A comprehensive research strategy should be developed to collect data to inform ongoing changes to the FC.

Data collection by MAG, as well as by ancillary service providers, should have a specific focus that is part of a comprehensive strategy. This information should provide meaningful feedback to inform the operations of the court and its ancillary services. Statistics should be collected uniformly across the province and with a known and specific purpose. A comprehensive research strategy must include input from the litigants as consumers of the system.

12. A systematic and comprehensive Review looking at the delivery of Family Law Justice in Ontario is necessary.

The Family Law Steering Committee together with other “experts” from the private bar, bench, government, academia and the social sciences should report periodically to the AG and the Chief Justice of Ontario on developments globally on the resolution of family Disputes. This information combined with the data collected by MAG provide for an opportunity to keep Ontario’s system of family justice current and relevant to the community’s expectations. In addition, the delivery of Family Law Justice in Ontario requires a comprehensive plan by the

Provincial and Federal government to look at realistic options for the efficient and effective delivery of the same level of service throughout the province.

These twelve major recommendations, in addition to the detailed suggestions presented in the body of this report, provide a framework for immediate action. The research team envisions a FC in the future that integrates an evaluative and renewal process to ensure that the court continues to meet the changing needs and expectations of the community. All the justice partners we consulted throughout this project were motivated to consider suggestions for the renewal of the family law justice system. We believe that this attitude and openness augers well for facing the challenges ahead.

PART I: INTRODUCTION

1. Overall Purpose of the Project

The overriding purpose of this project was to review practices, procedures, and court-connected services in place at Ontario's Superior Court of Justice Family Court Branch. The goal was to identify best practices in terms of service delivery and court operations that could be implemented in all family court (FC) sites.

The project was divided into two phases. Phase 1 was an evaluation of the ancillary services attached to the FC, including:

- Recommendations related to the best service delivery practices that could be implemented at all FC sites;
- Recommendations for enhancing service delivery to meet the objectives of the FC;
- An analysis of trends in accessing the services; and
- A review of challenges and gaps in the provision of services in terms of client need.

Phase 2 involved a review of the operations of the court, including:

- Recommendations for promoting consistent and best practices identified by the judiciary to ensure meaningful appearances;
- Recommendations for promoting administrative best practices;
- Examination of the impact of court-connected services on the progress of cases;
- Identification of methodology and subjective and objective factors to be considered in determining judicial complement for any new FC site; and
- An assessment of the impact of the liaison and resource committees on court operations.

Phase 2 of the project complemented the information identified by key family justice partners during the first phase about best practices. As a result, the findings from the second phase were interpreted and discussed in the context of solutions and best practices identified by participants during the first phase of the project.

The research team was asked to assume that the Ontario's FC court-connected family justice services operate within a fixed level of funding that is expected to remain constant. We were asked to make recommendations that could be operationalized within existing budgets. Some recommendations may require additional money from other sources of funding, or more creative partnerships with community resources and other levels of government. Ultimately, the research team supports a comprehensive and coordinated approach to the delivery of family justice in all courts in Ontario that decide family cases.

Four major sources of information provided the data for this report: interviews and focus groups, an on-line survey completed by participants, file reviews from three FC sites, and system data

provided by Ministry of Attorney General (MAG). In addition, an extensive review of the literature related to family court operations and ancillary services was undertaken.

The research team reviewed data from five different family court sites which were selected by MAG: Cornwall, Hamilton, Oshawa/Whitby, Ottawa, and Barrie. During the interviews and focus groups, we explored service delivery practices to identify best practices that could be implemented in all FC sites, problems facing stakeholders as part of their daily experience within the justice system, and the practices they have developed to overcome these problems. The on-line survey asked participants to report anonymously their experiences and views related to ancillary services and the operations of the court. The file review data included in-depth analysis of a random sample of family court files in terms of factors related to the progress of cases through the system. System data provided by MAG included data on use of services, and court-related information such as number of hearings or client representation.

This report is divided into sections that outline the methodology, research findings and observations, promising practices, and recommendations. The major findings and conclusions are highlighted in the executive summary and the concluding section.

2. Background of the Family Court

a. History of the “Unified” Family Court

Under the division of powers in the Constitution, only a federally-appointed judge has the authority to deal with family law matters relating to property and divorce. A provincially-appointed judge has the authority to hear matters including custody and access, child and spousal support, child protection, and adoption. The divided jurisdiction of family law has historically forced family law clients to go to different levels of court depending on the nature of their family law matter.

In July 1977, the Family Court of Hamilton-Wentworth opened as a three-year pilot project. It was created as a result of a federal–provincial agreement to implement law reform commission reports advocating the adoption of family courts. The vision of the family court was to provide a single, comprehensive jurisdiction over all legal matters and disputes related to the family. Comprehensive jurisdiction at the highest court level allows for an integrated approach to interrelated problems within the same family. Furthermore, the vision was for family problems to be dealt with in an integrated manner, with mediation, resource, informational, and legal services attached to each court site. These services were intended to complement the judicial side of the court and mitigate the adversarial nature of court proceedings by increasing non-litigious dispute resolution pathways. The services help achieve non-adversarial resolutions of family disputes by narrowing down the number of contentious issues and attempting to divert as many disputes as possible from formal court hearings.

In 1982, the Family Court of Hamilton-Wentworth was made a permanent entity. There have been two subsequent expansions to add more family court sites across the province. In 1995, the court was expanded to include four more sites and its name was changed to the family court, a branch of the Ontario Court of Justice (General Division). The new courts were located in

Middlesex County (London), Frontenac County (Kingston), Lennox & Addington County (Napanee), and Simcoe County (Barrie).

On December 13, 1998, the court was made a branch of the Superior Court of Justice. The legislative amendment confirmed the authority of the Chief Justice of the Superior Court over the family court and integrated the court into the operating structure of the Superior Court of Justice. The new provisions clarified that all judges of the Superior Court of Justice are members of the family court. Subsection 21.2(4) of the *Courts of Justice Act* was added, providing that the Chief Justice of the Superior Court may, from time to time, temporarily assign judges appointed to be members of the family court to hear matters outside the jurisdiction of the family court. This allowed for flexible scheduling and assignment of judges in accordance with the needs of the entire court.

In 1999, the province created twelve new court sites, determining the locations under the Courts of Justice Act. These new sites include Ottawa, Newmarket, Oshawa, Peterborough, Lindsay, Cobourg, Bracebridge, St. Catharines, Cornwall, L'Orignal, Brockville, and Perth.

The family court is a branch of the superior court and is created under the *Courts of Justice Act*. As part of the superior court, the head of the family court is the Chief Justice of the Superior Court. The Regional Senior Justices, who exercise the local functions of the chief justice in each region, are responsible for scheduling and assigning all judicial duties in each region of the court. A senior judge of the family court branch has enumerated duties to enhance and refine the special needs and procedures of the family court and to advise the chief justice on family law issues. These include the education of judges, practice and procedure, expansion, and the expenditure of funds budgeted for the court. The legislation setting out the structure of the family court branch has been amended a number of times since the original pilot project started in 1977. The current structure is set out in the Courts of Justice Act, R.S.O. 1990, c.43, which was most recently amended by S.O. 1998, c.20.

3. Objectives of the Family Court

The family court was designed with three overriding objectives in mind. These objectives relate to jurisdiction, an experienced judiciary, and early intervention and non-adversarial resolution of appropriate cases.

a. Jurisdiction

Where the family court branch exists, jurisdiction for all family law proceedings is consolidated into one court. Thus, the court has jurisdiction over all claims for divorce, support, custody, access, equalization of net family property, and trust claims. Superior court judges also exercise the jurisdiction of an Ontario court judge in child protection and adoption proceedings.

b. Experienced Judiciary

The court is made up of a core group of judges appointed to the FC by the federal government. The group is supplemented and complemented by judicial colleagues from the rest of the

superior court who are rotated in by assignment on both a scheduled and an as-needed basis. This core group of judges is appointed for its experience in, and commitment to and knowledge of, family law.

c. Early Intervention and Non-Adversarial Resolution of Cases

Another guiding principle of the family court is a commitment to early intervention and non-adversarial resolution of family disputes. This early intervention is structured through case management processes set out in the Family Law Rules that provide for a series of conferences, which promote early resolution or narrow the scope of issues being contended. In addition to the structured meetings, the emphasis on mediation as an alternate dispute resolution strategy is a key feature of the family court. The dissemination of information about parenting after separation and encouraging alternate dispute resolution is another component of the court's early intervention and non-adversarial resolution of cases philosophy.

4. Components of the Family Court

In pursuit of the aforementioned objectives, several structures and services were developed to assist the family courts. Mediation is an important feature of the FC in that it offers an alternate pathway for dispute resolution. Other services, such as the Family Law Information Centres (FLIC) and the Parent Information Sessions (PIS) provide important resources for individuals, particularly for self-represented litigants, who are involved with family justice matters. Finally, resource and liaison committees provide an opportunity for a range of stakeholders to convene and have input into the resources associated with the court, and oversee the operations of the court, respectively.

a. Family Mediation

Mediation in family law matters is a voluntary, non-adversarial dispute resolution mechanism. An impartial, professionally-trained mediator assists clients of a relatively equal bargaining position to reach a mutually satisfactory agreement on issues relating to custody, access, support or maintenance, and property without going to court. In Ontario, external service providers deliver voluntary mediation services. They are selected through a competitive process in accordance with the government-wide Request for Proposal (RFP) process. Under the terms of the contract with the ministry, the service providers are responsible for delivery of services as set out in the RFP (i.e., the deliverables, the requirements, and the parameters for the delivery of services). A selection committee evaluates each proponent who competes for the contract for delivery of services, and a contract is entered into for a fixed period of time. Under the terms of the contract, the service providers are responsible for:

- Providing on-site and off-site mediation services;
- Providing the information and referral co-ordinator for the family law information centre; and,
- Ensuring that the parent information sessions meet the standards set by the ministry and that they are offered in accordance with the community's needs.

Services are offered on a voluntary basis in all family law disputes, but are not yet extended to child protection cases. Mediation is available on-site, in the court facility, and off-site, in the mediator's office. On-site mediation services are available, at no charge, for quick resolution of particular issues referred by judges or requested by clients on that day's court list. In contrast, off-site mediation services are available for multiple or more complex issues, and are offered to the client on a sliding scale based on income and number of dependents. MAG sets qualifications, experience, and other requirements for mediators to ensure the provision of high quality, accessible, and safe services.

Under the contracts with service providers, minimum family mediation service requirements are set out:

(i) Scope of Mediation Services

The Service Provider shall provide comprehensive on-site and off-site family mediation services. Types of issues to be mediated may include custody, access, support, and equalization of net family property. Family mediation services are not yet provided in child protection matters.

(ii) Access to Services

The Service Provider shall ensure that all Clients have access to family mediation services as long as the contract cost set out in the Budget Bid Form submitted by the Service Provider as part of its Proposal and any applicable user fee revenue have not been spent. These services will be provided regardless of Clients' incomes and whether they have filed a court application.

(iii) Average Number of Off-Site Family Mediation Hours Per Case

Publicly funded family mediation services should be focused on helping couples who are capable of and willing to resolve their issues in a relatively short period of time. The Service Provider shall monitor the number of publicly funded family mediation hours provided per case and shall ensure that the average number of hours does not exceed eight (8) including mediation intake time.

(iv) On-Site Family Mediation Services

In order to provide the opportunity for quick resolution of narrow issues referred by judges or requested by Clients, the Service Provider shall provide some family mediation services in the Family Court. On-site family mediation services will include intake for mediation, screening and mediation of narrow issues in appropriate circumstances. The Ministry will provide limited space for this purpose at the court facility.

The Service Provider shall provide on-site family mediation services for the number of hours specified in the particular contract. There is no user fee for on-site mediation.

The Service Provider shall develop, in consultation with the local Manager of Court Operations, a schedule for on-site family mediation to coincide with the Family Court sittings (excluding child protection matters).

On an ongoing basis, the on-site mediator shall liaise with court staff, the judiciary, lawyers and Clients to promote the on-site family mediation service.

b. Family Law Information Centres

All family court locations contain Family Law Information Centres (FLICs), which are intended to provide information and assistance to those navigating the family justice system. There are several personnel available at each FLIC to assist in meeting the individual needs of clients, particularly clients who are not represented by a lawyer and are entering the court system for the first time. Each FLIC is staffed by: an information and referral coordinator (IRC) provided by the external service provider, who supplies information on alternative dispute resolution options, Parent Information Sessions, and other issues related to separation and divorce and community resources; court staff who provide information about the court process and court forms; and an advice lawyer from Legal Aid Ontario who provides summary legal advice. In addition, FLICs provide numerous pamphlets, publications, and audio-visual material on issues related to separation and divorce and child protection matters. These written resources include information about family law in Ontario, community resources available to support families undergoing separation or divorce, and other ancillary services (such as mediation and parent information sessions).

c. Parent Information Sessions

Service providers are responsible for ensuring that Parent Information Sessions (PIS) are offered in accordance with the community's needs and that the sessions meet standards set by the ministry. Under the contracts, the service providers must provide and/or ensure that PIS are provided on a regular and frequent basis, based on client needs. These sessions inform parties of alternative dispute resolution strategies available to parents.

PIS are typically held once a month in communities that have family courts. This voluntary information session covers a range of topics of interest to individuals who are undergoing separation and divorce. All parents involved in a separation (or contemplating separation) may attend these meetings. In some cases, parties attend at the recommendation of their counsel or a judge. The content of these sessions varies from site to site, but typically includes:

- The impact of separation and divorce on the family, and in particular children;
- The negative effects on children of protracted litigation and hostility between parents;
- The benefits of developing cooperative parenting arrangements, where appropriate;
- Children's needs at various stages of development;
- Parenting responsibilities and strategies for problem solving after separation;
- The impact of violence in the family on children;
- Community resources for children;
- Alternatives to litigation for the resolution of family disputes, where appropriate.

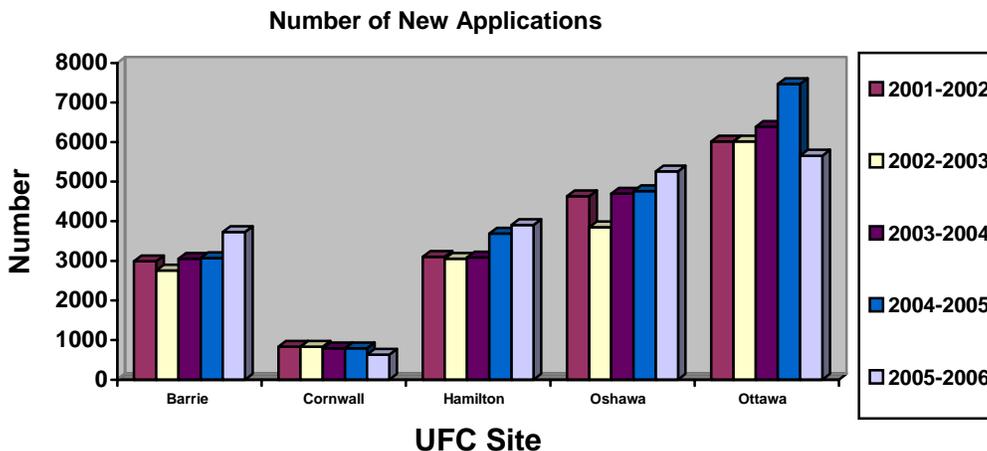
d. Resource and Liaison Committees

The *Courts of Justice Act* provides for two committees to be associated with the family court branch. The Community Liaison Committee is comprised of judges, lawyers, persons employed in courts administration, and other residents of the community. Members of the committee are appointed by the Chief Justice of the Superior Court through the Regional Senior Justice. The purpose of this committee is to provide a forum for the regular users of the family court branch to discuss issues relating to its operation. The Community Resource Committee is comprised of judges, lawyers, members of social service agencies, persons employed in courts administration, and other residents of the community, as appointed by the Chief Justice of the Superior Court through the Regional Senior Justice. The purpose of this committee is to identify, support, and promote resources relating to family law in the community.

PART II: METHODOLOGY

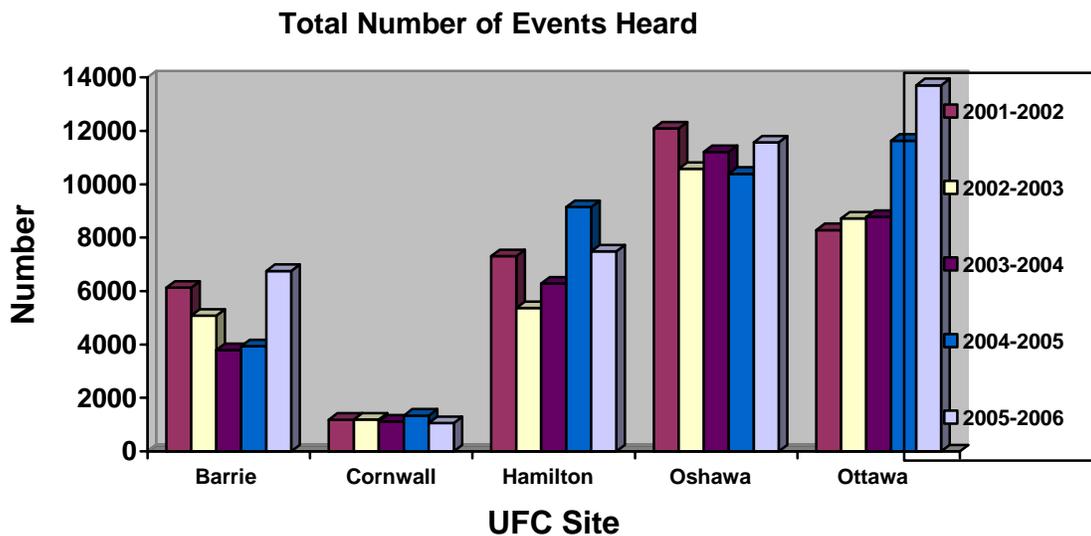
This research was conducted at five FC sites across Ontario: Barrie, Cornwall, Hamilton, Oshawa/Durham, and Ottawa. These five sites were chosen because they are representative of diverse characteristics across the province. They differ in the number of new proceedings and events heard, as indicated below.

The numbers of new proceedings, in the form of total applications, are shown in the graph below. The data show that Barrie and Hamilton had approximately the same number of new applications filed from 2001–2006, although the numbers were slightly higher in Hamilton across all years. Ottawa clearly experienced the highest number of new applications, with close to 7500 in 2004–2005. Cornwall remained fairly consistent across the five years, with a small decrease from previous years of approximately 160 applications in 2005–2006. Like most sites, Oshawa experienced a steady increase in the number of applications, the highest in 2005–2006 (approximately 5300 applications). While the number of new proceedings may also include motions to change, the numbers reflected here represent applications only.



Total Events Heard

The total number of events heard, both motions and other events, are shown in the graph below. Events heard include trials, pre-trials, settlement conferences, motions, and case conferences. Cornwall remained fairly consistent across the five years with approximately 1200 total events heard. Ottawa experienced a steady increase in total events heard since 2001, reaching a high of approximately 14,000 in 2005–2006; 32% of these events represented motions. Overall, Oshawa had the highest total number of events heard, an average of approximately 11,200 events heard across the five years. While Hamilton experienced a sharp increase from 6,288 events heard in 2003–2004 to 9,146 in 2004–2005, this number decreased slightly to 7,486 in 2005–2006. These statistics should be read with caution since different sites may have different interpretations of what constitutes an “event.” For example, *rota* basket orders, motions, or uncontested divorces might be captured as an event by some sites but not by others.



The research methodology for this project involved collecting both qualitative and quantitative data. The majority of the data were gathered from individuals within the family court system. The remaining information was gleaned from existing system data, family court files, and an extensive review of literature related to family court operations and ancillary services. Throughout this report, we only cite references related to those areas that help clarify some controversial issues in the field. Family court litigants were not contacted as a source of information because this was beyond the scope and funding of the research study. The research team was multidisciplinary and included experts in family law and its related areas. The team included a senior family law lawyer, a psychologist, and a senior researcher.

Four major sources of information comprised the data reflected in this report: interviews and focus groups, an on-line survey completed by participants, file reviews from three sites, and system data provided by MAG. Each of these data sources is described in detail below. The

collection of all sources of data took place between August 2005 and December 2006. Throughout this process, we had the benefit of ongoing consultation with two advisory committees organized by MAG: the Technical Committee was an internal group of senior ministry officials who helped guide the research; the Advisory Committee included provincial representatives of justice partners within the FC system.

A unique aspect of the methodology for this study was the ongoing interaction and discussions between the researchers and individuals within the FC. Although we had not explicitly intended to be part of a change process, the nature and length of the interviews fostered the desire and motivation for continuous improvement in the system. Similar to the Hawthorne Effect whereby individuals being studied are motivated to change the very behaviours being studied, family court professionals were very reflective and motivated to examine critical issues in the functions and operations of the FC. The opportunity to discuss in detail the day-to-day operations of various aspects of their jobs led some stakeholders to draw conclusions about ways to enhance the delivery of services.

1. Interviews and Focus Groups

MAG provided a list of the people who held key positions in the FC in each site, which we used to select individuals to be interviewed. We also obtained a list of the members of the resource and liaison committees at each site, and through discussions with the judges at each site, we identified other persons in the community with relevant information about the FC. The research team contacted the majority of the individuals and arranged a meeting date with those who expressed an interest and willingness to participate in the evaluation. Quite often, stakeholders contacted the research team directly to arrange a date to participate in the consultation. In general, stakeholders were very eager to meet and discuss the current successes and challenges of the FC.

Participants included individuals from the judiciary, local family bar, court management and staff, family mediation and information service providers, resource and liaison committees, local women shelters and supervised access centres, Children's Aid Societies, Legal Aid Ontario, advice lawyers, and duty counsel. We conducted approximately 150 formal and informal interviews and focus groups. Formal interviews consisted of scheduled visits or telephone calls. Some of these interviews were held with members of the same group of professionals (e.g., a group of judges). Other interviews included a cross-section of disciplines from various community organizations. Informal interviews and telephone calls by the senior family law lawyer of the research team took place on an impromptu basis at various conferences or meetings of the judiciary throughout the year and a half of the project. The terms of reference for this project did not include interviews with the litigants.

In semi-structured interviews, participants were asked to describe their role in the family court, their views on promising practices, the challenges and successes in their role, as well as their collaboration with community partners, the value and use of ancillary services, and recommendations for changes that could enhance the efficiency and effectiveness of the system. Interviews were conducted both individually and in a group setting and lasted from one to three hours. The research team transcribed interview data after each consultation. The team debriefed after each meeting, and clarified and reviewed major themes and observations for each

stakeholder in subsequent interviews. As similar themes emerged across sites, we identified critical issues for family courts. We then identified unique themes and examples of promising practices specific to a particular site.

2. On-Line Survey

An on-line survey was developed to collect information from interested parties related to the ancillary services (e.g., Family Mediation Services, Family Law Information Centres, and Parenting Information Sessions) and the operations of the family court. This information was used to assist with the evaluation of the FC and its ancillary services.

The survey was divided into two parts: part I dealt with the ancillary services to the family court and part II focused on court operations. Part II of the survey was completed by individuals who had regular involvement with the operations of the family court (e.g., judges, court managers/staff). Individuals completing the survey were asked to keep in mind the stated objectives of the family court (unified jurisdiction, experienced judiciary, early intervention, and non-adversarial dispute resolution).

The research team distributed a secure website address to participants to access and complete the survey on their own time. Hard copies were made available for those who preferred to complete the survey using a paper and pencil format. The survey was distributed or made available to participants over a five-month period (February–May 2006). Anonymous responses were encouraged, but not mandatory. However, participants were required to indicate their location, profession, and length of experience within the family court. The survey included both open-ended and closed question formats, and took approximately 30–60 minutes to complete (depending on the extent of qualitative responses).

One-hundred and one participants completed part I of the on-line survey related to the ancillary services to the family court. The categories of participants included family law judges (n=18), lawyers (n=15) (e.g., private bar, duty counsel, advice lawyer, and legal aid), court managers and staff (n=19), mediators (n=8), and counsellors and children and family services staff (n=38). Three participants did not indicate their relationship to the family court in part I of the survey. The categories of participants who completed the on-line survey for Part II included family law judges (n=7), lawyers (n=10) (e.g., private bar, duty counsel, advice lawyer, and legal aid), court managers and staff (n=12), mediators (n=1), and counsellors and children and family services (n=11). Table 1 shows the distribution of survey respondents by site.

Table 1: Number of Respondents by Evaluation Site

	Barrie	Cornwall	Hamilton	Oshawa	Ottawa	TOTAL
Part 1: Number of Respondents	30 (30%)	7 (7%)	13 (13%)	40 (40%)	11 (11%)	101
Part 2: Number of Respondents	10 (24%)	4 (10%)	8 (20%)	13 (32%)	6 (15%)	41

3. File Review

Four hundred and thirty-seven family court files were reviewed at three evaluation sites: Barrie (189, 43%) Oshawa (151, 34%), and Cornwall (97, 22%). Sites with a minimum of 350 files in total were chosen to ensure a representative sampling of all family court files. A research team member or an assistant under his/her supervision reviewed each file. The purpose of the file review was to collect the following key information: background data on the litigants (age, income, family characteristics), the length of time from the initial application to the final resolution, the number of case and settlement conferences, referrals to mediation, issues related to domestic violence and urgent motions, and the number of judges and court appearances per file.

Approximately 44% of the files were standard track and 52% of the files were fast track. Four percent of files reviewed were missing this information. In standard track cases, the relief requested includes divorce or property. In contrast, in fast track cases there is no request for divorce or issues related to property. With fast track cases, a first appearance court date is set right away, whereas in standard track cases, a case conference may be scheduled.

Cases for the file review were selected from closed files beginning in 2003 until 2005. Files were randomly selected throughout the year to ensure that a representative sample was examined across different months. Although file reviews can generate a vast amount of descriptive data, a limitation to all file reviews is the lack of consistency of information across files. For the current analysis, data was missing in some of the court files for some variables of interest. Thus, information reported is based only on the data that was available in the file. File review data may underestimate the true reality of court files due to the limited and often inconsistent information reported.

4. MAG Systems Data

We requested data from MAG related to the ancillary services. This data included mediation statistics, FLIC, and parent information session data. This data is recorded using standard forms and is gathered by the service providers as part of their contracted reporting requirements.

The family mediation statistical reports are compiled on a monthly basis by the service provider and submitted to MAG each month for the fiscal year (e.g., 2003–04; 2004–05; 2005–06). Statistics are collected for both on-site and off-site mediation services for files that *have closed during each month*. Ongoing files are not reflected in the data until they have been closed.

In some instances, data were not available for certain time periods, due to illness or misunderstandings about reporting requirements. Recently, Court Services Division has established a committee that includes service providers to resolve issues with statistics collection, such as identifying consistent methods of entering data in the program to avoid missing data. The committee is emphasizing obtaining complete data and ensuring consistent data entry.

PART III: OVERVIEW OF ANCILLARY SERVICE, OBSERVATIONS, AND FINDINGS

A. Family Mediation Services Overview

Mediation services has been one of the most important developments in the area of family law over the past quarter century. Extensive research supports mediation as an effective intervention to resolve conflicts and empower litigants to find meaningful resolutions outside of the courtroom. Many jurisdictions in North America have embraced and adopted mediation as an essential part of the family court system. There are several reasons for its growing popularity, but the principal one is that it works: mediation can produce agreements that are acceptable to all parties because they are part of the solution; it considers children's needs as a paramount consideration in the process; and it can be more effective and longer lasting than court-imposed decisions. Some jurisdictions have made mediation a mandatory step before involving a judge in the dispute. Most professionals associated with the FC acknowledge that the system could not exist without mediation services to alleviate the volume of cases before the court.

Ontario has a long history of supporting mediation services as an integral part of the resolution of family matters. In the past 25 years, mediation has moved from a fledging model where only a limited number of private practitioners were offering the service, to the current situation where the Attorney General has institutionalized this service as part of the FC and clients are encouraged to use these services as an alternative to the court process. Mediation services are well-advertised and readily accessible across the province.

Ontario recognizes that mediation may not be appropriate for all cases. Mediation is best suited to people who are in a relatively equal negotiating position. In cases involving domestic violence or abuse, or where there is a clear and inherent power imbalance between the parties, mediation may not only produce unfair results, but may also perpetuate one party's control over the other and potentially place the disadvantaged party at risk. Ontario mediators providing services at the FC are expected to carefully screen clients prior to and throughout the mediation process to assess their suitability for mediation.

The following section is divided into our findings on mediation services in terms of use of services, perceived effectiveness of services, successes and challenges of the services, promising practices, and recommendations.

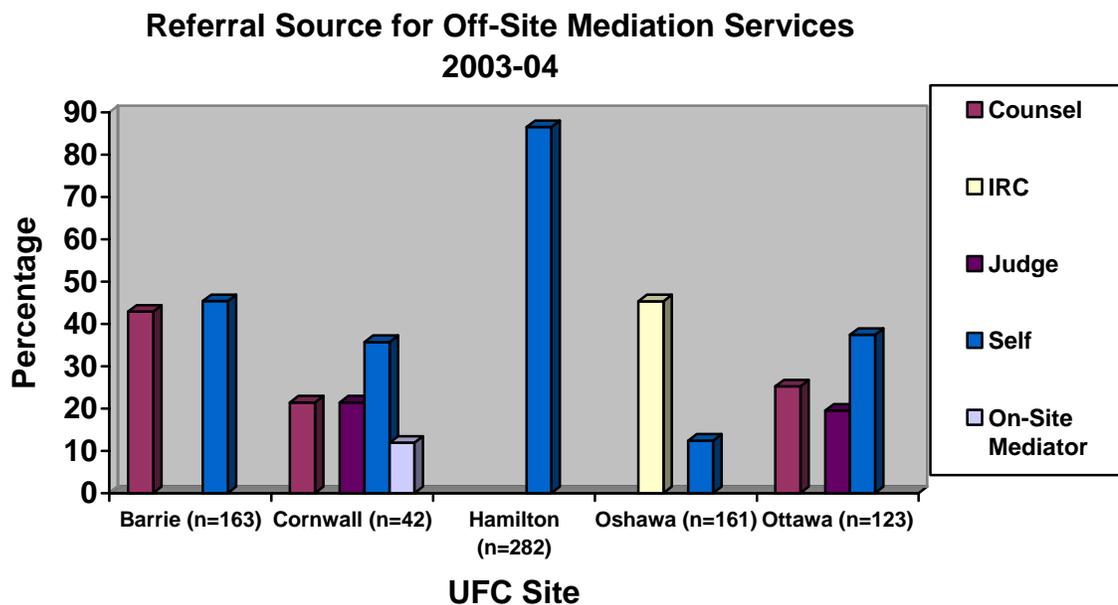
Use of Mediation Services

Use of mediation service data was collected from three different sources: MAG system data, a stakeholder on-line survey, and file reviews. To assess use of mediation services, we examined descriptive data related to referral sources, stage of court process, issues mediated, and reasons for file closures.

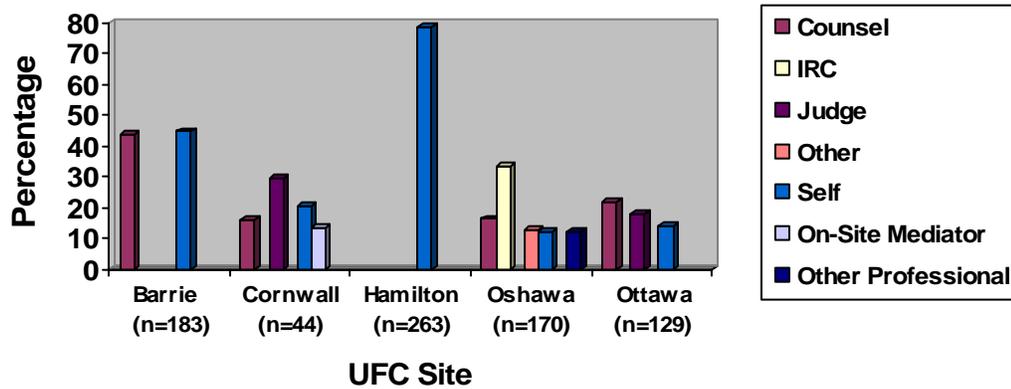
Source of Referral

The data revealed some inconsistencies with respect to source of referrals across the different data sources. The MAG data (based on litigants' self-report) indicated that the majority of

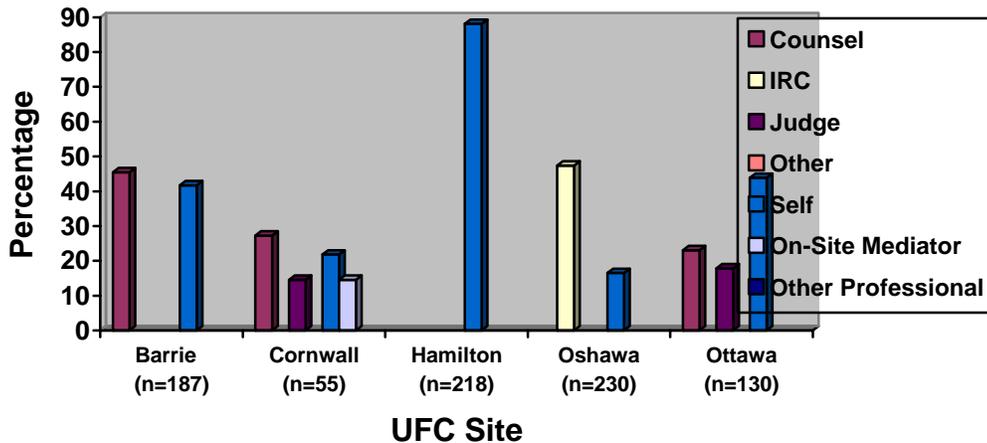
referrals to off-site mediation come directly from litigants. For example, from 2003 to 2006, in almost all sites, self-referrals represent the majority of referrals to off-site mediation services. This pattern of self-referrals was virtually the same across all years. For example, in 2003–04, self-referrals ranged from a high of 87% in one site, to a low of 12% in another site, decreasing slightly in 2004–05 (high of 79%, low of 12%), and increasing again in 2005–06 (high of 88%, low of 17%). Counsel (including the private bar) represents the next largest source of referrals to off-site mediation services, ranging from 21% to 43% of referrals in 2003–04, 16% to 44% in 2004–05, and 23% to 45% in 2005–06. On the other hand, the data indicate that in the majority of sites, very few referrals were made by judges. From 2003–2006, judges in Barrie, Hamilton, and Oshawa made no referrals to off-site mediation services. In contrast, judges in Cornwall and Ottawa consistently made referrals to off-site mediation services across all years (range of 30%–18%).



**Referral Source for Off-Site Mediation Services
2004-05**



**Referral Source for Off-Site Mediation Services
2005-06**

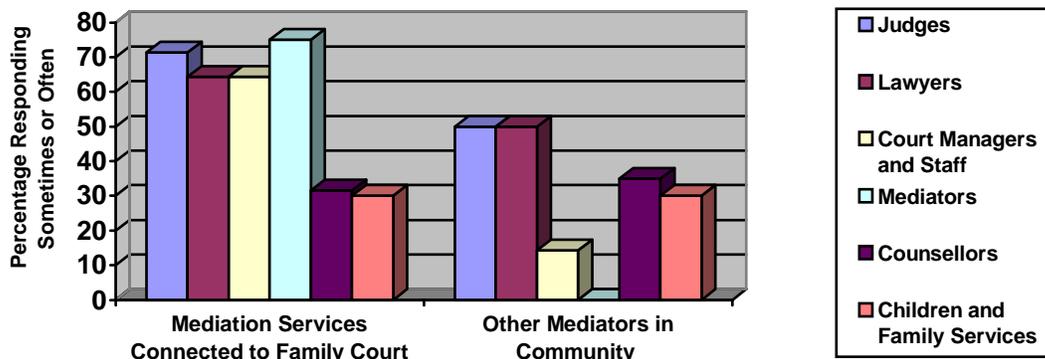


The data seem to suggest that many individuals receiving off-site mediation services do so because they have identified mediation as a desired means of resolving issues, and have sought out this service on their own. While counsel made some referrals to off-site mediation services, judges in three sites did refer litigants to off-site mediation. It is plausible that self-referrals hear about off-site mediation service through some other source. However, because they ultimately decide to attend on their own, they report themselves as self-referrals, when in fact they may have been originally referred to the service by someone else, such as a counsellor or family doctor. As indicated in the graphs above, different professionals are making significantly more referrals to off-site mediation in two particular sites: counsel in Barrie, and IRC in Oshawa. In Barrie, there is a supportive and positive relationship between the bar and the mediation services. In Oshawa, the mediation service staffs a full-time IRC who fosters referrals to the mediators.

A second source of information regarding use of mediation services comes from file reviews. Our file review data suggest a minimal number of court referrals are made to mediation. Only 3% of files reviewed had documented orders to attend off-site mediation services. This finding is not surprising since the MAG data suggests that an overwhelming number of referrals to off-site mediation are self-referrals. It is not possible to know if this information was simply not documented in the files, if clients had already been to mediation prior to starting court action, or if court referrals to mediation are truly rare occurrences.

The MAG data and file review on referral sources is, however, inconsistent with what a smaller group of participants reported in the on-line survey. There are some limitations with this data in terms of small sample size and self-selection of reporters. Nonetheless, these findings are of interest in terms of the contrast between perceptions and actual system data. Justice partners report making more referrals than what the MAG and file review data would suggest. Participants were asked how often they refer clients to mediation services connected to the FC (off-site and on-site mediation), as well as other mediation services within the broader community. Almost all stakeholders surveyed indicated that they refer more to the mediation service providers connected to the family court than they do to other mediators in the community. For example, 71% of judges surveyed indicated that they sometimes/often refer to mediation services connected to the family, while 50% make referrals to other mediators in the community. Seventy-five percent of mediators surveyed indicated that they often refer to mediation services connected to the FC and rarely make referrals to other mediators in the community. Sixty-four percent of lawyers surveyed indicated that they sometimes/often refer to mediation services connected to the FC, while 50% of lawyers make referrals to other mediators in the community. There were no differences in the percentage of referrals to mediation services connected to the Family Court or other mediators in the community made by counsellors and individuals working within children and family services (counsellors: 32% and 35%; children and family services, 30% and 30%). Court managers/staff surveyed indicated that they sometimes/often refer to mediation services connected to the FC 64% of the time, in contrast to 14% of referrals to other mediators in the community.

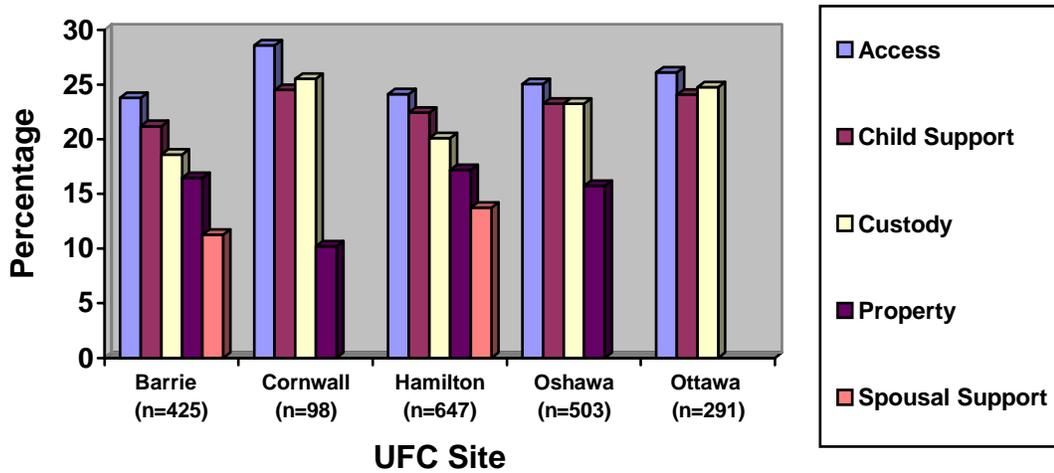
How often do you refer clients to Mediation Services?



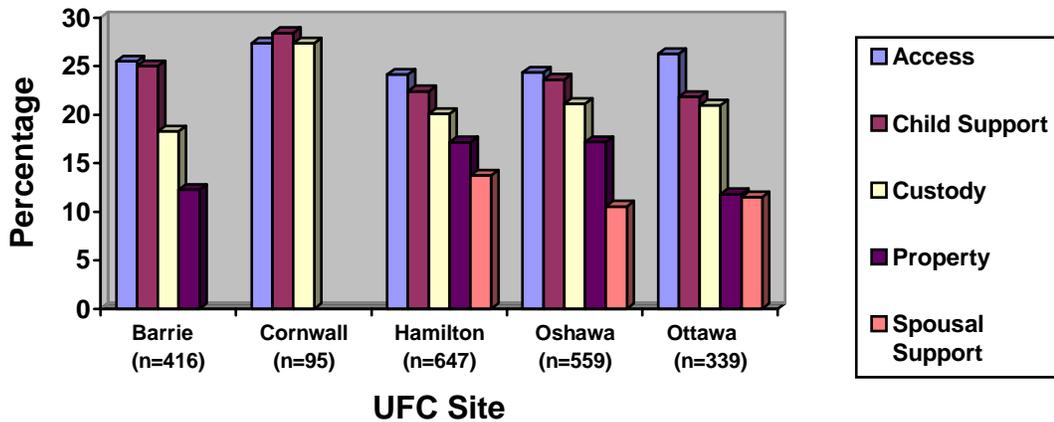
Issues Mediated

As can be seen in the graphs below, child-focused matters are the primary issues mediated at off-site mediation services. Between 2003 and 2006, child support and custody were the three top issues mediated, with spousal and property issues mediated much less frequently across all sites.

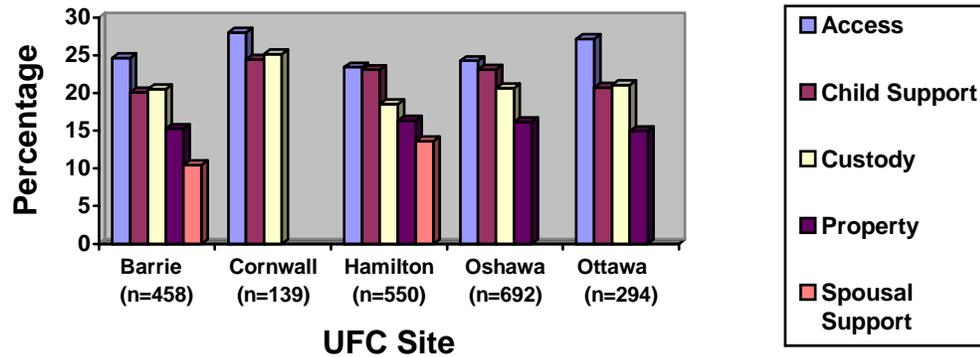
Issues Mediated at OffSite Mediation Services in 2003-04



Issues Mediated for OffSite Mediation Services in 2004-05



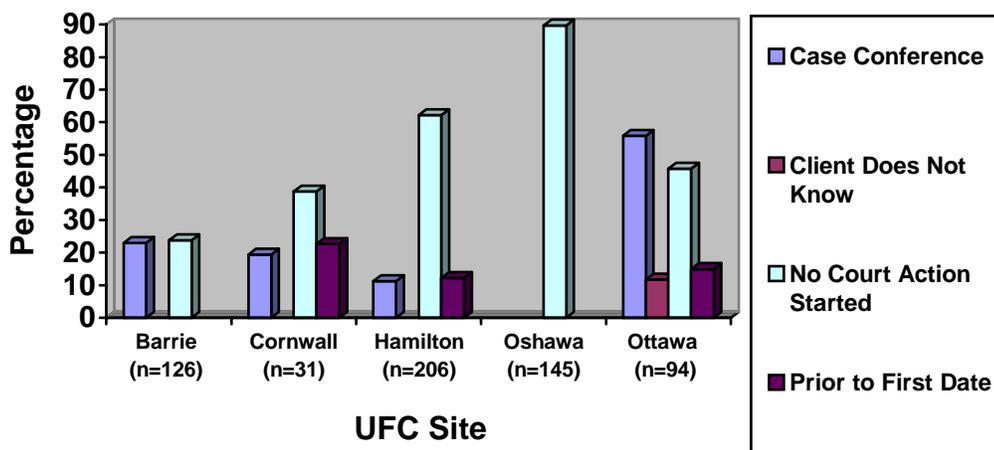
Issues Mediated for OffSite Mediation Services in 2005-06



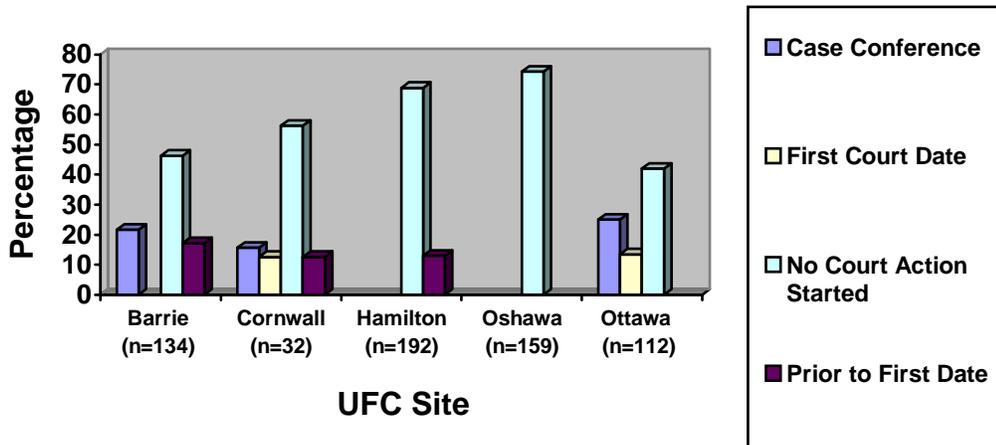
Stage of Proceedings for Mediation Clients

Clients are referred to mediation at different stages in the court process. Clients receiving off-site mediation services can be referred at the point of case and settlement conferences, prior to first court date, or when there is no court action at all. As indicated below, from 2003 to 2006, the most frequent stage of court action for clients who were involved in off-site mediation is, in fact, when there is no court action at all (ranging from 90% to 23% in 2003–04, 74% to 42% in 2004–05 and 70% to 53% in 2005–06). Case conferences were the second most frequent type of court action in almost all the sites. A smaller percentage of clients received mediation services prior to the first court date.

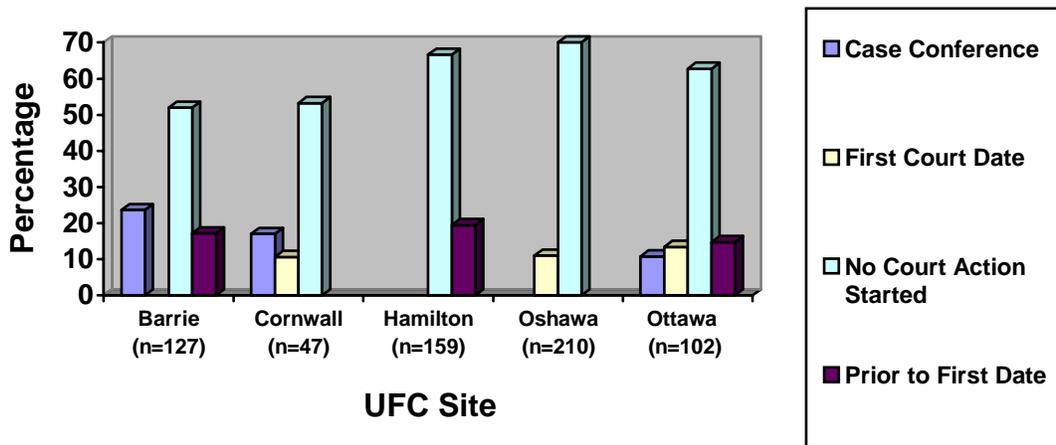
Court Action for OffSite Mediation Cases in 2003-04



Court Action for OffSite Mediation Cases in 2004-05



Court Action for OffSite Mediation Cases in 2005-06



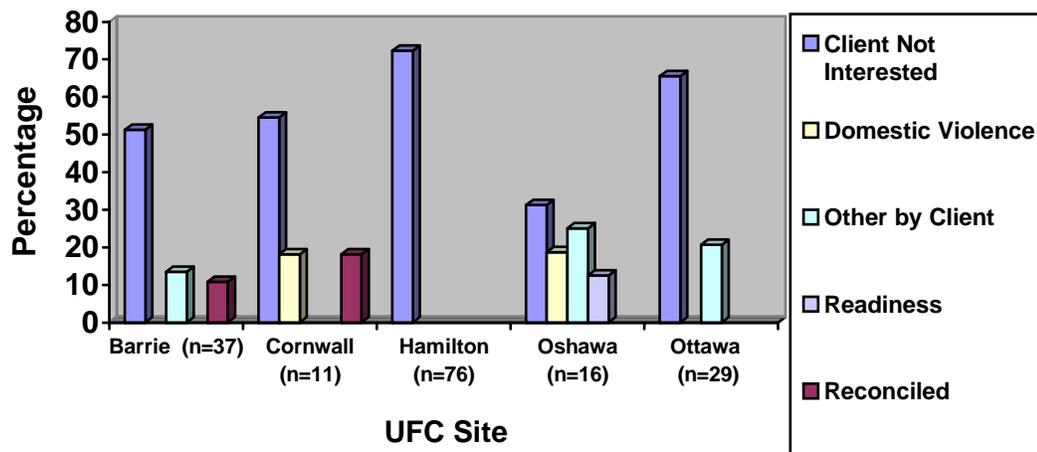
These data are quite compelling for many reasons. First, the data suggest that the majority of off-site mediation cases are not before the FC at the time the mediation case closes. There is a perception among family justice partners at all sites that mediation services attached to the family court have not successfully diverted cases out of the court system or significantly reduced the caseloads for judges. By examining these data, one can more clearly understand why this perception exists. Off-site mediation services are serving a need for the community and are assisting individuals who require mediation services. The majority of these individuals, however, are not involved in court proceedings, and as such, mediation services may not be reducing the caseloads for judges because these cases are not part of the judges' caseloads. Moreover, combined with the information related to the source of referral, it appears that off-site mediation services mediate many cases that are referred by the clients themselves and either do not end up in FC at all, or if they do, this happens after mediation services are completed. What is unknown

is whether these cases would have been litigated if the intervention had not taken place at this early stage.

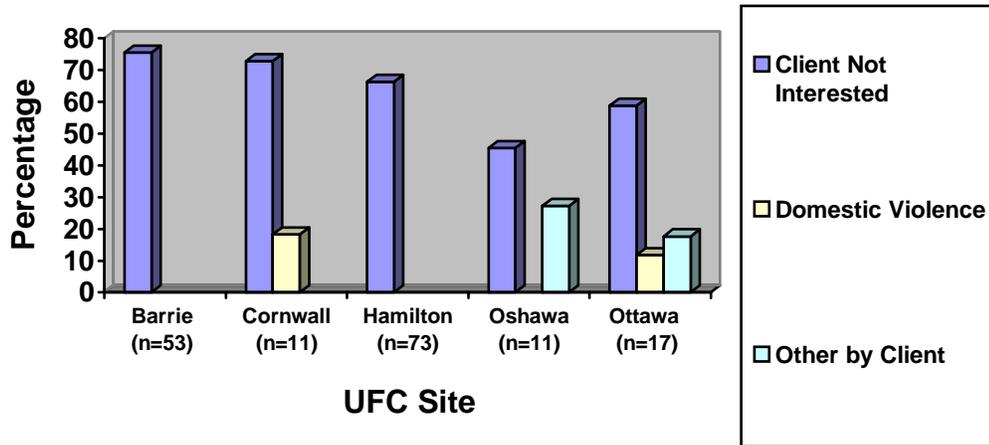
Reason for Mediation Cases Closed at Intake

Mediation is not necessarily appropriate for every case. Moreover, the timing of mediation is very important since some parties may not necessarily be ready to mediate or resolve their disputes early on in a case. More importantly, in cases of domestic violence and/or a clear power imbalance between the parties, mediation may not be suitable at all. Thus, knowing the reasons why mediation cases are closed at intake can help us understand the limits of the service. While the reasons for cases closed at intake vary, the vast majority of cases across all sites in all three years were closed because the client was not interested in mediation. In fact, in 2004–05, the client not interested in mediation and some other reason by the client represented almost all the reasons why cases were closed at intake. Only a very few number of cases closed because of domestic violence.

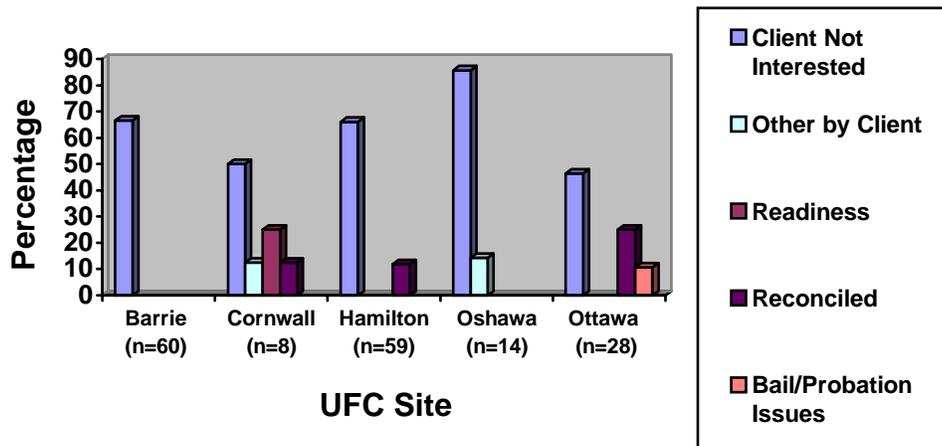
Reason Offsite Mediation Cases Closed at Intake in 2003-04



Reason Offsite Mediation Cases Closed at Intake in 2004-05



Reason Offsite Mediation Cases Closed at Intake in 2005-06



While the data do not provide clear answers as to why many clients are not interested in mediation after the intake process, it is possible, given the high-number of self-referrals to mediation services, that many clients hear about mediation through a third party and may be misinformed about the process and/or promises of ‘quick fixes’. Once a thorough intake is completed and the mediator explains the process (e.g., a lawyer is needed, both parties need to be at the table), clients may decide against mediation and become disinterested or concerned about the process. There could be a variety of reasons why people choose not to continue, but they may state that they are just not interested. Documenting and understanding why the client decides not

to pursue mediation services would be important additional information to collect to help clarify any misconceptions clients may have at any stage of the mediation process.

The fact that very few mediation cases across the years were closed at intake because of domestic violence raises some interesting concerns. It is well supported in the literature that domestic violence occurs more frequently in separated couples and is a significant issue in the majority of parents in high-conflict divorces. It is difficult to interpret whether domestic violence is being missed due to lack of client disclosure, lack of mediator screening, or a combination of the two, as literature in the area would support¹.

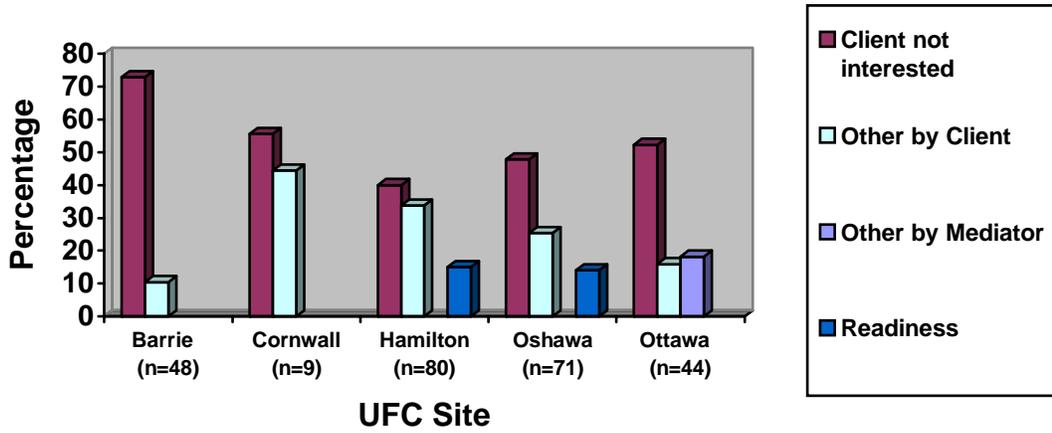
Victims of domestic violence often do not raise concerns about their victimization in mediation and may be afraid to disclose this information for fear they will not receive service. Mediation may be the only affordable, accessible, and expedient intervention, especially compared to litigation. Alternatively, the small percentages of cases closed at intake because of domestic violence across all sites might indicate that mediators are able to keep victims safe and are cognizant of the dynamics of the abusive relationship. In our interviews, all mediators indicated that formal and informal domestic violence screening procedures are considered in all cases, and that a differential approach to mediation is often used in appropriate cases. It is not known, however, how many domestic violence cases were mediated, nor the outcome of such cases. While the data does not provide answers to any of these questions, additional information should be collected and examined to understand the nature and the impact of domestic violence screening in cases of mediation.

*Reason Mediation Terminated **After** Intake*

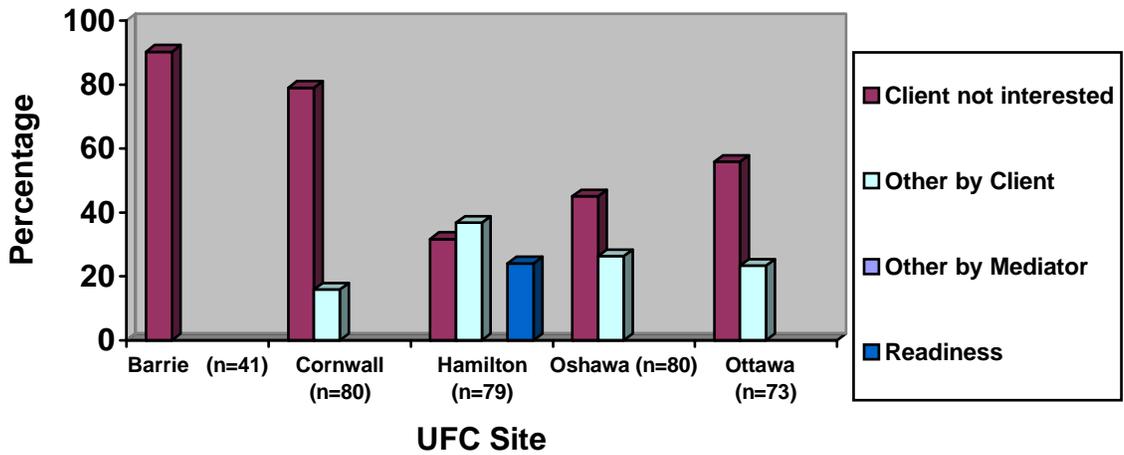
The graphs below show the reported reasons why mediation sessions were terminated prematurely. Between 2003 and 2006, the main reasons reported across all three sites were fairly consistent and were related to the client not being interested in mediation. Similar to the reasons why cases were closed at intake, cases terminated prematurely because of domestic violence concerns and/or power imbalances were evident in a very small number of cases (less than 5% overall across all sites). These data suggest that cases are closed either at intake or at some point during the mediation session because clients lose interest in mediation, despite the vital and necessary role mediation can play in settling disputes outside the courtroom. Again, given the high number of self-referrals to mediation services, it is unclear why many clients would subsequently drop out of mediation. It is possible that clients may not fully understand the process of mediation until later on in the sessions. Alternatively, they may come into mediation with unrealistic expectations in terms of the time and effort involved for successful mediation. Whatever the reasons may be, it is important to more thoroughly document and collect information about why clients lose interest in mediation. This information can then be used to better prepare clients about the process, nature, and scope of mediation.

¹ Hirst, A. (2002). Child custody mediation and domestic violence. Paper presented at the 2002 Family Court Services. State-wide Educational Institute, Long Beach, CA.

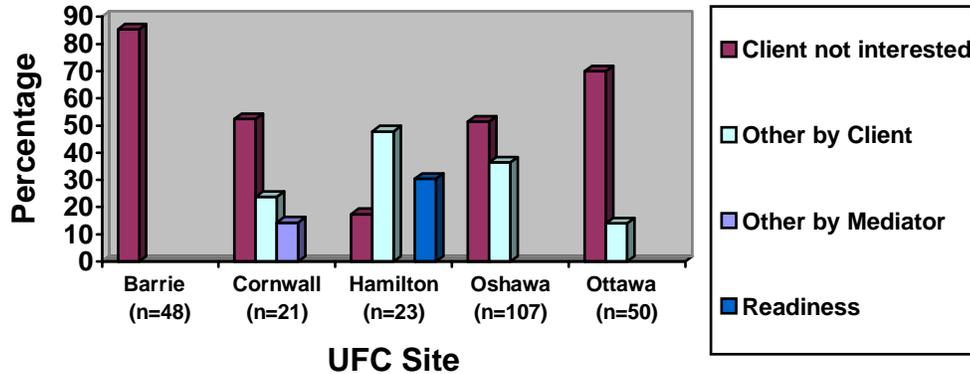
Reason Mediation Terminated for OffSite Mediation Cases in 2003-04



Reason Mediation Terminated for OffSite Mediation Cases in 2004-05



Reason Mediation Terminated for OffSite Mediation Cases in 2005-06



Perceived Effectiveness of Mediation Service

In examining the effectiveness of mediation services, our data suggest some important distinctions must be made in terms of mediation itself in contrast to the mediation service provider. In other words, mediation is endorsed as an essential service to the courts, but there are a range of opinions about the actual service provider and the nature of the service delivery.

Effectiveness of Service

Approximately 100 participants completed the on-line survey and were asked to rate the degree to which they agreed that mediation services are effective and beneficial to clients.

On-Site Family Mediation Services

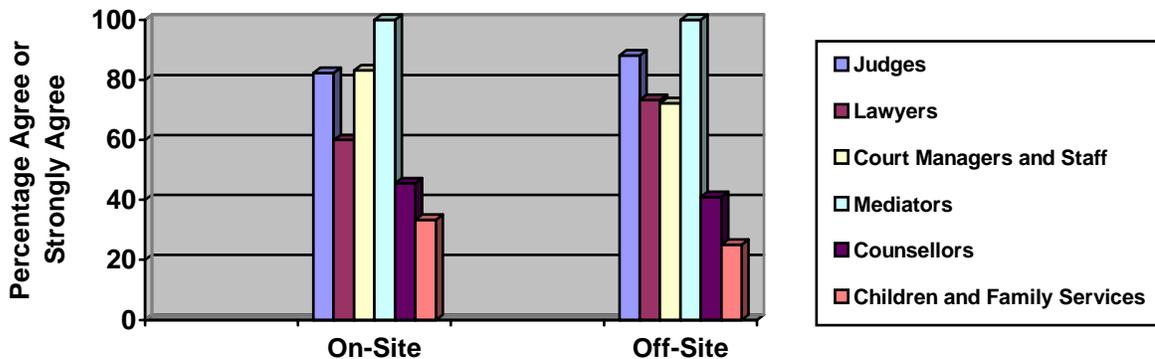
Approximately 83% of judges and court managers/court staff surveyed indicated that they agreed/strongly agreed that on-site mediation services are effective and beneficial to clients. On the other hand, only 60% of lawyers responded in a similar fashion. In addition, 46% of counsellors and 33% of individuals working within children and family services agreed/strongly agreed that on-site mediation services are effective and beneficial to clients. This lower rating could be accounted for by their lack of familiarity with the ancillary services overall (36% and 33% respectively rated their familiarity with the ancillary services as comprehensive/very comprehensive). All mediators who responded to this question strongly agreed that on-site mediation services are effective and beneficial to clients.

Off-Site Family Mediation Service

Judges also strongly endorsed off-site mediation services as being effective and beneficial to clients (88%). The remaining percentage of judges (12%) *strongly disagreed* that off-site mediation is effective and beneficial to clients. The majority of lawyers (73%) agreed/strongly

agreed that off-site mediation services are effective and beneficial to clients, while all mediators surveyed strongly agreed. The majority of court managers/staff (72%) surveyed agreed/strongly agreed that off-site mediation services are effective and beneficial to clients. Similar to on-site mediation services, less than half of counsellors (41%) and individuals who work within children and family services (25%) agreed /strongly agreed that off-site mediation services are effective and beneficial to clients.

Family Mediation Services are Effective and Beneficial to Clients



Effective Qualities of Mediation Services

On-line survey participants were asked to identify and describe any qualities of mediation services that currently contribute to the service working effectively for the benefit of the client. Participants described the effective qualities of the mediation services in their own words. Overall, the effective qualities used to describe mediation were: *accessible; well trained, competent personnel; cost-effective; and efficient*. Participants distinguished between on-site and off-site mediation. On-site mediation services were seen as being able to deal with less complex issues on a timely basis due to their convenient location within the courthouse. Off-site mediation services were seen as being able to deal with more complex disputes that required highly individualized solutions.

Effective Qualities of Mediation Services Reported by Stakeholders

- ✓ *Accessible*
- ✓ *Well-trained, competent personnel*
- ✓ *Cost-effective*
- ✓ *Efficient*

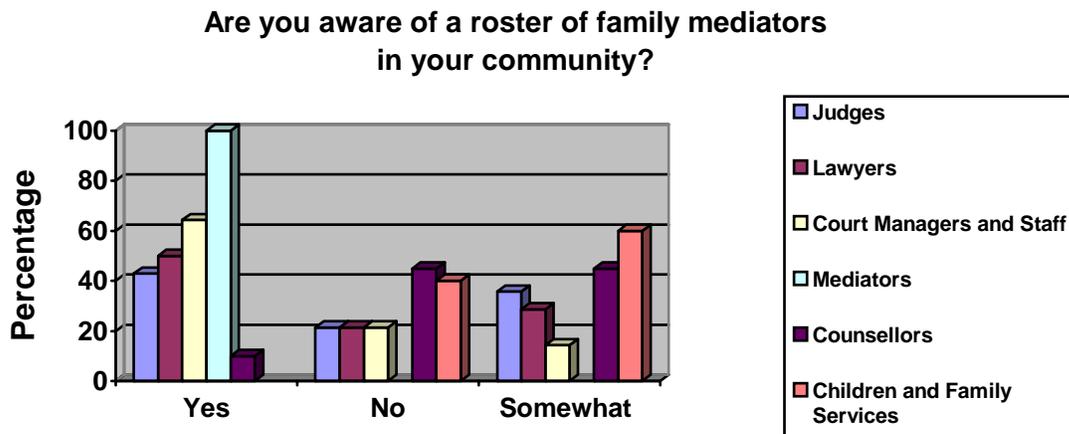
Alternative Mediation Services (Roster)

We explored whether there would be more referrals to mediation services if a roster of family mediators was made available to professionals associated with the family court. The on-line

survey included a question that assessed awareness of a roster of mediators and the likelihood of increased referrals in this case.

Roster of Family Mediators

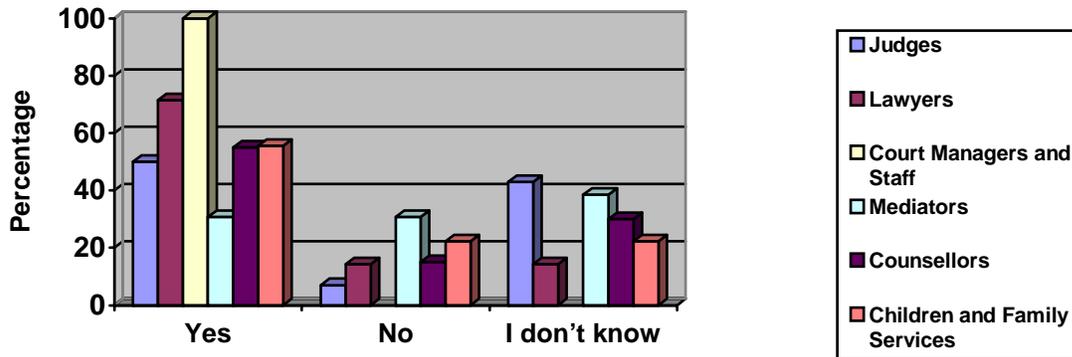
Participants were asked whether they were aware of a roster of family mediators in their community to whom they could refer clients. All mediators surveyed (100%) indicated that they were fully aware of a roster of family mediators in their community. On the other hand, 43% of judges and 50% of lawyers surveyed indicated that they were aware of such a roster in their community. Sixty-four percent of court managers/staff responded that they were aware of a roster of family mediators, while very few counsellors were aware (10%).



Participants were also asked whether they would refer more clients to mediation if there was a roster of family mediators that included well-trained and experienced family law lawyers. All court managers/staff surveyed (100%) indicated that they would in fact make more referrals to mediation services if this were the case, in contrast to 50% of judges and 71% of lawyers. Thirty-one percent of mediators and approximately 56% of counsellors and individuals working within children and family services surveyed indicated they would make more referrals if such a roster existed.

Overall, these data suggest that few professionals, other than mediators, are aware of a roster of family mediators in their community. Moreover, even if a roster were available that included well-trained and experienced family law lawyers, it would not increase the likelihood of more referrals. Despite these findings, during our interviews, one site (Barrie) indicated that a roster of family law mediators was not only helpful, but in fact was an integral part of the development of mediation services in their community.

Would you refer more clients to mediation if there was a roster of family mediators that included well trained and experienced family law lawyers?



Strengths and Successes of Family Mediation Services

The data on the successes and challenges of mediation services are based on the on-line survey and the in-depth interviews and focus groups with participants in the family law justice system. The major themes are highlighted in this section, with examples from the five evaluation sites.

Justice partners are motivated to use mediation to resolve family law disputes, and there is support in the community for mediation being an integral part of the court system:

- Judges are well aware of the financial and emotional costs to families associated with prolonged litigation. They welcome the use of competent professionals with an understanding of the court system to assist parties and their lawyers to achieve a result that is acceptable to both parties.
- Lawyers are supportive of the idea of using mediation in child related issues. There is, however, some resistance from the lawyers interviewed with respect to the use of mediation for financial matters. The reported source of this resistance is their minimal confidence in non-lawyers or lawyers who do not have their trust mediating support and property matters. For example, some lawyers feel that property and financial rights are complicated and that most non-lawyers do not have the necessary in-depth training, knowledge, and experience to ascertain the parameters of a fair agreement.
- Court administration is supportive of the incorporation of mediation services as part of the services offered by the family court to the consumers of family law legal services.
- Professionals in the community who work with families involved in separation and divorce support a differential approach to the use of the FC to resolve matrimonial matters. Moreover, the vast majority of community professionals share the opinion that mediation can empower parties to resolve their own problems with the assistance of an able mediator. The exception to this sentiment comes from advocates for abused women. These advocates are concerned that the power imbalance between the parties

may be used to extract an improvident settlement and that the process itself may further victimize the victim.

The division of on-site and off-site mediation is perceived at all five sites as an effective model of service delivery:

- The majority of judges and lawyers interviewed perceive on-site mediation to be effective for the resolution of less complex and narrower issues in disputes before the court. The immediate availability of this intervention is seen as invaluable.
- Both lawyers and mediators at all five sites see the clear benefit of on-site mediation services since the parties are available at the courthouse for court proceedings. For example, the parties may have made special efforts and arrangements, including travel, time off work, and childcare to attend court, and are more receptive to immediate resolution rather than planning for additional days in court. The parties often see the courtroom and the mediation office as an integral part of the same system.
- The vast majority of mediators appreciate the close connection to the court, as well as the opportunity to promote the benefits of off-site mediation where appropriate. The on-site mediators facilitate a smooth transition to off-site mediation.

The relationship between mediators and judiciary in some FC sites has been characterized by a level of trust and mutual respect:

- The success of mediation services depends on a close working relationship between judges and mediators founded primarily on trust and mutual respect. Some of these relationships have flourished because of a collaborative investment in the development of the service from its inception. In other circumstances, this relationship developed through formal and informal meetings that created a mutual understanding of the benefits and limitations of mediation.
- The trust in the relationship is essential in situations where the judges and mediators have different perspectives on the suitability of the parties for mediation. For example, the parties may present differently (or present different information) in front of the judge compared to the informal setting of a mediator's office. In these instances, if the mediator determines that the referral from the judge is not appropriate after a full picture of the history emerges, mediation may not proceed.
- The ongoing dialogue amongst judges, lawyers, and mediators about the complexity of cases enhances each profession's understanding of their role and provides for more integrated service delivery. For example, in one of the sites we visited, the resource committee served this function by providing a forum for discussing difficult case scenarios and issues.

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Challenges and Barriers of Family Mediation Services

Our investigation identified a number of challenges and barriers in the current delivery of mediation services in the FC that are preventing the system from reaching its full potential.

Systemic Accountability and Leadership

The majority of stakeholders interviewed shared the opinion that the model for delivery of mediation services lacks clear and discernable objectives.

- Interview data revealed a clear disconnect between the nature of mediation as perceived by mediators hired by the service providers, and that of judges and lawyers at each site. Mediators true to the fundamental principles of traditional mediation subscribe to a model that requires them to engage in a process which educates the parties, helps them to understand their interests and those of the other side, and seeks to empower and encourage the parties to find a solution to their dispute with the help of the mediator who acts as a facilitator. Their focus is very much on the process and on creating an environment within which the parties can find common ground to reach an agreement. On the other hand, many judges and lawyers perceive mediation as a bilateral negotiation process focused primarily on reaching an agreement on the issues in dispute. Some judges and lawyers expressed the view that mediation can become too much of a therapeutic process rather than finding an immediate settlement on narrower issues.
- Lawyers who are mediators may subscribe to either of these models depending on their personal philosophy of mediation. The different perspectives have created tension between the service provider and the judiciary which has reduced the effectiveness of the service. It is imperative that the objectives of the court mediation services be clearly set out, including the model that it is expected to follow, so that all of the participants' expectations are in line with each other. This issue, of course, is vitally important when choosing the roster of mediators, since the skill set and underlying philosophy of the mediator must be consistent with the objectives and the principles of the model that is deemed to be appropriate for the court services. Our view in this regard does not preclude the accommodation of different models depending on the issue in dispute. For example, there may be different approaches to mediation depending on the issues raised for resolution and the history of the conflict between the parties.
- Although the general goal of resolving disputes is obvious, there are no articulated specific indicators that provide guidance to the mediators, lawyers, and judges in terms of how well the program is functioning. This lack of a common objective leads to conflict between various justice partners as they each assess and perceive the success of the program with their own measurable criteria and perspective, rather than through an identifiable and objectively measurable goal based on a systemic perspective. For example, a mediator may consider a case as a successful intervention by narrowing the number of issues and disputes and facilitating referrals to mental health and social services to deal with underlying parent and child adjustment concerns. These may be important steps on the path to a future, final settlement between the parties.

The system lacks a consistent definition of accountability to ensure that the initial objectives of the service model are being met.

- There is a lack of local accountability with respect to the service providers in any given community. For example, all of the primary interested groups at each site complain about the issue of accountability. The service providers feel that they are being “micro-managed” by the requirements stipulated in the RFP. On the other hand, other justice partners feel that once the contract is awarded, there is a lack of meaningful monitoring and evaluation of the service².
- There is a lack of self and outside evaluation of the service on a regular basis. Gathering and forwarding certain statistics for MAG by the service providers is not necessarily connected to the evaluation of the effectiveness of the service. Moreover, there is no local monitoring or verifying of the data that is collected. Beyond the reporting of the statistics, the overall context of the information may be critical in the appropriate interpretation of the data. For example, the results in one community may be a function of the overall volume of cases and the demographics in the region rather than the service per se³.
- At the local level, at all sites interviewed, outside of the mediation service provider, there is a lack of clarity among all family court participants in terms of responsibility to ensure that the mediation services are meeting the needs of the family court. Various partners might have good ideas as to how the service can be improved, but without any formal authority to bring on change, they become frustrated and discouraged with the service.

Differential Expectations about the Appropriate Use of On-Site Mediation

On-site mediation services include intake for mediation, screening, and mediation of narrow issues in appropriate circumstances. On an ongoing basis, the on-site mediator is to liaise with court staff, the judiciary, lawyers, and clients to promote the on-site family mediation service. At the majority of sites interviewed, there is a disagreement among professional groups as to what type of cases or issues are appropriate for on-site mediation.

In some cases, this conflict leads to the onsite mediation services not being used because the judges perceive the service as being ineffective by not resolving previous cases. Alternatively, the mediator’s desire to try to please the judge sometimes leads to the mediator’s time being

² Until January of 2006, managers of Court Operations were required to sign-off on the accounts provided by the service provider without having any authority over the service provider or any direct knowledge or input with respect to the services rendered. In December 2005, however, following the transition to a government-wide financial information system, the Ministry approved a policy change in the invoicing procedure whereby service providers are not required to submit invoices directly to the Ministry for payment. An annual audited financial statement must also be submitted.

³ To enable the Ministry to monitor and evaluate service delivery, the service provider must provide detailed mediation and information service statistics, client satisfaction information, and any other information that the Ministry may request at any time. The Ministry may require the service provider to follow-up with the client(s) after the service has been delivered for purposes of providing the Ministry with information on client satisfaction with the services provided. The service provider is to provide the monthly and bi-annual statistics to the Ministry, by the 15th day of the following month, using the electronic data collection system provided by the Ministry. Service providers are responsible for tracking and verifying all information sent to the Ministry.

taken up by complex cases on-site, while other potential referrals cannot be dealt with due to a lack of time and opportunity.

Data Management & Evaluation

In general, family mediation statistics provided by the service providers at most sites are neither complete nor consistent. The definitions used to report statistics are not of a nature or quality that enables a scientific review of data; no protocols exist for missing data⁴.

Service providers are required, under the terms of the contracts, to administer customer satisfaction surveys with clients who use their services. However, in all sites, there was a lack of consistent and complete consumer data related to mediation services.

The data needs to be interpreted and analyzed in the context of the jurisdiction's population and overall number of cases being brought before the court. Some aspects of this analysis require a province-wide perspective and comparisons of comparable jurisdictions.

The Current Model for Delivery of Mediation Service

There was considerable debate about the merits of mandatory mediation.

- Although there is concern that mandatory mediation may coerce domestic violence victims or other vulnerable litigants into an inappropriate intervention, most justice partners indicated that many cases could be resolved through mediation. Many participants suggested that consideration should be given to mandatory mediation in certain types of cases. In any event, it is essential that all litigants receive information about mediation to ensure an informed decision prior to using court time.

There is a lack of stakeholder input into the selection of the service provider and the mediators.

- The success of the service depends on the satisfaction of the consumers of that service, which includes not only the litigants, but also judges and family law lawyers. While members of the judiciary and managers of court operations have been included on selection committees in the past in a limited number of sites, members of the bar have not been. In many sites, this has led to the bar and the judiciary having little or no confidence in the mediation service⁵.

⁴ Under the terms of the contracts with service providers, mediation services are required to submit monthly statistics by the 15th day of the following month, using the electronic data system provided by the Ministry. Service providers are responsible for tracking and verifying all information sent to the Ministry. Court Services Division is currently working collaboratively with service providers to create clear standardized definitions, improve methods of collecting data, and ensure a process to correct errors in past reporting.

⁵ In response to such concerns, in the most recent Request for Proposal (posted in December of 2005), a new additional criteria was added for rating proponents: references for the proponent, preferably a judge and member of the Bar from the liaison committee, addressing the proponent's past performance and service delivery, that provide information on relationship building skills; mediation results; balance and legality of mediation results; and, the referee's confidence in making referrals to the proponent. While the new additional criteria are an improvement from the previous RFP, it still does not completely address the larger issue of a lack of stakeholder input into the selection of mediators.

The current rating and weighting criteria set out in the RFP used in the awarding of contracts to mediation service providers are generally not supported by the bench and bar. There is a lack of flexibility with the mediation service funding model.

- The stringent financial requirements do not allow for the service provider to be able to reallocate funds into an area where it is required in any particular community. For example, where the services are underused, service providers perceive that they are unable to access some of the surplus funds to market the program and thereby increase referrals. Most mediation services indicated that the current funding does not adequately cover overhead and administrative costs. One mediation service provider has to use funding from other programs to meet service demands.

Physical Site

The RFP states that the ministry will provide limited space for the purpose of on-site mediation. Each service provider is required under the terms of the contract to provide a computer. There is, however, significant inconsistency from site to site in the nature of the physical space available and the equipment (e.g., computers) necessary for on-site mediators to effectively perform their work.

Mediation Involving Domestic Violence

The challenge identified involving domestic violence and mediation is represented by a significant difference in the opinion of the mediators versus community advocates on whether the needs of abused victims are being recognized. On one hand, each mediator is contracted to ensure that they are vigilant in their efforts to screen their clients for abuse and other issues related to power and intimidation⁶. On the other hand, community advocates believe that many abused victims are coerced into mediation, or at least their plight is minimized. Although our research team did not interview litigants or track them through the system, the different perceptions were strongly articulated.

Existing Promising Practices of Mediation Services

Our evaluation identified a number of promising practices that may enhance the effectiveness of the mediation services attached to the court. The term “promising practice” is used to capture practices that appear effective and encouraging in their implementation, although there may not be any research or evaluation documented on their use. The term “promising” is preferred to “best” practice since “best” implies one answer that might be imposed on all sites.

Implementation of these practices throughout the FC sites would help the court:

⁶ The RFP requires that each mediator demonstrate the particular screening tool that will be used. Screening must be conducted during the intake stage and, given that direct disclosure of domestic violence/abuse does not necessarily occur at the intake stage, there must be continuous screening throughout the mediation process. The safety of clients must be placed first and foremost. Whether victims of domestic violence/abuse are identified at intake or later in the process, they must be given support for their disclosure, urged to obtain independent legal advice (if they have not already done so), and encouraged to explore the availability of protective orders and appropriate community resources.

- Provide a more uniform service delivery system throughout Ontario;
- Improve the service to the consumers;
- Increase the usefulness of the service to family law judges and lawyers; and
- Alleviate some of the pressures on the court system.

Existing Promising Practices

Promising Practice #1: Remind judges of the availability of on-site mediation services.

Although it is not a frequent practice, effective on-site mediators make it part of their regular routine to remind judges that they are available to receive referrals from them on days when the court is conducting case conferences, settlement conferences, motions, or presiding over a “first appearance” list of cases. This practice takes a number of different forms, from a formal introduction to judges who do not usually sit in the FC and who do not know the mediator, to simply walking into a courtroom where a judge is presiding who is known to the mediator and familiar with the service.

Promising Practice #2: Conduct ongoing professional development related to mediation for court staff.

In the majority of sites, court staff receive information and in-service training about the ancillary services and how mediation services can be promoted with all litigants, especially self-represented litigants.

Promising Practice #3: Remind lawyers of the availability of the on-site mediation services.

In the majority of sites, court staff and administration do not take for granted that lawyers are always aware of on-site mediation services. Various sites have found that referrals to on-site mediation increase when there is a deliberate reminder to lawyers about the availability of the on-site mediator. This can be done through regular discussions with the lawyers, through the resource and liaison committees, and by increasing the visibility of the on-site mediator.

Promising Practice #4: Post signs in the waiting areas that provide information about the mediation services.

In a limited number of sites, appropriate signage highlights the purpose of mediation services and the availability of the service.

Promising Practice #5: Locate on-site mediation office in close proximity to the Family Law Courtrooms and the waiting area.

When the on-site mediation office is in close proximity to the Family Law Courtrooms and waiting area, there are a number of advantages, including: self-represented litigants find it easier to access service; the close presence of the mediation office naturally promotes the service; litigants are close to the courtroom in the event that their case is called; and the on-site mediator can go back and forth between litigants and the office to promote the service.

Promising Practice #6: Ensure a knowledgeable manager of court operations, counter services supervisor, and counter staff.

Despite the high stress environment that court staff, counter staff, and managers/supervisors of court operations work under, most staff have a positive approach to customer service, are knowledgeable and friendly to litigants, and demonstrate effective skills in dealing with issues that may arise on any given day. The importance of a positive approach to customer service cannot be overstated. The majority of court and counter staff interviewed genuinely felt that their primary responsibility is to ensure that efficiency of service is delivered to the litigants.

Existing Promising Practices for Off-Site Mediation:

Promising Practice #7: Establish and maintain a close relationship with the counter services supervisor and the counter services staff.

At some sites, counter staff were knowledgeable about off-site mediation services and the benefits of mediation for litigants. At other sites, the service provider had regular contact with some of the counter staff and supervisors and used this contact to address and clarify any questions and concerns regarding mediation.

Promising Practice #8: Use the existing statutory committees to act in the capacity of an advisory board.

The mediation service provider sits on the statutory committees. At some sites, the service provider not only provides information, but uses the other members of the committee in an active fashion as an informal advisory committee on critical issues and challenges that they face on a regular basis.

Promising Practice #9: Use experienced family law lawyers to conduct mediation in support and property cases.

While the current RFP does not require service providers to use lawyers as mediators, in at least one site specialized family law lawyers were part of the roster of off-site mediators and tended to be used for more complex matters regarding financial and support issues. While not required, there is no doubt that this expertise is an asset to the services offered. Although it may not be financially ruminative for senior lawyers to conduct these types of mediation, they have expressed to us many other benefits that they derive from this participation that enhances their careers as mediators in private mediation practice while making a significant contribution to the community. Without exception, every lawyer we spoke to felt strongly that they would not refer litigants to non-lawyers for mediation in cases of financial and property issues. In one site, from the inception of the mediation program, lawyers were sought out and assisted in the development of the service. As such, this site experiences a higher number of mediation referrals from the bench and bar. In this site, lawyers participated in mediation training and at any given time, at least one-third of the roster consisted of lawyers who do support and property on their own and work together with clinicians to mediate custody and access issues.

Promising Practice #10: Provide information to the family law bar and bench about mediation services and related dispute resolution/reduction materials.

In the majority of sites, the mediation service providers consistently attend family law meetings and update them on current literature on mediation and child issues. Relevant literature is circulated among the bench and bar about alternative dispute resolution. In one site, the family law bar received mediation sensitivity training that explained the process, thereby enabling them to explain it to their clients and encourage its use. The service provider, in conjunction with the area legal aid director, arranged for mediators to meet with new duty council to familiarize them with the process and the available services.

In the majority of sites, there have been times when the service providers have presented materials about mediation services, which cases are best suited for mediation, and more importantly, the role of bench and bar in identifying appropriate cases and preparing clients about the process of mediation.

Promising Practice #11: Use differential techniques to mediate cases where there is a power imbalance between the parties of a nature that still makes a fair mediation possible.

A number of sites have made a considerable effort to ensure that there is a differential approach to mediation in cases of domestic violence. For example, in one site, any significant report of domestic violence leads to a termination of the possibility of mediation. In other sites, mediators create safeguards, including:

- Setting up pre-determined signals between the victim and the mediator to deliver the message that the session is becoming uncomfortable for the victim because of the interaction occurring during the session;
- Having the victim's lawyer present throughout the mediation process;
- Having the victim's advocate, community professional, or family/friend present throughout the mediation process;
- Having the parties in different rooms and conducting "shuttle" mediation between parties.

Promising Practice #12: Use mediators who are highly skilled and well known to the bench and bar.

Despite the minimum qualifications stated in the RFP for mediators, in some sites specific training and experience in the justice system prior to receiving the contract has led to a more in-depth knowledge of the inner workings of the justice system. This has also resulted in a high level of confidence among the bench and bar of the mediator's ability to mediate cases appropriately.

Promising Practice #13: Establish and maintain a close working relationship with the area legal aid director, staff duty counsel, and per diem duty counsel.

Promising Practice # 14: Provide regular statistical feedback to lawyers, judges, and court services of the mediation services.

Promising Practice #15: Conduct regular and informal meetings for all stakeholders to discuss appropriate referrals to mediation and problem-solve challenging issues unique to each site.

Promising Practice #16: Promote mediation intern policy and practice.

In some sites, the importance of training future mediators was recognized by promoting an internship program. In this program, graduate level students and professionals interested in learning about mediation could observe experienced mediators to learn more about the theory and practice of mediation in a court setting.

Overall Effectiveness of the Court-Related Mediation Services

Mediation services are an integral part of a solution-focused “unified” family court and continue to be universally accepted by the stakeholders at all five sites. However, defining success in mediation service delivery differs among stakeholders.

The statistics prepared by the service providers and gathered by MAG seem to indicate that mediation is used to the extent of the funds available under the RFP at most sites. However, what is strikingly clear from this data, as well as from the file review data collected, is that many mediated cases are in fact not in the family court system at all. This means that while the community is using the mediation services provided by the court, it is doing so outside of the court system. Thus, the initial objective of mediation reducing the number of cases before the court is not being met. What is unknown is whether these cases would have been litigated if the intervention had not taken place at this early stage.

The experience of the vast majority of judges and lawyers interviewed at all five sites is that very few cases before the court are being mediated, and as such, they perceive the service as not living up to its full potential and the initial expectations of the FC. The data collected by MAG supports these divergent views that mediation is primarily being used off-site by clients not involved in any court action. This phenomenon may be in keeping with mediation’s wide acceptance across the community as an early and inexpensive intervention strategy outside the formal court system. On the other hand, at most sites in this review, judges and lawyers are only referring a small number of cases actively being litigated to mediation. Based on our interviews, there is a wide range of reasons for the paucity of referrals to mediation. Some judges and lawyers candidly admit that they simply do not refer cases to the court mediations services because they have no faith in the mediators associated with the agency that was granted the mediation contract.

The current structure of the contract has been universally criticized by the service providers as not providing sufficient funds to accomplish the number of mediations expected of them. However, in 2004–05, none of the five service providers provided the level of service that required more than the contract amount for service delivery. Despite this, a change in the funding structure that took away a core amount of funds for administrative purposes was identified repeatedly as having made it very difficult for the service providers and the mediators to balance their budgets. Some of the other individuals interviewed outside of the mediation service provider community indicated that the discrepancy in remuneration between on-site and off-site mediation provides an incentive to do less on-site mediation because it pays less, even though it requires more skill due to the time pressure involved in the process. Another criticism often

voiced by the vast majority of mediators at all five sites is that the overall remuneration is significantly lower than what mediators can charge on a private basis, making it difficult for the program to attract the best mediators in the community.

In a limited number of sites where the program is receiving a substantial number of referrals from the bar and the judiciary, the mediators seem highly enthused and are well-known and respected by the bar and the judiciary. Additionally, senior family law lawyers and mediators involved from the inception of the mediation program as organizers of the project have proven invaluable in maintaining an efficient program. The key to success is trust, and it is not surprising that when the service contract was provided to a person(s) who was known and respected by the bench and bar, success increased immensely, as opposed to those areas where no such relationship existed before the contract was awarded. In contrast, when the contract was awarded to a person(s) who was unknown to the bench and bar, the program has not been able to reach its potential. In these locations, even though the service looks like it is a success on paper, it has not been able to divert many cases already before the courts out of litigation. As mentioned earlier, each stakeholder is using a different measure to assess the effectiveness of the service, and these different perspectives have in turn perpetuated longstanding misunderstandings between various stakeholders. Moreover, there is a real disconnect about the nature and purpose of mediation between the different stakeholders in the system.

The answer to the question of whether court-related mediation services are effective depends on who you ask and what measuring tool you use. Firstly, the degree of effectiveness, irrespective of how it is measured, varies greatly from one site to the other. Secondly, in many sites the service provider has a completely different view of how successful the program is than that held by the lawyers and the judiciary in that community. Thirdly, in any given site, there is a marked difference in perception between senior and junior lawyers of the role that the mediation services play in the FC, and whether it has had any impact on the court's case load. Finally, it is evident that a large percentage of cases being mediated are ones that are not in the court system. What is unknown is whether these cases would have been litigated if the intervention had not taken place at this early stage.

Emerging Themes in Mediation

- There are a number of cases involving domestic violence where mediation is clearly not appropriate for victims of violence. However, in many of these cases,⁷ victims of domestic violence may feel coerced into mediation as the only accessible and affordable service. In some situations, victims may not disclose domestic violence out of concern of being screened out of the service, the mediator may miss the history of violence in the initial screening, or the mediator may feel that he/she created enough safeguards to overcome this history in the mediation sessions. In addition, litigation does not appear to be an attractive alternative to domestic violence victims due to the uncertainty of proving the allegations in court, the ultimate outcome, and the

7 Johnson, N. E., Saccuzzo, D. P. & Koen, W. J. (2005). Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. *Violence Against Women*, 11, 1022–1053; Hirst, A. M. (2002). *Domestic violence in court-based child custody mediation cases in California*. Research Update, Judicial Council of California, Administrative Office of the Courts, November, 1–12.

emotional and financial costs involved. Many other reasons may contribute to a lower number of referrals to mediation in these instances, such as a community professional (e.g., counsellor or shelter staff) advising against mediation as an alternative to service.

- Child welfare legislative and policy reform has increased the extent of litigation of these matters in the family court. These complex cases add to an already overburdened court system. Child welfare mediation could alleviate some of the strain on the system, but is currently not available as part of the current model of the FC⁸. The Ministry of Children and Youth Services has recently established a province-wide roster of child protection mediators under the oversight of the Ontario Association of Family Mediators.
- There is not always a clear distinction between cases that come to court as a private family law matter versus cases entering the system as a child protection matter. For example, domestic violence in the presence of children is increasingly a common reason for referral to CASs (e.g., it is a standard police services practice to fax reports of domestic violence occurrences with children in the home to the local CAS). There is a lack of consistent policy and protocols in this emerging area to decide whether the case should be handled in the family law system or the child protection stream. Abuse victims may be faced with the dilemma of either being accused of not protecting their child from domestic violence, or finding themselves in a legal dispute in the family law arena with their abuser requesting custody or extensive contact with the children. These dilemmas require coordination amongst different agencies and professionals (e.g., CAS, police) as well as access to appropriate services such as mediation (with safeguards in place).

Recommendations to Enhance the Effectiveness of the Mediation Services

a. Systemic Accountability and Leadership

Recommendation #1:

MAG should set out clear goals and objectives for mediation services. An independent review to measure the effectiveness of the service should be conducted.

Recommendation #2:

Members of the statutory resource committees should be charged with the local responsibility of assessing the extent that formulated objectives of the services are being met in their community.

8 Cunningham, A., van Leeuwen, J. (2005). Discussion Guide for Communities Implementing Child Protection Mediation, www.lfcc.on.ca.

Recommendation #3:

Quarterly meetings should be held, chaired by the administrative judge in each site, specifically designed to provide an opportunity for ongoing meaningful communication between the mediation services and the referral sources: the FLIC service providers, the bar, judiciary, legal aid, duty counsel, court counter staff, court administration, and court staff.

Recommendation #4:

Mediation service providers should be accountable to a local advisory committee primarily composed of members of the resource committee. This accountability should include monitoring of service data related to mediation.

Recommendation #5:

Mediation services should provide an annual review of their activities and promising practices at a provincial FC meeting that involves all family law justice partners. Consideration should be given to such a meeting coinciding with a multidisciplinary family law conference or judges' conference to maximize judicial attendance. Remote sites should be included through videoconferencing.

b. Data Management & Evaluation

Recommendation #6:

MAG should continue to support a provincial committee to promote consistency and accuracy of data related to mediation services.

The ministry recently established a committee, including service providers, to improve the consistency of data entry and collection. MAG should, through this process, devise a consistent method of gathering statistics to enhance their reliability. Formulation of a province-wide standard definition of terms that are to be used in the recording of statistics would facilitate comparable data practices across sites. In addition, the purpose of the statistical information should be identified, and a person or position in government designated as being responsible for the interpretation of statistics and dissemination of the statistics to the judiciary, administration, and the statutory committees in each site to enable the stakeholders to gauge the effectiveness of the service being provided in their community.

c. Training and Best Practice

Recommendation #7:

Mediation service providers should ensure ongoing training sessions for their mediators to keep them up to date on emerging issues such as screening for domestic violence cases. This training should include judges and seniors lawyers to promote cross-disciplinary dialogue and a better understanding of the benefits and limitations of mediation.

Recommendation #8:

MAG, in collaboration with mediation service providers, should promote training and internship opportunities for future mediators. Policies and practices should promote this training and include partnerships with accredited educational programs or organizations.

Recommendation #9:

MAG, in consultation with the representatives of family court branch, bar, and administration, should devise province-wide guidelines for mediators, judges, and lawyers for which cases are suitable for on-site mediations.

On-site mediation requires special attention and examination. The presence of a mediator at the courthouse on a day when the parties are appearing before a judge creates a unique opportunity for problem solving to take place. The formal authority of the judge and the court setting, as well as the special skills of an on-site mediator to deal with narrow and very discrete issues, can maximize this opportunity to deal with the most appropriate cases that are likely to be successfully mediated. In this way, the judiciary, bar, and the mediators can arrive at a common understanding of the appropriate types of cases, subject matter, timing, and process that has to be involved in on-site mediation.

d. The Current Model for Delivery of Mediation Service

Recommendation #10:

Building on the existing requirements, MAG, in consultation with the Ontario Association for Family Mediation and representatives of the family court bench and bar, should devise province-wide criteria of qualifications necessary for a person to mediate in the family court. Not only academic qualifications should be considered, but also experience and recognition in her/his community of that person's abilities to mediate family law disputes, knowledge of community resources, and knowledge of family law in general.

Recommendation #11:

Building on existing practices, the family court bench and bar in each community should be directly involved in the selection of the service provider and have input into the selection process of those persons who will be doing mediation in their community. This will ensure the trust and confidence of the two major partners in the family law justice system.

Recommendation #12:

A standard method should be devised to track cases in the system that were partially or completely settled through mediation, the nature of the settled issues, the timing of the settlement, and any other measure that can assist in determining the impact the mediation services have on judicial caseloads.

Recommendation #13:

Senior lawyers should be recruited as mediators to assist in mediating financial and property matters.

Recommendation #14:

All litigants should receive information about mediation services as soon as they enter the system. This fact should be documented in litigants' files and presented to the judge before proceeding with regular court hearings. MAG should actively promote mediation services through advertising, public service announcements, and outreach to mental health, social services, education, and health service providers.

e. Physical Site and Hours of Service

Recommendation #15:

Standards should be set province-wide for the minimum physical requirements in each family court facility for on-site mediators, and the equipment to be made available for the mediators to effectively perform their work. This space should include a separate room for applicant and respondent, especially in cases of domestic violence that require extra safeguards. Equipment should include computer hardware and software necessary to conduct child support calculations or the income tax consequences of certain spousal support amounts.

Recommendation #16:

On-site mediation service hours must mirror court sitting times.

f. Domestic Violence

Recommendation #17:

Mediators should consult with local coordinating committees or councils on domestic violence (or woman abuse) to ensure that their practices are better informed by community feedback and recent development in the field.

B. Family Law Information Centres (FLIC)

Family Law Information Centres (FLIC) at the five family court locations reviewed provide resources and services for clients related to: separation and divorce and child protection matters; procedures, legal services, and the court process; other community resources to support families, including family mediation services and parent information sessions.

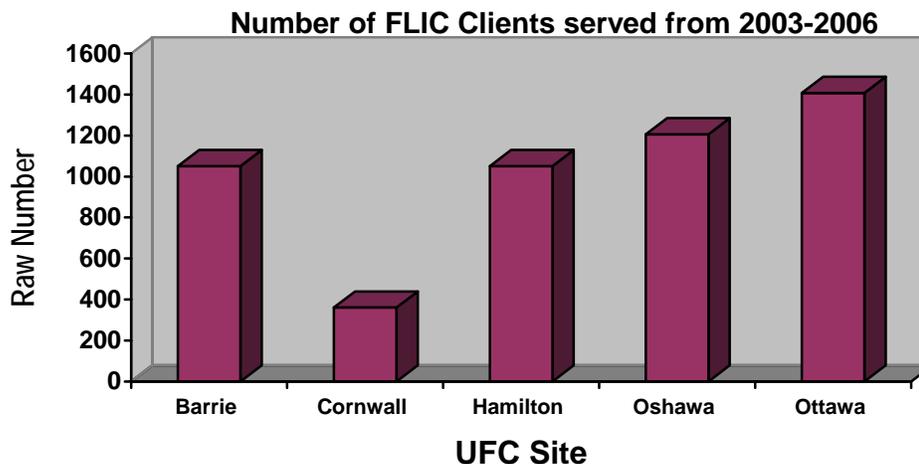
A number of individuals at each centre provide service and information to clients. Each centre has slightly different hours of operation and staffs according to these hours and the needs of the centre. Each centre includes an Information and Referral Coordinator (IRC) who provides information on alternative dispute resolution options and parent information sessions related to separation and divorces and community resources. Oshawa is the only site reviewed that has a full-time IRC at the FLIC. Court staff are available to assist clients to complete court forms and understand the court process and procedures. Advice lawyer services are also available from Legal Aid Ontario, and they provide summary legal advice to those clients who qualify for service.

Use of FLIC Services

Use of FLIC service data is reported from one source of information: MAG system data from 2003–2006. The data across the three years was averaged for a summary value per site. Data is collected in May and November of each year and represents average typical monthly results. Thus, the data are reported as a *snapshot* of service for two months in the year, and are averaged to represent the entire year. The data reported for 2006 are based solely on May numbers as November data was not available at the time of this review.

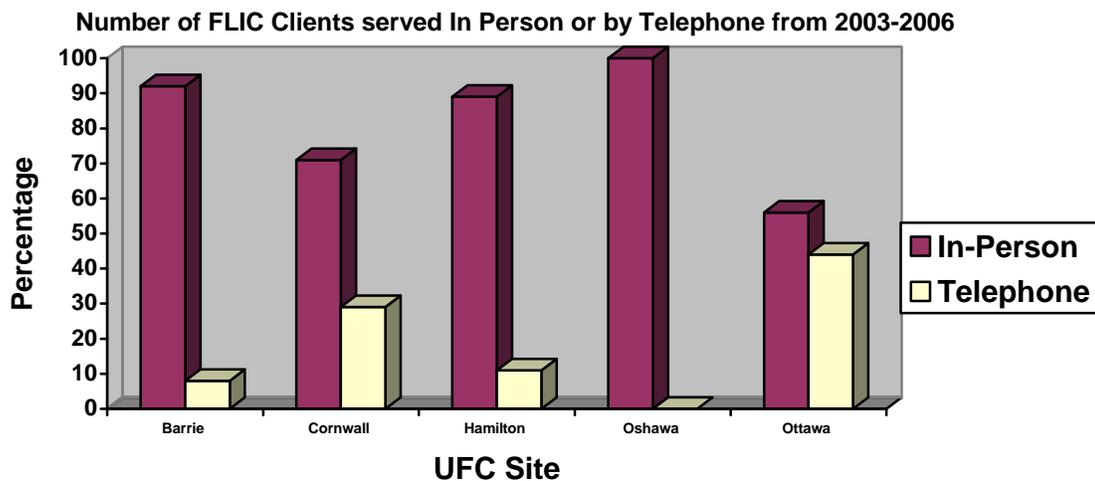
To assess use of FLIC services, we examined descriptive data related to the number of clients served (by phone or in person), whether court action had started or not, total number of issues raised and top three issues, and the total number and top three services provided to FLIC clients.

Estimated Number of Clients Served per month



The graph above reflects the estimated number of clients served per month from 2003–2006, based on the averages from May and November 2003–2006. Virtually all sites except Cornwall (due to its much smaller size) served about the same overall number of clients at the FLIC from 2003–2006. This is unexpected, since these four sites serve a range of populations. Hamilton and Barrie served approximately the same number of clients (1050 clients), with Durham serving slightly more at 1206. Ottawa had the highest number, serving 1408 FLIC clients from 2003 to 2006. It is important to note that the statistics collected by MAG related to the number of clients served includes multiple visits by parties, as well as parties who may not be involved in any court proceedings. Overall, FLIC use appears to be low in contrast to the numbers of proceedings and events heard by the court. This fact is especially important in light of the number of self-represented litigants who would likely require FLIC services.

Number of Clients Served by In Person or by Telephone



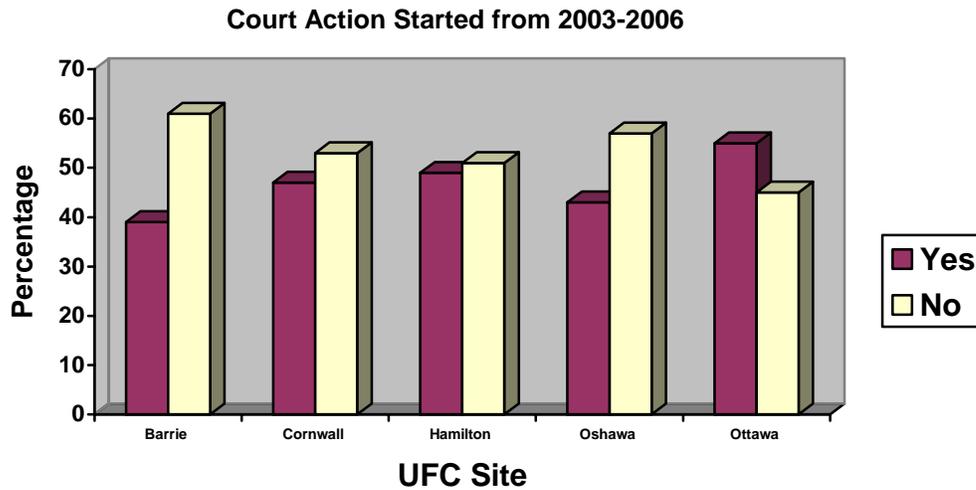
As indicated in the graph above, the majority of clients are served in-person at the FLIC as opposed to by telephone. The exception is Ottawa, where almost an equal number of FLIC clients were served in-person and by telephone from 2003–2006. In contrast, the data reported to MAG indicate that Oshawa/Whitby did not serve anyone by telephone from 2003–2006⁹. Again, these data do not distinguish between multiple visits by the same party or individuals not involved in any court action.

Stage of Proceedings for FLIC Clients

Family law clients can be at a variety of different stages of court proceedings prior to receiving services from the FLIC. The data below describes whether clients attending and receiving service

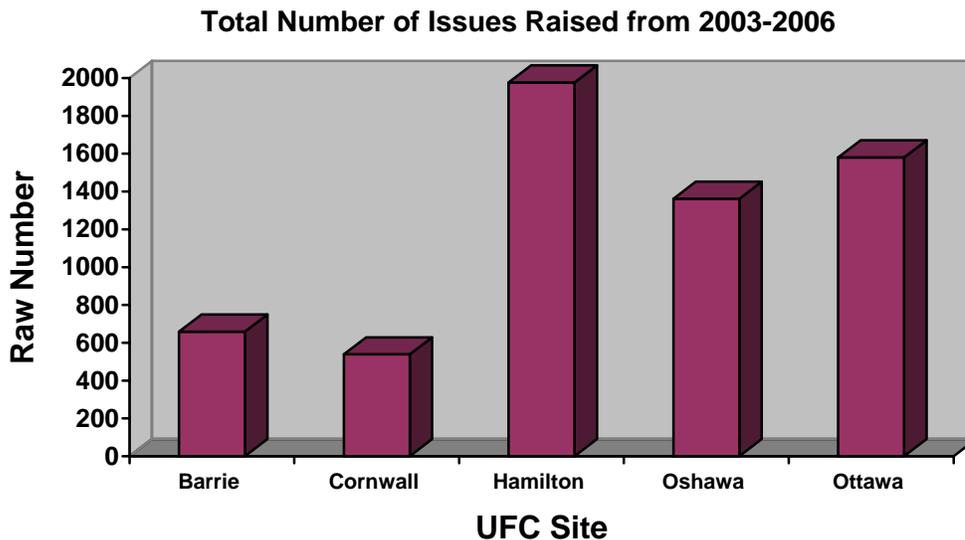
⁹ In subsequent discussions with Oshawa clarifying this data, staff indicated that they do in fact speak to FLIC clients on the phone and do encourage clients to drop by the centre for information and advice.

at the FLIC had any court action started or not.



From 2003–2006, most of the FC sites reviewed served approximately the same number of FLIC clients who had court action started and who had no court action started. The exception to this was Barrie, where more than half of FLIC clients (61%) did not have any court action started when they visited the FLIC. These data are in contrast to those presented on the use of mediation services, where the vast majority of clients receiving off-site mediation services had no court action started at the time of mediation case closing.

Total Number of Issues Raised



Thirteen possible substantive issues can be raised at the FLIC: divorce, separation, property, custody, access, access enforcement, child support, spousal/partner support, support enforcement, child protection, adoption, restraining/intervention order, and other issues. The graph above indicates that the total number of issues raised across the five sites ranged from a low of 539 in

Cornwall, to almost 2000 in Hamilton. Individuals are likely to raise multiple issues at the FLIC, which means these numbers may also reflect the complexity of the cases.

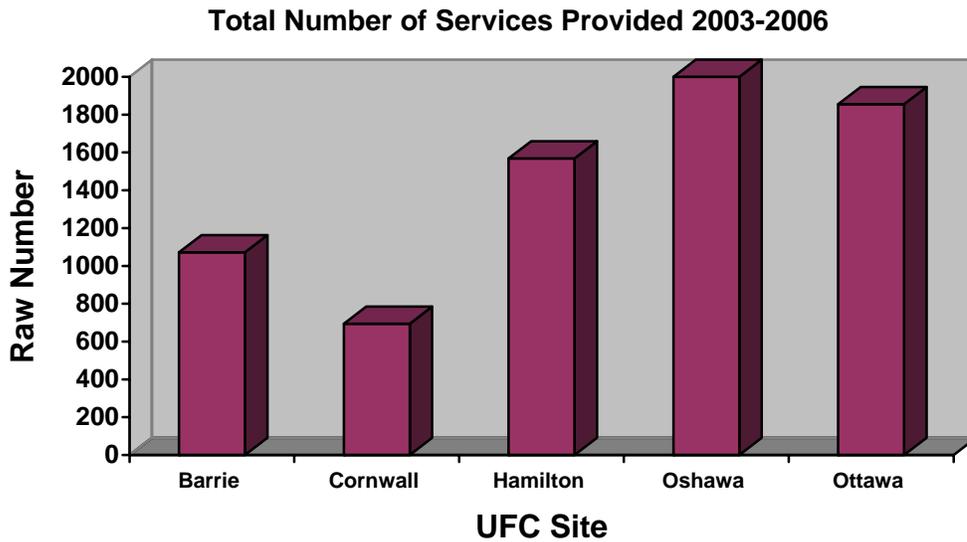
Top Three Issues Raised from 2003–2006

Barrie	Cornwall	Oshawa	Hamilton	Ottawa
Child support	Child support	Child support	Child support	Divorce
Custody	Custody	Custody	Custody	Child support
Divorce	Divorce	Access	Access	Custody

The top three issues across all sites were fairly consistent. Child support and custody were the top two issues raised for all sites except Ottawa, where divorce was raised most frequently across the three years, followed by child support. Access issues were the third most frequently raised issue by FLIC clients in Oshawa and Hamilton.

The data above are consistent with the data presented on the use of mediation services in that the top issues mediated during the same time period are child-focused issues related to child support, custody, and access. These data underscore the importance of staff training and education, both at the FLIC and mediation services, that focuses on issues specifically related to children. Other issues raised at the FLIC that are noteworthy for staff training and education purposes, as well as the availability of current information and materials, are issues related to restraining/intervention orders. In Barrie for example, issues raised at the FLIC related to restraining/intervention orders increased from 4% in 2003 to 8% in 2006. Similarly in Ottawa, 1% of FLIC clients received information related to restraining/intervention orders in 2003 and this number increased to 5% in 2006, with a slightly higher percentage in 2005 (9%). In all other sites, issues related to restraining/intervention orders were less than 5%. Similar to the data presented on issues mediated at off-site mediation services between 2003 and 2006, property issues are raised much less frequently by FLIC clients (less than 5% for most sites across all years) than child-focused issues. The lower number of restraining/intervention orders raises the possibility that these parties are going to police or anti-violence agencies for advice in these matters.

Total Number of Services Provided



Top Three Services Provided from 2003–2006

Barrie	Cornwall	Durham	Hamilton	Ottawa
Court forms info				
Advice lawyer referral				
Guides to procedure				

The FLIC at all sites offers a variety of services: information on court forms, guides to procedure, pamphlets/brochures, referral to FLIC advice lawyer, lawyer referral, mediation services, parent information session, and other. As indicated in the graph above, the total number of FLIC services across all sites ranged from 694 in Cornwall to 2000 in Durham (Oshawa). The top three ranked services provided to clients at the FLIC was consistent across all sites from 2003 to 2006: information on court forms, advice lawyer referral, and guides to procedures.

Consistent with information collected throughout the course of this review, less than 2% of services provided, and in almost all sites, less than 1% of services provided, was related to parent information sessions. This finding is consistent with the consensus among stakeholders that the parent information sessions are neither well promoted nor well known by family law clients, and are generally not very well attended. Surprisingly, community resources referrals are not provided very frequently at the FLIC across most sites, even though one would expect that this would be one of the main functions of the FLIC. At all sites except for Barrie, less than 3% of services provided to FLIC clients were related to community resources referral. In Barrie, this number ranged from 3–5%.

The distribution of video/DVDs and printed materials has formed the basis of a wide variety of education procedures and policies in the area of family law. FLIC offices proliferate with pamphlets and brochures for clients to read and obtain valuable information about the courts and family law procedures. The government produces high-quality materials and uses sophisticated

approaches to pamphlet development. Pamphlets/brochures do not appear to be a frequent service provided at the FLIC, although guides to procedures are popular and are, in fact, in pamphlet form. It is also more difficult to keep track of clients who come into the FLIC to seek out pamphlets and brochures. In almost all sites, pamphlets/brochures represented less than 9% of the total services provided, except in Durham (range of 4–16% of total services provided). Although guides to procedures are important printed materials for clients and are the second most frequent service provided at the FLIC at all sites, the utility and possible effectiveness of pamphlets/brochures compared to the cost of producing such materials should be reviewed to ensure that resources are being used effectively.

Perceived Effectiveness

Approximately 100 respondents completed the on-line survey and were asked to rate how much they agreed that FLIC services (advice lawyer, court staff services, and IRC) are effective and beneficial to clients. These results need to be interpreted cautiously because stakeholder groups may not be equally familiar with all services provided.

FLIC Services

The vast majority of respondents surveyed agreed/strongly agreed that FLIC services are effective and beneficial to clients. For example, a high percentage of both lawyers and individuals working within children and family services responded favourably (87% and 92% respectively). Similarly, 82% of judges agreed/strongly agreed that FLIC services are effective and beneficial to clients. Surprisingly, a much lower than expected percentage of mediators surveyed agreed/strongly agreed that FLIC services are effective and beneficial to clients. This result is similar to the responses of counsellors (45%). Seventy-eight percent of court managers and staff agreed/strongly agreed that FLIC services are effective and beneficial to clients.

Effective Qualities of FLIC Services

On-line survey respondents were asked to identify and describe any qualities of FLIC services that currently contribute to the service working effectively for the benefit of the client. Participants described the effective qualities of FLIC services in their own words. Overall, the effective qualities used to describe the FLIC were *accessibility, well-trained, competent personnel, valuable sources of information, efficient, and cost-effective*.

Effective Qualities of FLIC Services Reported by Respondents

- ✓ *Accessible*
- ✓ *Well-trained, competent personnel*
- ✓ *Valuable sources of information*
- ✓ *Efficient and cost-effective*

Advice Lawyer Services

The majority of respondents surveyed agreed or strongly agreed that services provided by advice lawyers are effective and beneficial to clients. For example, 100% of mediators and 83% of court managers/staff surveyed agreed/strongly agreed that advice lawyer services are effective and beneficial to clients. Sixty-seven percent of both judges and individuals working within children and family services agreed/strongly agreed that service provided by advice lawyers are effective and beneficial to clients, while a much lower percentage of counsellors surveyed agreed/strongly agreed (46%).

Court Staff Services

Individuals working within children and family services, as well as court managers/staff, agreed/strongly agreed that court staff services are effective and beneficial to clients (75% and 83% respectively). These ratings were similar to those provided by judges (71%). On the other hand, a much lower percentage of mediators and counsellors surveyed agreed/strongly agreed that court staff services are effective and beneficial to clients (43% and 32% respectively). Sixty-percent of lawyers responded that they agreed/strongly agreed with this issue.

Effective Qualities of Court Staff Services

On-line survey participants were asked to identify and describe any qualities of court staff services that currently contribute to the service working effectively for the benefit of the client. Participants described the effective qualities of court staff services in their own words. Overall, the effective qualities used to describe the court staff services were *accessibility, efficiency, well-trained, friendly, and competent staff, and informative/knowledgeable information.*

Effective Qualities of Court Staff Services Reported by Respondents

- ✓ *Accessibility*
- ✓ *Efficiency*
- ✓ *Well trained, friendly, and competent staff*
- ✓ *Informative and knowledgeable information*
- ✓ *Efficient and cost-effective*

Information and Referral Coordinator Services

The majority of respondents indicated greater uncertainty about the effectiveness of the Information and Referral services compared to responses rating the effectiveness of the other FLIC services. For example, 41% of judges and 53% of lawyers surveyed agreed/strongly agreed that IRC services are effective and beneficial to clients. Sixty-one percent of court managers/staff and 43% of mediators agreed/strongly agreed that IRC services are effective and beneficial to

clients, while 27% of counsellors and 25% of individuals working within children and family services agreed/strongly agreed.

Overall, a high percentage of participants surveyed responded that they did not know *at all* whether IRC services were effective: judges (44%), lawyers (33%), court managers/staff (16%), counsellors (30%), children and family services (47%). These data seem to suggest that, at least for some of the stakeholders who completed the on-line survey, there is limited knowledge of the role of the IRC and what it can do to improve the effectiveness of FLIC services.

Effective Qualities of IRC Services Reported by Respondents

- ✓ *Accessibility*
- ✓ *Well-trained, competent personnel*
- ✓ *Informative*

Success and Strengths of Family Law Information Centres

- The Family Law Information Centres are frequently accessed by the public. FLIC fulfils an obvious need in the justice system for a clear entry point and access to information. The personal nature of the centre allows for greater access by those individuals who face barriers related to culture, language, literacy, and poverty.
- For the consumer, FLICs provide one-stop shopping for service. Consumers can access information, mediation, advice counsel, and community resources conveniently all in one location.
- FLICs also provide a visual reflection of the principles and holistic nature of the court, and a continuity of service. For example, in some sites, the counter staff work closely with the IRC, and this assists greatly with the backlog at the counter. In other sites, FLICs provide a continuity of service between the advice lawyer, duty counsel, and the area director of Legal Aid.
- The FLICs that are perceived as successful are open the same hours as the courthouse, are accessible, and have a warm and welcoming atmosphere for the public.

Barriers and Challenges of Family Law Information Centres

Our evaluation identified a number of challenges and barriers in the current delivery of Family Law Information Centres in the FC that are preventing the system from reaching the anticipated level of effectiveness.

a. Location

- In most courthouses, FLICs are placed in whatever physical space is available and the majority of these locations are not visible to the public.
- In some sites, the space allocated for the FLIC is not sufficient for the important services that the FLIC delivers and provides little privacy for consumers to discuss confidential matters.

- Most FLICs do not have a child-friendly area where children can play close enough to parents for safety, but far enough away so that they can be distracted from the issue at hand.

b. Operations of the FLIC

- The manager of court operations is responsible for overseeing the operation of the FLIC. At the majority of sites, there is a perception that there is no centralized authority to oversee these operations, and no accountability to ensure effective delivery of service.
- The IRC's duties, as set out in the contracts for service providers, include the provision of information on and referrals to community agencies and resources. The IRC at four of the five sites (all except Oshawa) are part-time staff provided by the service providers. At the majority of sites, there appears to be limited collaboration between the FLIC and the community agencies that provide services that could benefit the users of the FLIC.
- Due to limited resources, FLICs in some sites have reduced hours and are not always staffed.
- In the majority of sites, there is no visible signage for the FLIC or the hours of operation.
- In the majority of sites, lawyers perceive that the counter staff are providing legal advice, which could be inconsistent with the information litigants have already received through the FLIC.

c. Systemic Barriers

- At all five sites, legal advice is only available at the FLIC to those who are below a certain low income threshold. As a result, many consumers who do not qualify for public legal assistance are frustrated and uninformed. This adverse effect is further compounded as they move through the system.

d. Availability of Technology

- Service providers are required, under their contracts, to have computers. Respondents at some sites felt that a lack of technology, in the form of computer terminals set up to assist consumers to complete forms, affects the efficiency of the FLIC and causes additional backlogs that could be averted.

Existing Promising Practices for FLIC

Promising Practice #1: Develop a culture of community service and teamwork amongst court staff and those providing FLIC services.

A high level of collaboration between the FLIC and counter staff is essential for the efficient delivery of family services. In the majority of sites, despite the high level of stress that is often encountered at the counter and FLIC, staff were able to maintain a high level of customer service, and when interviewed, always stated that effective customer service was their top

priority. At the majority of sites, counter supervisors have developed several strategies to support staff. For example, in sites where the family law counter does not have a separate line for self-representatives and lawyers, a staff member who is dealing with professional processors or lawyers for an extended period of time would exchange places with another counter staff member who was dealing with self-representative litigants.

Promising Practice #2: Ensure hours of operation of the FLIC offices are aligned with the hours of operation of the court.

In the majority of sites, FLIC offices are open during regular court office hours to enable litigants to access the services.

Promising Practice #3: Ensure a family counter staff person is available at all times (a plan for illness and holidays is in place) at the counter of the FLIC.

At the majority of sites, a detailed schedule was made by the counter supervisor outlining an available staff member at the counter at all times. Counter staff rotate from the FLIC offices to the counter to ensure that staff are trained in all areas so that staff shortages are minimized in cases of illness or holidays.

Promising Practice #4: Provide a full-time IRC staff at the FLIC.

Promising Practice #5: Rotate family law counter staff into the FLIC on a weekly or bi-monthly basis.

Promising Practice #6: Provide an advice counsel with extensive experience in dealing with family law matters.

Promising Practice #7: Rotate the advice lawyer.

In one site, the number of lawyers rotating through the position of advice lawyer was limited to ensure greater consistency in the advice being offered to litigants. This smaller group of lawyers is able to provide more effective service to repeat cases, is able to develop closer working relationships with other stakeholders, and gains the confidence of the family court bench.

Promising Practice #9: Organize ongoing professional development of the court staff person(s) through the court services supervisor and court manager.

At the majority of sites, the court services supervisor and court manager organize varied activities related to professional development for court staff. Some of these activities are informal, in regular staff meetings; others are more formal, when new changes to the rules are introduced. What was particularly noteworthy in the majority of sites was the training and mentoring of new counter staff.

Promising Practice #10: Create a welcoming, user-friendly and child-friendly environment that offers a wide range of accessible information.

In a limited number of sites, FLIC offices have a separate area for children, with toys and videos.

Promising Practice #11: Provide a physical site that is easily accessible with clear signage.

Promising Practice #12: Create a binder of community services for the IRC to use to assist clients.

Best Practices and Recommendations for Change

Recommendations to Enhance the Effectiveness of the FLICs:

The following recommendations will help increase the effectiveness of the FLIC in meeting the stated objectives of the Family Court. These recommendations were developed from the numerous sources of information collected during this project: interviews, focus groups, and surveys.

a. Organizational Structure

Recommendation #18:

A definite organizational structure should be in place for FLICs to increase accountability and responsibility for service delivery.

A clear definition of the scope of services to be provided by the FLIC is needed. The FLIC should come under the direct responsibility of the court services manager who will oversee the operations of the FLIC and be accountable for the effective delivery of services. The court services manager will have regular meetings and liaison with the area Legal Aid director with respect to the advice lawyer, as well as with the mediation services provider. These meetings will help coordinate the efficient and effective operation of the FLIC and establish policy within ministry guidelines to meet the needs of the community in consultation with the resource committee that is to act as the advisory board to the FLIC.

The FLIC as an Entry Point into the Family Justice System

Recommendation #19:

The FLIC should be the entry point into the family court system for most cases.

FLICs represent an essential entry point into the family court and must be holistic, comprehensive, and recognize and respond to the diversity of clients and issues.

To promote a non-adversarial approach to the resolution of family law disputes, it is vital that other options be presented to the potential litigants as early as possible. The FLIC should be instrumental in meeting this goal and ideally should be the entry point into the family justice system. The FLIC would make parties aware of the differential approaches available that would serve the family best in the resolution of the dispute.

Recommendation #20:

A properly funded (hired and trained through MAG), full-time IRC, with clearly defined roles and responsibilities, should be provided for the FLIC.

Across most sites, there was a lack of knowledge with respect to the role of the IRC. In contrast, in one promising practice site, the IRC played a central role at the FLIC and was highly valued by the stakeholders. In our view, this model should be adopted at all FC sites.

In addition to the established duties of the IRC as presently defined, he/she will also have the following responsibilities:

- To implement policies established by the court services manager in consultation with the resource committee;
- To compile and update a community resources binder (and electronic version) for the benefit of the clients of the FLIC, as well as for all other stakeholders in the family court system, including judges and lawyers;
- To be an *ad hoc* member of the resource committee and to assist in the development of links between the court and community agencies, as well as to identify and inform the committee about needed resources for the court to be able to meet the needs of the consumer;
- To organize and coordinate the Parent Information Sessions with an agency or agencies in the community that deal with early childhood education or related matters;
- To coordinate information about the availability of other services in the community that can assist separated families.

b. Physical Location

Recommendation #21:

The FLIC should have improved location and increased space within the courthouse.

The majority of individuals interviewed and those who completed the on-line survey felt strongly that the physical location of the FLIC offices need improvement, including:

- Designated rooms for victims of violence;
- Confidential front desk;
- Additional wickets;
- Separate rooms for applications and respondents; and
- Space for children.

Recommendation #22:

Adequate security measures should be implemented at the FLIC as part of overall courthouse security.

In the majority of sites, the FLIC (and this applies equally to family law counter staff) is not protected by any security measures. Some courthouses do not have any security check for those entering the courthouse, and this makes the staff even more vulnerable to clients who are often argumentative, upset, and emotionally unstable. This issue has to be addressed as part of the security in all courthouses.

c. Public Education and Information

Recommendation #23:

FLIC should provide better client access to user-friendly information through computers, videos, and other innovative tools.

MAG should develop a “virtual FLIC” based on frequently asked questions, the services available at the FLIC, and related information. This virtual FLIC can be an expansion of the material available on the MAG website. The format should simulate the actual FLIC and the information can be provided based on a menu of questions that the consumer might have on a particular topic. For example:

- The virtual FLIC will be capable of being accessed through the MAG website.
- The virtual FLIC will have links to local sites that will provide information about the local FLIC office and community resources.
- Information provided should be accessible to those with limited reading and writing abilities and language barriers.
- Self-help kiosks where litigants can access up-to-date information and assist with the completion of forms should be provided.

One objective of the virtual FLIC will be to provide those who are in need of the information with the opportunity to access it privately and at a time convenient to them. In addition, individuals who are comfortable with receiving information on a computer can be directed to that venue, freeing up time for the staff of the FLIC to deal with more needy clients who are not able to obtain the information in an electronic format.

Recommendation #24:

The advertising of FLIC services to public and community agencies should be increased.

The existence and function of the actual FLIC and the virtual FLIC (in addition to the mediation services and the parent information sessions), should be the subject of a marketing campaign throughout Ontario. A potential source of funding may be federal dollars as part of the five year mandate (2003–2008) Child-centered Family Justice Strategy, which has as one of its goals public legal education and information.

d. Staffing, Training, and Support

Recommendation #25:

Increase FLIC staff and advice lawyer's hours of operation to ensure that hours mirror or exceed courtroom hours.

There was an overwhelming consensus across all sources of information that additional staff at the FLIC and family law counter is necessary, ensuring that back-up staff are available when the counter is overburdened. A floater staff member should be provided to assist those in line to ensure that forms are completed correctly and that those litigants in line are there for the right reasons. The highly stressful environment of the family law counter and the demanding needs of FLIC clients suggest that more provisions must be in place for staff relief, and ways to increase teamwork and positive attitude during high volume times. There was also consensus that more hours are needed for the availability of the advice lawyer, especially during peak periods or high-volume dockets.

Recommendation #26:

Ensure the consistency and accuracy of information provided by FLIC staff¹⁰ by providing a continued commitment to staff training and education.

Clear definitions about what advice can and should be given to litigants at the counter, especially in the case of self-representing litigants, should be provided. Interviewed stakeholders and those who completed the on-line survey felt that consistency and accuracy of information provided to litigants by FLIC and counter staff is not adequate.

It is vitally important for FLIC staff to receive ongoing training and support to work efficiently in an environment that is stressful due to the high volume of clients and the nature of the presenting problems and stressed experienced by some of the consumers. All of these factors require that staff provide consistent information to the clients, be trained to diffuse emotionally laden situations, as well as be provided with support to deal with issues of burnout and vicarious trauma. The same training and support should be available to all family court and counter staff as well as legal aid duty counsel.

In addition to the training of family law rules and procedures, training and education should also focus on the issues relevant in domestic violence or high conflict cases. Training that focuses on a more supportive and understanding approach to serving FLIC clients in general, and self-representing litigants in particular, is also recommended.

¹⁰ The Ministry, in consultation with court supervisors and court staff, maintains comprehensive manuals that provide information on family procedures and practices. Directives are developed and disseminated to all court staff to update them on any changes or new requirements. Training is provided when there are significant changes, such as the expansion of the Family Law Rules.

Recommendation #27:

Ongoing training and mentoring of the advice lawyer should be provided to increase level of skills and expertise.

Recommendation #28:

The FLIC should develop information and contacts in the community to help provide assistance to members of the community whose mother tongue is not English or French.

As Ontario's cultural diversity increases, it is imperative that the family court justice system has the capacity to understand that population's needs and remove language as a barrier to service. The IRC should use existing agencies dedicated to providing services to new immigrants and cross-culture learning, as well as leaders of the various ethnic communities, as a resource in formulating policies and practices within the FLIC. A roster of **independent** interpreters to assist in providing equivalent services to all members of the public should be available.

C. Parent Information Sessions

Parent information sessions are offered to better inform parents about the impact of divorce and separation on adults and children. These sessions are typically held once a month, for two hours. Sessions are voluntary and they cover a range of topics of interest to individuals who are undergoing separation and divorce. All parents involved in a separation (or contemplating separation) may attend these meetings. In some cases, parties attend at the recommendation of their counsel or a judge. The content of these sessions varies from site to site, but typically includes:

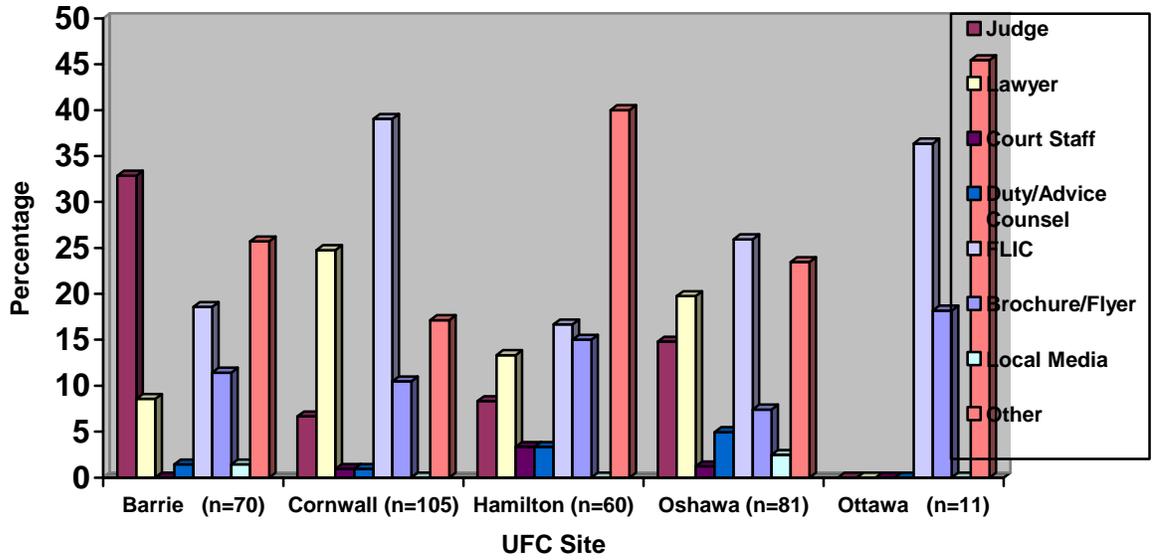
- The impact of separation and divorce on the family, and in particular children;
- The negative effects on children of protracted litigation and hostility between parents;
- The benefits of developing cooperative parenting arrangements, where appropriate;
- Children's needs at various stages of development;
- Parenting responsibilities and strategies for problem solving after separation;
- The impact of violence in the family on children;
- Community resources for children;
- Alternatives to litigation for the resolution of family disputes, where appropriate.

Use of Service

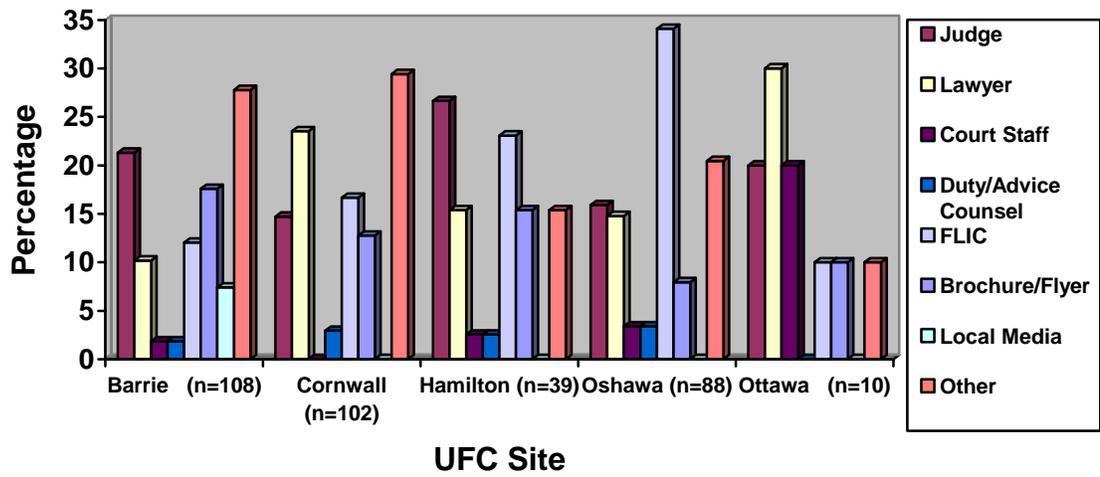
Use of parent information session data was collected from one source: MAG system data. To assess the use of this service, we examined descriptive data related to referral source on feedback forms. It is important to note that the actual numbers of participants is most likely higher than the numbers reported below, given that feedback forms from the sessions are completed voluntarily.

Source of Referral

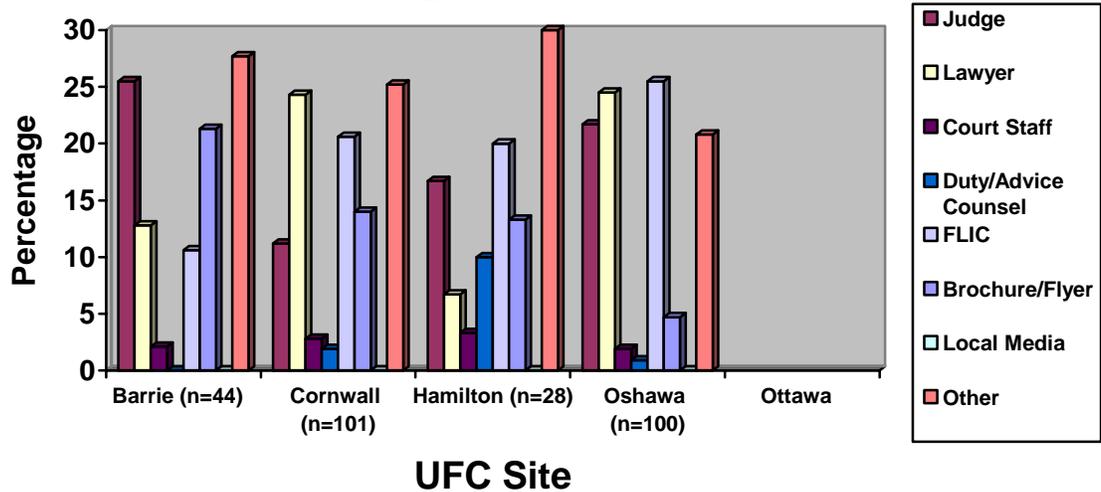
Referral Source for Parent Information Sessions
2003-04



Referral Source for Parent Information Sessions
2004-05



Referral Source for Parent Information Sessions 2005-06



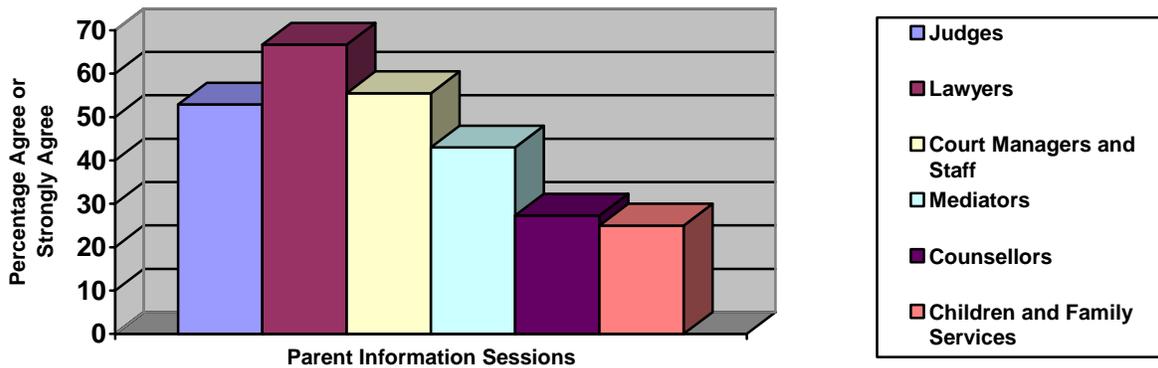
As can be seen from the graphs above, referrals for parent information sessions come from a variety of sources. The overall low participation rate of attendees to these sessions across sites matches the feedback obtained during the interviews and focus groups. Many stakeholders expressed concern that the sessions are underused and not well advertised.

Perceived Effectiveness of Parent Information Sessions

Approximately 100 respondents completed the on-line survey and were asked to rate how much they agreed that parent information sessions (PIS) are effective and beneficial to clients. The data suggest that there is more uncertainty about the effectiveness of this service for clients compared to responses rating the effectiveness of FLIC services or mediation services. Fifty-three percent of judges and 56% of lawyers surveyed agreed/strongly agreed that PIS are effective and beneficial to clients, in contrast to the slightly higher percentage of lawyers (67%). Similar to their responses about the effectiveness of FLIC services, 43% of mediators surveyed agreed/strongly agreed that PIS are effective and beneficial to clients. Similarly, the responses by counsellors and individuals working within children and family services (27% and 25% respectively) mirrored their responses for FLICs.

A high percentage of individuals working within children and family services (53%) responded that they did not know at all whether PIS were effective or beneficial to clients. In addition, 35% of counsellors and 26% of court managers/staff surveyed responded in a similar fashion, while 11% of judges responded that they did not know at all whether PIS were effective or beneficial to clients.

Are Parent Information Sessions Effective and Beneficial to Clients?



Effective Qualities of Parent Information Sessions

On-line survey participants were asked to identify and describe the qualities of the parent information sessions that currently contribute to the service working effectively for the benefit of the client. Participants described the effective qualities of parent information sessions in their own words. Overall, the respondents indicated that PIS were accessible, informative, practical, user-friendly, cost-effective, and child-focused.

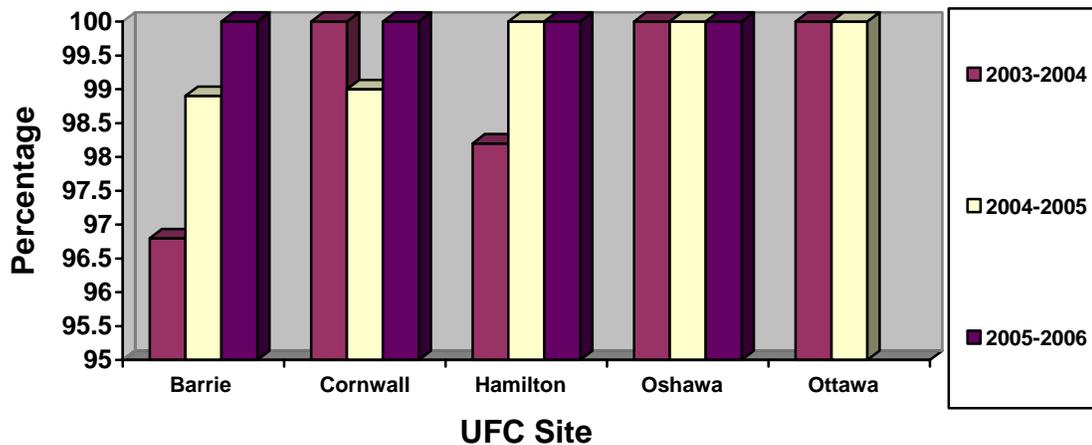
Effective Qualities of Parent Information Sessions Reported by Stakeholders

- ✓ Accessible
- ✓ Informative, practical, and user-friendly
- ✓ Cost-effective
- ✓ Child-focused
- ✓ Other

Ratings by Participants: Customer Satisfaction

Participants who attend parent information sessions complete an evaluation and feedback form indicating whether they would recommend the session to other separating or divorcing parents, as well as their overall rating of the session. Data from 2003–2006 are presented below. Of the percentage of participants who would recommend the session to others, the total number of participants who completed this question for each site are as follows: Barrie 2003–04 (n=63), 2004–05 (n=95); Cornwall 2003–04 (n=106), 2004–05 (n=105); Hamilton 2003–04 (n=57), 2004–05 (n=51); Oshawa 2003–04 (n=71), 2004–05 (81); Ottawa 2003–04 (n=12), 2004–05 (n=10). Raw data were not available for 2006 sessions.

**Percentage of Participants Who Would Recommend Session to Other
Separating / Divorcing Parents**

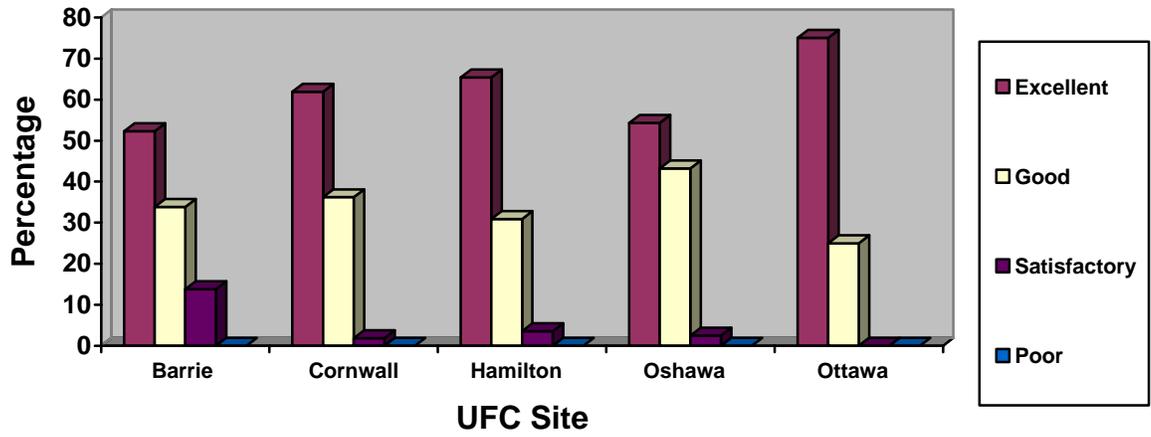


Despite the small numbers of parents who completed the parent information session satisfaction forms across the three years at the sites reviewed, there is a very high level of endorsement from parents about the program. From 2003–2006, across all sites, almost all participants who attended the sessions stated they would recommend the session to other separating or divorcing parents. This is a very promising finding, because consumer satisfaction is one important consideration when evaluating the effectiveness of a program. Although the majority of literature, as well as the stakeholders agree that a comprehensive parenting program which is more skilled-based is needed, parents who responded to these questionnaires obviously felt that the sessions were helpful and meaningful.

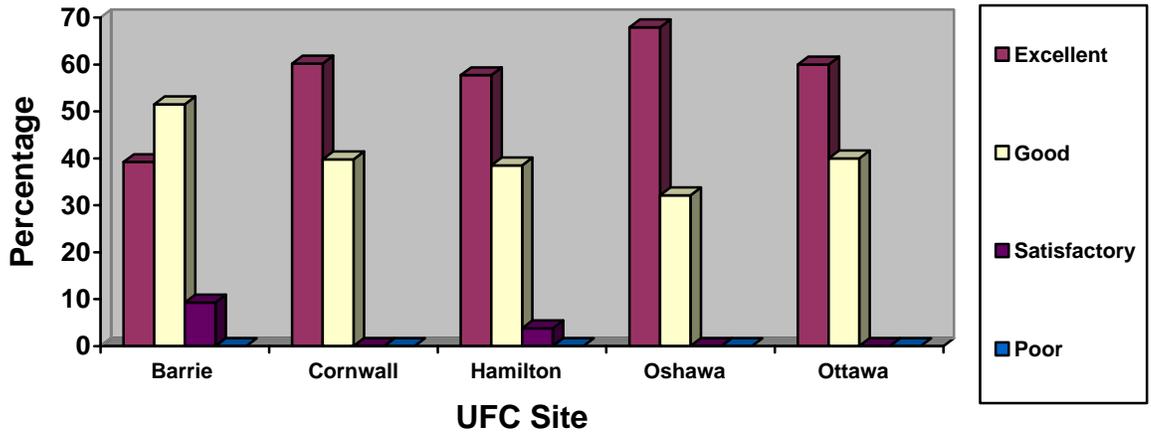
Overall Rating of the Parent Information Session

Participants who attend the parent information sessions also rated the session from excellent to poor. For this overall rating, the total number of participants who completed this question for each site are as follows: Barrie 2003–04 (n=65), 2004–05 (n=97); Cornwall 2003–04 (n=105), 2004–05 (n=103); Hamilton 2003–04 (n=55), 2004–05 (n=51); Oshawa 2003–04 (n=74), 2004–05 (n=81); Ottawa 2003–04 (n=12), 2004–05 (n=10).

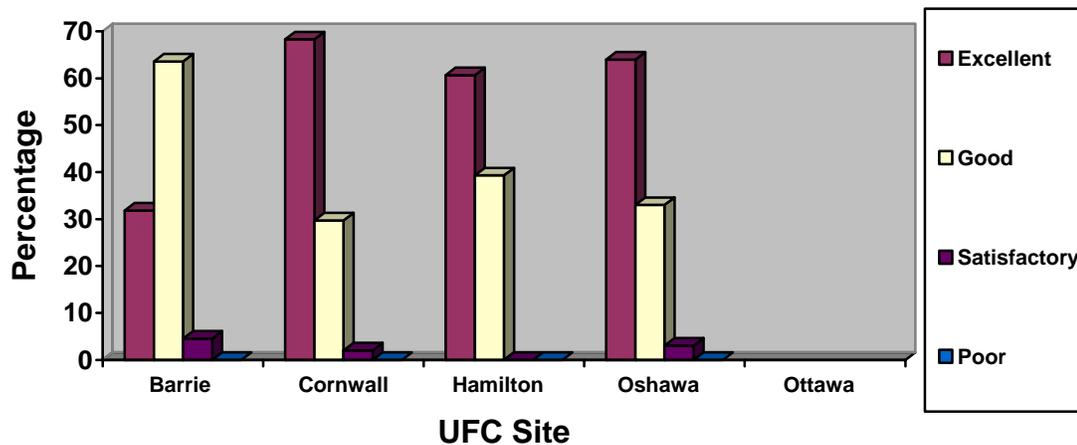
**Participant Ratings of Parent Information Sessions
2003-2004**



**Participant Ratings of Parent Information Sessions
2004-2005**



Participant Ratings of Parent Information Sessions 2005-2006



Given the high endorsement by parents, it is not surprising that very few participants rated the sessions as either satisfactory or poor from 2003–2006. In fact, the data is consistent across all sites and all years: parents rated the sessions as either good or excellent. The data suggest that despite the low numbers of referrals or the lack of advertising of the sessions, those who do know about the service and do attend feel they benefit from the session. Whether parent information sessions have an impact on changing parenting behaviour in the long term cannot be determined by satisfaction surveys alone. That said, they do offer an important viewpoint from the consumers who use the service and should not be taken lightly.

1. Successes and Strengths of Parent Information Sessions

Overall, parent information programs are recognized as a valuable resource to help parents better understand the impact of separation on themselves and their children. Although the overall rate of use of these sessions by parents has been reported as low, those who do participate expressed a very high level of endorsement for the program. Almost all participants reported that they would recommend the sessions to other parents in the same circumstances. Moreover, most parents reported that they wanted more information and longer sessions, and additional materials for parenting after divorce.

2. Barriers and Challenges of Parent Information Sessions

Our evaluation identified a number of challenges and barriers in the current delivery of PISs in all five sites that are preventing the system from reaching the anticipated level of effectiveness.

- A lack of a skills-based approach to parenting practices after separation is seen as a shortcoming.
- There is a lack of awareness of parent information sessions across all five sites with respect to the existence, scope, and nature of the sessions. This situation is sometimes

exacerbated by judges who do not regularly sit in family court and who may not know about the availability or the usefulness of this service.

- The vast majority of participants interviewed recognized that a two-hour session was insufficient time to provide separating parents with the information they require.
- While the contracts state that the sessions must be available to participants in a timely and convenient way, at the majority of the reviewed sites, parenting information sessions are offered at inconsistent and inconvenient times for parents.
- Lack of childcare for parents attending the session makes it extremely difficult for parents to attend the session.
- There is a lack of consistent advertising and information to promote the availability and benefits of the program, especially in light of the high endorsement from participants. While service providers could, under the contracts, use user fees for such advertising, most service providers interviewed indicated that the user fees are often used for overhead and administrative-related costs not covered by the contract.
- Links between parent information programs and other community service providers that provide counselling and support to separating parents and children in crisis are lacking.
- A lack of screening for domestic violence victims may lead to the victim and perpetrator attending the same information session. The contracts require that efforts be made to provide a safe environment for all participants.
- Parent information sessions require a differential program in cases of domestic violence. Sessions need to deal with the impact of domestic violence on children and care needs to be taken to prevent abuse victims from feeling guilty for separating and inadvertently encouraging her to return to her partner for the sake of the children.

3. Existing Promising Practices of Parent Information Sessions

Promising Practice #1: Judges strongly endorse the program and make referrals at different stages of court proceedings.

Promising Practice #2: Offer sessions during the noon hour and late afternoon to allow easier access for working parents.

Promising Practice #3: Make available promotional material for parent education programs throughout the FC.

Promising Practice #4: Educate court staff to promote the parent education programs.

Promising Practice #5: Develop a community centre to provide one-stop shopping for domestic violence victims who require a wide range of services, including counsel and information on the impact of violence and separation.

For example, the Oshawa community has developed a project called “Driven” in which they are looking to house essential community and counselling service in one location to facilitate abuse victims gaining more immediate access to a range of services. This project was born out of the recognition that abuse victims were often overwhelmed with having to access multiple services with different hours, and different eligibility criteria, all over Durham Region.

4. Recommendations to Enhance the Effectiveness of Parent Information Sessions:

In addition to implementing across all of the FC sites of the existing promising practices listed above, we offer the following recommendations with a view to increasing the effectiveness of the parent information sessions in meeting the stated objectives of the family court.

a. Organizational Structure

Recommendation #29:

Parent information sessions should be coordinated by the IRC and overseen by mediation services or a not-for-profit agency in the community that is already dealing with early childhood education, parenting after divorce, or child development issues.

The service providers are required, under their contracts, to make PIS available on a regular and frequent basis, based on client needs¹¹. Considerations include:

- As the sessions will take place at the successful agency's place of business, they will have the infrastructure to organize the sessions and keep relevant data that will assist in the evaluation of the program.
- The agency should provide qualified babysitters on location during the sessions through a college or high school coop or volunteer program.

b. Content

Recommendation # 30:

Content of the sessions should be standardized to ensure consistency from one jurisdiction to the other, while allowing for the opportunity to inject local examples or resources in the presentation. Consideration should be given to implementing a parenting skills-based program longer than two sessions to supplement the basic program.

A sub-committee of the Ontario Family Law Rules committee, which includes mediation services providers and representatives from MAG and the bar, have worked on such a "script." Two locations, Toronto and Ottawa, were approached by the Ministry in January of 2006 to pilot the script.

The session should include information that is broader than simply discussing parenting after divorce. It should also cover:

- An overview of the court process;
- General information about various options for the resolution of family law disputes;

¹¹ The frequency of the sessions is currently subject to review by the Local Resource Committee. In addition, the sessions must not provide therapy or counselling services, and children are not to participate. The sessions must be didactic and provide an opportunity for questions from participants. The information at the sessions is to be provided by a professional, such as a social worker or mediator, who has in-depth knowledge of the subject areas being presented, as well as significant experience working directly with families in the process of separation.

- The FLIC;
- Court mediation as an ancillary service to the court;
- Supportive services to the court, such as the Office of the Children’s Lawyer, court ordered assessments, and supervised access programs; and
- Legal aid and duty counsel.

Consideration should be given to the intended purpose of the sessions. Studies show that a one-time session is useful in providing information, but is not likely to bring about any permanent change in parenting practice. With this in mind, subject to funding available in a particular site’s contract, a skill-based program of two or three sessions should be developed to assist parents in developing skills that will reduce conflict for their children. Such programs are already available in some communities, and should be used after they are screened for content. In other jurisdictions, the IRC and the resource committee can work with existing childcare agencies to develop such a program.

Healthy parenting is an issue of general community interest and as such the funding for skill-based parenting sessions should not be borne by Justice, but by those ministries that have as part of their mandate the care for the emotional, psychological, and physical health of children.

c. Participation in the Parent Information Sessions

Recommendation #31:

Mandatory general information and parent information sessions should be implemented throughout Ontario where children are involved and a full agreement on custody and access issues has not been reached.

In spite of the very high ratio of cases before the court with issues that affect children, the sessions are vastly underused and virtually unknown in some jurisdictions by the majority of stakeholders. Under *the Family Law Rules*, these sessions are mandatory in Toronto at the Superior Court of Justice, but not in any other part of the province. The Rules should be changed to encompass all jurisdictions in Ontario.

It is desirable that parents attend these sessions in person; however, we recognize that due to distance, lack of funds, work commitments, or other legitimate reasons, a parent might not be able to attend a parent information session in a timely fashion. This could potentially prejudice his/her right to have access to the courts (since the litigant cannot proceed to the next step in the court process without having obtained a certificate of attendance at the PIS).

If, in the discretion of the Administrative Justice of the Family Court, or his/her designate, based on established criteria, a legitimate reason for not attending in person is found, the parent should then be able to obtain the information through written material, a video, or a website. We suggest that, in these circumstances, the process require that before a certificate is issued, the parent will swear an affidavit that he/she has read or viewed the sessions, and then answer a short questionnaire on the information provided to see if the parent has indeed assimilated the main points of the session.

Recommendation #32:

An established process should be in place to allow for a person attending PIS and who is in need of additional community resources, to be able to set up an appointment with the IRC at the FLIC to discuss a referral to the appropriate agency.

Many litigants have multiple issues to deal with and would benefit from referrals to community agencies. The more immediate and particular the referral is, the better chance of that person following through. It would be advantageous for attendees at the PIS to be able to immediately arrange for an appointment with the IRC at the FLIC so that the IRC can arrange a referral to the appropriate community agency.

PART IV: AN ASSESSMENT OF THE IMPACT OF LIAISON AND RESOURCE COMMITTEES ON COURT OPERATIONS

Overview

The *Courts of Justice Act* provides for two committees to be associated with the FC branch. The Community Liaison Committee is comprised of judges, lawyers, persons employed in courts administration, and other residents of the community. Members of the committee are appointed by the Chief Justice of the Superior Court through the Regional Senior Justice. The purpose of the committee is to provide a forum for the regular users of the FC branch to discuss issues relating to its operation. The Community Resource Committee is comprised of judges, lawyers, members of social service agencies, persons employed in courts administration, and other residents of the community, as appointed by the Chief Justice of the Superior Court through the Regional Senior Justice. The purpose of the committee is to identify, support, and promote resources relating to family law in the community.

The data used to assess the impact of the Statutory Liaison and Resource Committees on the effectiveness of court operations came from two sources: interview data and on-line survey data.

Perceived Effectiveness of the Statutory Resource and Liaison Committees

Stakeholder Survey

Approximately 40 respondents (7 judges, 10 lawyers, 1 mediator, 12 court managers/staff, 8 counsellors, and 3 individuals working in children and family services) completed part II of the on-line survey. They were asked to rate the impact of the Statutory Liaison and Resource Committees on the effectiveness of the operations of the family court.

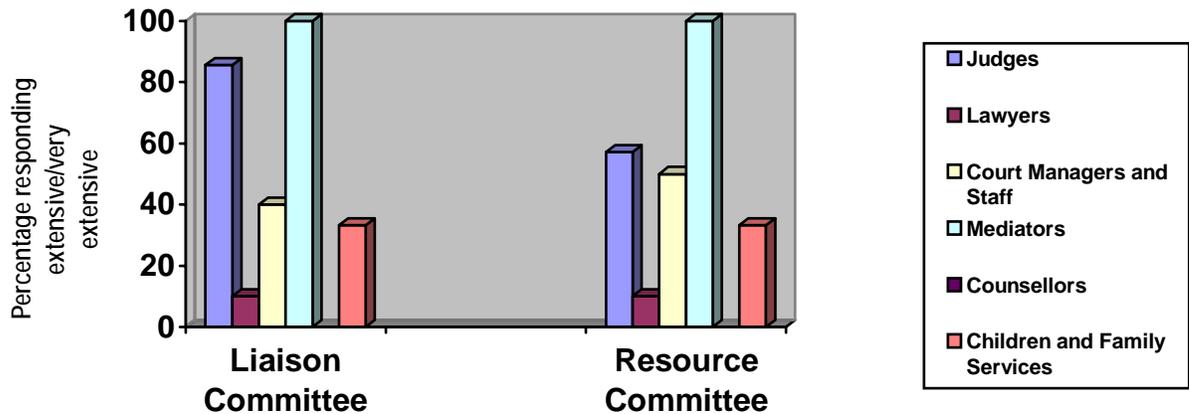
Liaison Committee

Approximately 86% of judges and the one mediator surveyed reported that the liaison committee has an extensive/very extensive impact on the effectiveness of the FC. On the other hand, only 10% of lawyers responded in a similar manner. Approximately 33% of individuals working within children and family services and 40% of court managers/staff reported that the committee has an extensive/very extensive impact on the effectiveness of the FC. The majority of counsellors (75%) reported that they did not know at all whether the liaison committee had any impact (positive or negative) on the effectiveness of the family court.

Resource Committee

In contrast, a smaller percentage of judges (57%) reported that the resource committee has an extensive/very extensive impact on the effectiveness of the FC. There was no change in the ratings of lawyers (10%) and individuals working within children and family services (33%) of the impact of the resource committee (10%) compared to their ratings of the liaison committee. There was a small increase in the court managers/staff ratings of the resource committee compared to the impact of the liaison committee on the effectiveness of the FC (50%).

The Statutory Liaison and Resource Committees have an extensive/very extensive impact on the effectiveness of the Family Court



Reflections and recommendations for changes in practice relating to the Liaison and Resource Committees that would have a positive impact on the effectiveness of the Family Court

Reflections

Throughout the course of this review, we encountered many conflicting opinions about the effectiveness of the liaison and resource committees. The majority of respondents interviewed across all five sites clearly agreed that both committees need to exist in some form, and that they need to meet on a regular basis. The frustration expressed during our interviews and in the qualitative data reported from the on-line survey related to these two committees focused on the current function of the committees and the lack of authority to implement change. For example:

All the good ideas arise at this level but the authority to implement ideas is severely restricted. This committee has no ability to make or influence change. There is no statutory authority to make recommendations or for them to be considered.

Anonymous on-line survey respondent

*A range of authority should be carved out to allow a balance between provincial uniformity and autonomy to develop **local solutions to local problems**.*

Anonymous on-line survey respondent

During our interviews, participants agreed that these two committees are not the most efficient use of participants' time and court resources, particularly because they have become increasingly process oriented and not outcome driven. Survey respondents expressed dismay at the fact that similar discussions occur year after year, with very little change. Respondents emphasized the importance of having a defined category of issues or established goals and objectives that could be addressed by both committees to meet local needs. Some respondents reported that the committees are very judicially, legally, and procedurally focused, as opposed to discussing family and community issues and how the community should work together. There was concern from all respondents that there is no authority to implement suggestions or change, and as such

very little gets done. In particular, the resource committee has been criticized by some of not fulfilling its mandate:

At best, it is about education about resources—not identifying and seeking the resources in the community that are needed. Workshops providing information are helpful but implementing resources and finding what is needed in the community is essential.

Anonymous focus group respondent

Moreover, some of those interviewed noted that the resource committee does not advocate for more resources and is far too busy to do community outreach. On a positive note, the committees experience an increase in attendance when presentations have been offered at these sessions, which have been well received.

Liaison and Resource Committees, Recommendations

We developed the following recommendations from our interview and focus group data, promising practice recommendations from the literature, and stakeholder suggestions from the on-line survey.

Recommendation #33:

The committee should be provided with operational information (e.g., statistics) to allow a solution-focused approach, rather than a reactionary approach.

In our review, we repeatedly heard complaints that liaison committee meetings are dominated by discussion of what is wrong with the system, delays, and the lack of judicial resources. Similarly, members of the resource committees continually hear about the lack of assessment and other resources available to assist the court and the inadequacy of mediation funding. Members feel helpless in the face of these institutional problems and powerless to bring about change. It is not surprising they report a loss of interest in attending meetings.

Rather than dealing in generalities, the committee members should be provided with operational information and statistics to assist them in assessing the problems. This will enable them to take a solution-focused approach when discussing issues. This strategy requires the leadership of the key participants through the formation of a secretariat as discussed below.

Recommendation #34:

Form a secretariat¹² for the statutory committees.

The key members representing the judiciary, administration, lawyers, legal aid, and ancillary services should form a secretariat for each of the statutory committees or in those areas where the committees meet jointly for the combined committee. The role of the secretariat is to bring issues to the committees, provide background information necessary to understand the matter under discussion, and pose potential options for action. Members of the committee can propose agenda

¹² The term secretariat is used to describe a number of committee members who will collectively oversee the work of the Committee and organize materials for distribution with a view to create more efficient and productive meetings.

items and items for discussion to the secretariat, who will be responsible for compiling the agenda and prioritizing issues for discussion. The secretariat from various committees throughout the province can network with each other to benefit from a cross-pollination of ideas and solutions.

Recommendation #35:

Provide the committees with authority to propose and implement change, within a pre-defined sphere of authority.

The committees should be more than mere advisory bodies. The committees need to be able to generate ideas for improvements to the delivery of service, taking into consideration fixed monetary, human, and physical resources. As a reflection of the importance of the statutory committees, a member of the judiciary should be the chair or the co-chair, and be the liaison with other judges and the regional senior judges so that input can be provided from those sources prior to any final decisions.

It is recommended that within certain well-defined areas that require provincial uniformity across all FC sites, the local committees have the authority to find local solutions to the needs of their communities. A protocol can be established so that such changes are approved by the senior regional justice or his/her designate and the local courts manager or his or her designate. We believe that only if they have the power to achieve change, will there be pro-active and eager participation by all members of the statutory committees.

Recommendation #36:

The statutory committees should be responsible for increased coordination, communication, and involvement between local court committees and other court locations.

Lists of the members on each statutory committee in the province should be circulated among the committees, and should include affiliation and contact information. In addition to informal networking between committee members, a yearly day-long meeting should be organized for all members to attend at their expense. The meeting should be planned to coincide with a popular conference that appeals to those practising in the family court and should include a professional development component that will appeal to legal and non legal members.

Recommendation #37:

The statutory committees should oversee the ancillary services contract.

The funding allotted by the ministry for each jurisdiction to provide specific ancillary services to the court should be administered locally by the court services manager with input from a representative committee taken from members of the liaison and resource committees. These members should provide advice for selecting the successful bidder. In addition, they should have autonomy, within certain guidelines, as to how the funds are to be spent in their community, based on an assessment of the area's needs.

Recommendation #38:

The statutory committees should assist in the organization of information sessions to advise professionals about new practices and procedures.

The committees should work together with the IRC at the FLIC to organize regular meetings of the court staff, legal aid duty counsel and advice counsel, and those involved in providing the ancillary services to the court. The objective of such meetings would be to inform professionals associated with the FC about new or proposed rules, practices, and procedures in the court. In addition, “experts” would provide information on topics to assist them in discharging their duty to the clients, or better the delivery of family law justice to the public.

PART V: FAMILY COURT FILE REVIEW

Overview

The review of FC files provided an opportunity to see the system in operation as reflected in judges' actions during hearings. Four hundred and thirty-seven family court files were reviewed at three evaluation sites: Barrie (189, 43%), Oshawa (151, 34%), and Cornwall (97, 22%). Sites were chosen with a minimum of 350 files in total to ensure a representative sampling of all family court files. The purpose of the file review was to collect the following key file information: background data on the litigants (age, income, family characteristics), the length of time from the initial application to the final resolution, the number of case and settlement conferences, referrals to mediation, issues related to domestic violence and urgent motions, and the number of judges and court appearances per file. Cases for the file review were selected from closed files beginning in 2003 until 2005. Files were randomly selected throughout the year to ensure that a representative sample was selected across different months. Approximately 44% of the files were standard track, whereas the remaining 52% were fast track. This information was missing in 4% of files reviewed.

Litigant Characteristics: In 68% of all files reviewed, females were the applicants, and they were on average 36 years old (ranged from 16 to 73 years). This finding was relatively consistent across sites. The median income of female applicants was approximately \$22,000 (ranged from \$0–122,000)¹³. Female applicants were married in 65% of the cases and 20% were living common-law. The remaining 15% of female applicants were neither married nor living common-law. Males were the applicant in 32% of the all files reviewed and they were on average 42 years old (ranged from 20 to 74 years). The median income of male applicants was approximately \$32,000 (ranged from \$51–105,000). Male applicants were married in 71% of the cases and 15% were living common-law. The remaining 14% of male applicants were neither married nor living common-law. On average, applicants had two children, while the number of children ranged from none to a high of 17 in one file. Overall, applicants were represented by counsel in 66% of the files reviewed, with the remaining 33% self-represented. In contrast, 58% of respondents were self-represented, and the remaining 42% were represented by counsel. Representation was relatively consistent across male and female applicants and respondents.

File Characteristics

Total Number of Judges per File and Court Appearances

To determine how many different judges “touched” a file, the total number of judges per file was counted based on the orders made by a judge on the endorsement page(s) of the court files and/or final orders. This information was not captured for 34 cases. On average, the median number of judges per file was 2, with the number of judges ranging from 1 to a high of 7. This finding was consistent across all sites. The total number of court appearances was collected as a measure of how many times a case went before a judge, even if the court appearance was adjourned. Across

¹³ There was large variability of income for both applications and respondents. Thus, the median income is reported rather than mean income, since extreme values can greatly skew data. The median value represents the middle of the distribution; half the scores above the median and half the scores below the median. The median is less sensitive to extreme scores than the mean and is a better measure than the mean for highly skewed data (such as income). Where applicable, median is reported throughout this report rather than the mean.

all files reviewed, the median number of court appearances was 2, with court appearances ranging from 0 to a high of 18 in one file.

Presumably, the longer a file remains in the system, the greater the likelihood that the case will more frequently come before a variety of judges. Moreover, the number of judges per file may also be dependent on the complexity and nature of the case. In interviews with lawyers, it was reported to us that in cases of high conflict/domestic violence, a greater number of judges may be involved. Some generalist judges will limit their level of activity on such a file, preferring to defer the tough issues to a family judge. The file review indicated that in files where three or more judges were involved (126 cases), the median number of weeks from the date of application to the date the final order was made was 55 weeks (range of 2 to 165 weeks). This is in contrast to 17 weeks where two or fewer judges were involved on a file. The file review data also showed that in 25% of the cases where three or more judges were involved, domestic violence was documented as a serious concern.

Involvement of OCL

Involvement of the Office of the Children's Lawyer (OCL) is an important consideration in ensuring that the interests of children are paramount in family law disputes. Of the cases where either the applicant or respondent had children (330 cases), only 30 of these cases (9%) involved the OCL. In 33% of the cases where the OCL was involved, there was a documented reference of domestic violence (10 cases) and in seven of these cases (70%), a request for restraining order was made. Sixty-seven percent of the files with OCL involvement were fast track. Custody and access was the primary reason for starting the court application in 43% of these cases, with 20% of the cases requesting support or a reduction in support payments (e.g., motion to vary). Applications started because of divorce proceedings occurred in 3% of the cases where the OCL was involved. In 37% of these cases, two or more of these issues were reasons for starting the application. While an attempt was made to document the number of cases where a court ordered assessment (e.g., Section 30) was made, there was no evidence documented in almost all files reviewed to make any meaningful comparisons either within or between sites.

High Conflict Files

Files were reviewed for references and documentation of domestic violence and issues related to high conflict between respondent and applicant. In addition, requests for a restraining order were also reviewed. Overall, references to domestic violence were recorded and documented in 14% of all files reviewed (63 cases). In 11% of these 63 cases, a request for a restraining order was made. The majority of the files with references to domestic violence were fast track files (70%). In 98% of the files related to domestic violence and restraining orders, females were the applicants with a median income of approximately \$21,000 (range \$0–62,000). Moreover, children were involved in 84% of these cases.

Referral to Mediation Services

Files were reviewed for evidence of an order made to mediation services (either on-site or off-site mediation). An overwhelmingly small number of files (13 files; 3%) contained information that indicated a referral to mediation services was made. The majority of the documented orders

to mediation services were from the Oshawa site (8 files; 62%). Overall, it is unclear whether this information was simply not documented, whether clients had already been to mediation prior to starting court action (as the other ministry related statistics on mediation would indicate), or whether court-ordered referrals to mediation are truly not occurring (as some of our interview data would suggest).

Case Conferences

The total number of case conferences held from the time the application was filed to the date the final order was made was recorded. In slightly more than half of the files reviewed (51%; 220 files), no case conferences were held. This finding potentially has a very significant impact on the design of the family justice delivery system. It is important that further study be conducted to look at additional variables related to the files where no case conferences were held. The recording on the file does not disclose the reason for the lack of case conference. If no case conferences are held during the course of an application, one might expect that court involvement may be minimal (e.g., uncontested divorce). Moreover, some of these files may be easily diverted out of court and require less 'judge time' than those where case conferences are held. As expected, in files where no case conferences were held, the median number of judges per file was one (representing over 70% of the cases), and the median number of court appearances was also one. Forty-six percent of these applications were fast track and children were involved in 70% of the files. Of the files where no case conferences were held, slightly more than half (51%) were applications related to divorce, 22% were custody and access, 22% of applications were started because of multiple reasons (e.g., custody/access, divorce, support), and 4% of applications were started because of a motion to vary support.

Of those files where a case conference was held, the total number ranged from one (21% of files) to a high of 18 case conferences in one file. On average, there were two case conferences held per file. In files where a case conference was held, 34% of applications were started because of a custody and access dispute, 18% were divorce applications, 5% were applications to vary support payments, and 29% of applications were started because of multiple reasons (e.g., divorce and custody and access, support). Other reasons, such as property issues, accounted for 14% of the applications started where a case conference was held.

An important implication of these data is related to determining judicial resources or complement. If one were to use the number of applications as a proxy measure in determining judicial resources, these data would indicate that the number of applications alone is neither sufficient nor an effective measure of judicial resources. If more than half of the files reviewed did not require a case conference, judicial involvement would be expected to be minimal and the data do support this (i.e., median number of judges was one, median number of court appearances was one).

Settlement Conferences

The total number of settlement conferences held from the time the application was filed to the date the final order was made was recorded. Settlement conferences were held in a small number of files reviewed (17%, 73 cases). In these instances, on average, one and a half settlement

conferences were held per file. The majority of files had one settlement conference (63%) held, although the number of settlement conferences reached a high of seven in one file.

Although settlement conferences were held in a small number of files reviewed (20%), the remaining 80% of cases were examined for the number of case conferences held. It is possible that in some instances, a case conference was treated much like a settlement conference, and might account for the small number of settlement conferences held across all files reviewed. However, these data suggest that even in files where settlement conferences were not held, case conferences were held in only 40% of files. Thus, this data does not necessarily suggest that the small number of settlement conferences can be accounted for by the idea that case conferences were treated as formal settlement conferences.

Trial Management Conferences

Information was recorded on whether a trial management conference was held at some point during the course of the application. Overall, trial management conferences were held in 6% of the files reviewed (24 cases). Exactly half of these cases went to trial (12 cases; or 3% of the total files reviewed).

Motions

The total number of motions, urgent motions, and use of Form 14B motions was recorded. On average, there was one motion per file, ranging from none to a high of seven motions per file. Form 14B motions¹⁴ were used in approximately 19% of the files reviewed (79 cases), and urgent motions much less frequently, 8% (35 cases).

Dismissal Orders

Files were reviewed for a notice of approaching dismissal order and a final dismissal order. In 7% (31 files) of all files reviewed, a notice of approaching dismissal order was present. Of these 31 files, 28 (90%) received a final dismissal order. Data related to dismissal orders is difficult to interpret and understand because of the many reasons, known and unknown, which may account for why a file is dismissed. Anecdotally, the research team reviewing the files found it increasingly difficult to understand the course and events of a given file that eventually was dismissed.

Length of Time between Date of Separation and Application Date

Where date of separation was documented, data was calculated to determine the length of time between a couple's date of separation and the date a court application was filed. The median number of weeks that separated the time between the date of separation and the date the court application was filed was 76, although this varied significantly between files (ranging from one week to 930 weeks).

¹⁴ Form 14B motions are, made under Rule 14 (10) of the *Family Law Rules* when the relief requested is procedural, uncomplicated or unopposed.

Length of Time between First Case Conference and Application Date

Data was calculated to determine the length of time between the date an application was filed and the date of the first case conference. The median number of weeks between the date of application and the date of the first case conference was 14. The length of time between the date of application and the date of the first case conference ranged from a low of one week in 8% of the files reviewed, to a high of 133 weeks in less than 1% of the files reviewed.

Length of Time between the Case Conference and First Settlement Conference

Data was calculated to determine the length of time between the date of the first case conference and the date of the first settlement conference. The file review data indicated that the median number of weeks separating the time between the first case conference and the first settlement conference was 18. The length of time between the first case conference and the date of the first settlement conference ranged from a low of one week in 1% of the files reviewed, to a high of 103 weeks in one file.

Length of Time between Trial Management Conference and First Settlement Conference

Data was calculated to determine the length of time between the date of the first settlement conference and the trial management conference. The file review data indicated that 24 weeks separated the time between the first settlement conference and the trial management conference. The weeks separating the first settlement conference and the trial management conference ranged from two weeks to a high of 174 weeks.

Length of Time between Date of Trial and Date of Application

Where possible, data was calculated to determine the length of time between the date an application was made to the time the case went to trial. A small number of files in this review went to trial (12; 3%). The file review data indicated that the median number of weeks that separated the time between the date of application and the date the case went to trial was 35. The weeks separating the date of application and trial date ranged from three to 174 weeks.

Length of Time between Date of Final Order and Date of Application

Data was calculated to determine the length of time between the date the application was made and the final order issued. The median number of weeks a file was opened was 24, ranging from one week to a high of 282 weeks.

Cases Resolved within Four Weeks: Further analyses on 407 files were conducted to determine the percentage of cases resolved within 30, 60, 90, 120, and 120+ days from the date of application to the date of final order. Five percent of cases (21 cases) were resolved within four weeks. These cases were predominately fast track (62%). Divorce cases accounted for 33% of the files resolved within four weeks, followed by custody and access files (24%). The remaining files were related to motion to vary support or termination of child support.

Cases Resolved within Eight Weeks: Thirteen percent of cases (51 cases) were resolved within eight weeks. These cases were almost equally standard (52%) and fast track (46%). Divorce cases accounted for half of the files resolved within eight weeks (52%), followed by cases related to custody and access (37%). The remaining 11% of cases were related to motion to vary support or RO.

Cases Resolved within 12 Weeks: Ten percent of cases (40 cases) were resolved within 12 weeks. Slightly more than half of these cases were standard track (55%). Divorce cases accounted for 55% of the files resolved within 12 weeks, followed by custody and access (20%). Motion to vary support accounted for 13% of these cases. The remaining cases had multiple issues relevant to the case (e.g., divorce and custody and access).

Cases Resolved within 16 Weeks: Seven percent (29 cases) were resolved within 16 weeks. Fifty-nine percent of these cases were standard track. Divorce cases accounted for 48% of these files, followed by 14% for custody and access. The remaining cases had multiple issues relevant to the cases (e.g., support and custody, divorce and custody and access).

Cases Resolved after 16 Weeks: The majority of files reviewed were resolved after 16 weeks (265 cases; 65%). Slightly more than half of these cases were fast track (56%). Divorce and custody and access accounted for 27% of the files resolved after 16 weeks from the start of the application to the final order. The remaining files were related to multiple issues such as support and custody and access, motion to vary, disputes over matrimonial home, and property issues.

Summary

The file review provides some insight into the complexity and range of clients and issues before the court. Some cases end as quickly as they begin, while others consume a great deal of court time and multiple judges. In our review, we found that many vulnerable clients deal with abuse, poverty, and/or language barriers. The majority of applicants are women at the poverty level, and the majority of respondents are men representing themselves. Most cases do not appear to have an apparent final resolution. It is hard to know if the case settled, or if the parties ran out of emotional and/or financial energy. There is almost no reference to referrals to the ancillary services such as mediation or community program for counselling or assessment.

The contents of the file review were very much dependent on judges or court staff recording what transpired during individual hearings. Often this information was missing or sketchy. The overall review suggested a lack of meaningful appearances as defined by the appearance being an event that requires judicial skills, knowledge, and authority (see Part VII on meaningful appearance).

Many cases are resolved very quickly. The question should be raised as to why these cases have to be started in the first place and take up administration/counter staff time. Is there a simpler way to deal with uncontested divorces? Should the documentation necessary for fast track cases be simplified since so many do not get very far? The file review data support the finding of low referral rates to mediation, and especially the lack of referrals before a case conference is held.

In the file review, it is apparent that certain judges are more motivated than others to ensure that something meaningful is achieved with every appearance before them. They appear to seize the matter and help narrow down the issues and set clear parameters for the next hearing or case conference. Their records of decisions and rationale are easy to follow. These differences can sometimes be explained by whether the presiding judge has the experience, knowledge, and confidence to take a pro-active approach to the matter before her/him. Appropriate recording of events on the file is generally lacking. From an outsider or audit perspective, it appears that many court appearances lead either to more hearings before different judges or end abruptly. If there is meaningful action and litigants moving to settlement or trial, it is not evident in the file. This finding has implications for better tracking of cases and judicial intervention that could be captured on standard information sheets that would better inform the next judicial official to touch the case. Better summaries of judicial intervention could also assist in the formation of policy and practice and further research.

PART VI: BEST PRACTICES RELATED TO ADMINISTRATIVE PRACTICES

Overview

The staff members working in the family law counter and office at each courthouse serve many individuals, each with its own expectations:

- To the public, court staff are the embodiment of the justice system. The public expects their needs to be met in a timely, efficient, and courteous manner, otherwise they consider that they have been denied their right to access to justice.
- To the lawyers, court staff are the gatekeepers to the justice system. Lawyers often hope for differential treatment in favour of their clients, but not their opponents.
- To the judges, court staff are both the supplier of their case inventory as well as the recipient of disposed cases. Judges expect that the staff at each end and throughout the litigation process exercise just the right amount of discretion.
- To their employer, court staff are expected to be courteous and efficient, keep all work current, and ensure that their conduct does not generate any complaints about the administration of family justice from the litigants, lawyers, or judges.

Court staff members enable litigants to turn the theory of litigation into a reality. Their attitude, competence, and knowledge have a significant impact on how well the system serves the public.

Observations and Findings

To determine best practices related to administrative practices, we collected data from two sources of information: interview data and on-line survey data.

- In every site we visited, we found hard working dedicated court staff who work tirelessly to deal with the daily deluge of paperwork and clients, usually under adverse conditions of space restrictions, impatient litigants, demanding lawyers, and the constant challenges of deciphering judges' endorsements.
- Court services managers are doing an admirable job of providing efficient service to the public, in spite of limited financial and human resources.
- Scheduling coordinators who are responsible for assigning dates for conferences, motions, trials, and other court appearances in a timely fashion using limited judicial complement are to be commended for their industry and resourcefulness.
- The perception at each site of the staff, lawyers, and judges is that each location is under-resourced and that in successive years, staff have had to do a lot more with less personnel and resources.
- Limited work space and storage facilities make it more difficult for the staff to do their work efficiently and effectively.
- Working at the front counter is very stressful because of the intensity of the tasks involved, the higher number of self-representing litigants, and the high volume of cases.

- Staff spend a significant amount of time trying to figure out what happened in court based on a lack of detailed recording of the event and/or trying to read the court’s endorsement.
- Lack of communication between the counter staff and those at the FLIC often leads to contradictory direction being given to the self-representing litigants.
- Longer line ups at the counter are caused by self-representing litigants not having the correct documentation, institutional litigants and big law firms having multiple filings, and staff being unable to locate files expeditiously.
- Routine paperwork such as the issuance of “ordinary” (as opposed to those that deal with an urgent subject matter) court orders and uncontested divorces is delayed for many weeks as staff give priority to more urgent tasks such as answering the telephone, waiting on clients at the counter, or handling urgent paperwork.
- Lawyers often have different interpretation of the Family Law Rules than that of the staff. This often causes disagreements at the counter with respect to filings or steps to be taken in the litigation, which in turn causes delay and frustration.

Recommendations for Administrative Best Practices

The following recommendations have been developed from our interview and focus group data, best practice recommendations from the literature, and stakeholder suggestions from the on-line survey.

Recommendation #39:

An objective process for determining the appropriate number of family court counter/office staff in each site should be developed.

An objective process should be established to determine staffing complement, similar to the models and methods used to determine judicial complement.

Recommendation #40:

Consideration should be given to the possibilities of increasing space and file storage facilities to ensure adequate space for the large number of court files that are increasing in number.

A long-term solution requires the conversion of the paper file into an electronic one similar to what has been done in other jurisdictions and in the land registry office in Ontario. We appreciate that this is a long term proposition and a costly process, but it is, in our opinion, an inevitable development.

Recommendation #41:

Ongoing training of court staff should be undertaken on family law issues and procedures, Family Law Rules, diversity of litigants, and handling the stress and vicarious trauma that is associated with serving this client population.

Staff should be given training not only on legal procedures common to the FC, but also on dealing with impatient litigants, deescalating conflict, and handling stress and vicarious trauma. The family law counter staff should be specially trained as experts in Family Law Rules and procedures, as well as resources available through the FLIC. Staff in the family law administrative office should be cross-trained to ensure that each person can fulfill all of the functions that the office provides if called upon to do so. In addition to the internal training of court staff on new rules and procedures, joint sessions should be held involving the administrative staff, the lawyers, FLIC personnel, legal assistants, duty and advice counsel, paralegals and ancillary services providers, so that the expectations of the staff and the interpretation of the rules and procedures are known and followed by those who work in the family justice system. Such joint sessions should be organized by the liaison committee in each jurisdiction on a regular basis to enhance communication between the administrative staff and other stakeholders.

Recommendation #42:

Measures should be in place to increase the efficiency of service at the front counter and reduce any unnecessary delays.

The following measures have been identified to help increase the efficiency at the front counter and reduce delays and long line ups:

- Set up a separate line for lawyers.
- Give institutional litigants a specific time within which they are to attend at the counter and advertise that time.
- Direct self representing litigants to the advice lawyer at the FLIC.
- Direct that documentation filed by self-represented litigants be first approved by the administration representative at the FLIC.
- Publicize slow times at the counter to even out the work.
- Ensure that the FLIC has consistent and available resource information for the completion and filing of court documents (e.g., using checklists for standard processes).
- Have the counter open for the entire work day.

Recommendation #43:

The IRC should play a leadership role in the coordination of services with the court's statutory committees and other services.

The IRC should organize regular meetings of the court staff, legal aid duty counsel and advice counsel, and the ancillary services providers under the auspices of the liaison and resource committees to coordinate, review, and improve service provided to the public by each segment represented at the meeting. In addition, staff, together with members of the liaison and resource committees, should develop protocols with respect to the issuance of orders that impact on the safety of one of the parties or the children and the sharing of such orders between the criminal courts, the family court, the crown's office, the police, and the Children's Aid Society.

Recommendation #44:

Consideration should be taken to ensure that the issuance of court orders are efficiently available.

To ensure that litigants have court orders available to them in a timely fashion, we recommend a two step plan:

- Implement standard clauses, developed under the auspices of the liaison committee, so that judges can then complete the blank parts of the form to facilitate the finalizing of the order by the staff.
- The administration and the liaison committee should consider the feasibility and cost of adopting a procedure known as “auto orders” in jurisdictions where orders are generated by the court clerk immediately upon pronouncement of the terms by the judge. The court clerk fills in the blanks as required in the form order and prints it out for the judge to sign. We appreciate that this recommendation is a long term solution which could require significant up front costs, but we believe the expenditure will be a prudent investment in the more efficient and effective delivery of family justice.

To keep track of backlog and implement solutions, the staff should be required to complete a form every Friday. This form would set out the number of files and the nature of the work that is required on any file that has been waiting for attention on his or her desk for more than 10 days.

Recommendation #45:

Consideration should be taken to increase the current security measures at the courthouse.

Those responsible for security issue in the courthouse should be mindful of the potential security risks to front counter staff and implement a security plan that includes potential screening, counter layout, alarm alert, and training. In addition, local police services should work with the managers and directors of the court operations to develop and update local safety plans.

Recommendation #46:

The role of the Court Services Officer (CSO) should be expanded.

Court officers often have a wealth of personal and professional experience that makes them invaluable for the smooth operation of the courtroom. In many jurisdictions the particular skills, knowledge, and personalities of the officer, with the encouragement of the judiciary, have taken on an expanded role of being the “in court” liaison between the judge and the other participants, including the clients and duty counsel. We suggest that that the role of the CSO and the court clerk be reviewed with a view to expanding the CSO role for the efficient running of the court list. This concept is currently being used effectively in the Oshawa-Whitby FC.

PART VII: BEST PRACTICES RELATED TO ENSURING MEANINGFUL COURT APPEARANCES

Overview

A “meaningful court appearance” would primarily be one that includes the following factors:

- The event requires judicial skills, knowledge, and authority;
- The event has a defined purpose that is known to the litigants, their lawyers, the administration, and the judge;
- All relevant documentation to enable the court to deal justly with the issue has been filed in a timely fashion and on notice to the opposite side;
- The parties and their lawyers (including duty counsel if one is involved) are prepared and ready to deal with the issue;
- What is sought to be accomplished at the court appearance could not have been achieved in any other way;
- The subject matter of the appearance is essential to the advancement of the case toward a cooperative or adjudicated resolution; and
- Something is accomplished that could not have occurred without the appearance.

These factors are essential to make optimum use of the judicial resources available to each court. The rules have to enhance the chances of these factors being present, and in addition, a staff person has to be responsible for ensuring compliance and that the necessary documentation and the parties are “judge ready.”

The expenditure of time and money by litigants on court appearances that do not further the resolution of the case brings the administration of justice into disrepute. Non-productive appearances are also a drain on the administrative staff who have to juggle schedules to free up judge time for each individual event, as well as legal aid resources requiring appearances by duty counsel.

Observations and Findings

The following findings in terms of meaningful court appearances are based on our file review, interviews, and focus groups.

Judges are frustrated by the number of events that they are required to preside over when (in no particular order):

- The issue that the court is required to adjudicate on is not clear;
- The parties and/or their lawyers are not ready to proceed;
- Unrepresented litigants have not received input from duty counsel;
- The issue could have been easily resolved through communication between counsel;
- The documentation necessary to adjudicate on the matter is not complete;
- The issue could better be resolved through intervention of ancillary services;
- The issue is of a minor or inconsequential nature;

- Lawyers are not knowledgeable about the subject matter before the court;
- Lawyers are not using waiting time when in court to narrow or resolve issues;
- Conferences and motions are adjourned late after the judge had taken the time to read the file.

Lawyers feel that a number of events that they are required to attend in court are not productive, including:

- Waiting for long periods of time to get in before a judge for a conference or motion, and on many occasions not being seen by a judge after having waited all day;
- Being required to attend court for a case conference, just to be asked if disclosure is complete and adjourn the matter to a settlement conference;
- Having a judge preside over a motion or conference who admits in open court that he/she knows very little about this area of law;
- Having the clients present for a meaningless appearance;
- Attending with dozens of other lawyers for half a day at an assignment court with a list of cases that cannot possibly all be heard at the upcoming sittings;
- Working with judges who will not play an active role in trying to resolve the case at a settlement conference;
- The delay in getting a date to be before a judge on an event sometimes making the reason for the appearance meaningless due to the passage of time;
- Lack of continuity in the management of a file (having several judges on the same file) and the inability of one judge to figure what other judges have done before him/her.

Recommendations/Conclusions

Overview

Meaningful court appearances are at the heart of the family justice system. A court appearance for a litigant is not synonymous with having access to justice if the event does not further the resolution of the case. A meaningful appearance also necessitates a practical application of the principles in Rule 2 of the *Family Law Rules* of proportionality when it comes to the nature of the dispute, the resources available, the time to be allotted, and the expense involved in the resolution. The analysis also demands an evaluation of how ancillary services to the court are to be used, mandatory attendance at certain programs, and automatic referral to mediation. As such, the recommendations below are to be read in conjunction with other sections of this report that comment on the overall delivery of justice to the litigants.

By way of explanation, the following recommendations are based on the belief that simply asking for more judges and emphasizing the existing court process, without making significant changes, will not create a better system of justice. We recommend a number of new initiatives, in addition to a “tweaking” of the current system. Any changes to the role of the court should be directed toward the goal of the family justice system’s paradigm shift from a culture of litigation to that of cooperative dispute resolution. The court should be the last option for the few cases that require the formal authority and coercive power of the court.

Based on our mandate and the direction we received from MAG, our evaluation does not include an assessment of the court process for child protection cases. In our opinion, those cases require the development of a procedure that is not merely legal but also clinical in nature, one that balances the integrity and dignity of the family and the safety of each child. Consideration should be given to the treatment of child neglect as a public health issue with legal implications, rather than as a purely legal problem. Meaningful court appearances in CFSA (Child and Family Services Act) cases require more than adjustments to the current system, but a fundamental review of the process and the expertise required by the judiciary to appropriately preside over these difficult cases.

Recommendation #47:

Early neutral evaluation by a judge should be made available to counsel without first having to commence formal proceedings, as presently constituted.

Based on our extensive discussions with the bar and the judiciary, we firmly believe that many lawyers lack the knowledge and experience, and therefore the confidence, to make recommendations to a client with respect to an appropriate settlement without first having had judicial input. This phenomenon increases litigation, prevents settlements from taking place early in the file, and leads to an avoidance of the mediation process. We recommend that an early, neutral evaluation by a judge be made available to counsel, without first having to commence formal proceedings as they are presently constituted.

The Family Law Rules Committee should consider a process where counsel can request a neutral evaluation by a judge. The institution of such a process could be by way of a special summons or notice to the other party, in which the applicant confirms that the relevant facts of the case are not in dispute and that an evaluation for the rights and obligations of the parties is being requested with respect to certain defined issues. The rules would ensure that the documentation that is required to be filed once a hearing date is set would be similar to that required at a settlement conference. If the request is opposed, then the issue as to whether the litigants would benefit from an early neutral evaluation is determined by a motions judge.

We believe that such an approach will increase early settlements and will also lead to referrals being made to mediation once the lawyers are secure in the belief that a judge has set out a range of solutions within which the mediator can forge a deal.

Recommendation #48:

A case manager should, through the expansion of the role of the Rule 39 Clerk, be implemented to assist with the proper implementation of a case management system.

A case management system needs someone to oversee it and have the responsibility of making it work. The system cannot run itself, and judges should not be placed in a position of having to try and do it in a piecemeal fashion. We believe that a case manager is essential for the proper implementation of a case management system and to ensure that cases are judge-ready. This could be accomplished through expanding the role of the Rule 39 Clerk to include that of a case

manager. The additional responsibilities would require that the person in that position have the necessary skill, experience, and knowledge to meet the requirements of the job.

The role of the Rule 39 clerk should be expanded to include that of a case manager who should be a person that has the necessary experience, skill and knowledge to perform the tasks described below. The specific duties of the case manager should be the subject of discussion between all of the family justice partners, but generally should include:

- Relieving judges of simple procedural matters;
- Being responsible to ensure that cases are judge-ready;
- Keeping track of the compliance by litigants with respect to any rules that require attendance at mandatory mediation and parenting information sessions;
- Implementing directions from the court as to specific case management requirements in domestic violence or high conflict cases;
- Networking with legal aid, duty counsel, the FLIC, and the on-site and off-site mediation services provider to discuss an appropriate level of service to the court;
- Dealing with disclosure issues;
- Directing litigants to the FLIC and promoting ADR;
- Other functions as may be agreed to by the Chief Justice.

Recommendation #49:

A change in the *Family Law Rules* should be made to ensure that case conferences are meaningful and productive.

Changes are recommended in the *Family Law Rules* to make the case conference more meaningful and productive. We were repeatedly told during our interviews with lawyers that case conferences often become nothing but an admonishment by the court that disclosure has to be given; this is not a good use of judicial resources, lawyer's time, or client's money. Disclosure should be mandatory in very specific terms with cost consequences for non-compliance.

The Family Law Rules Committee should consider the following amendment to the Rules so as to reduce the number of necessary court appearances and make appearances, including conferences, more meaningful:

- Create specific mandatory disclosure requirements with clear timelines (i.e., documentation to support all of the figures for assets and liabilities in the financial statement within 30 days or a statement signed by the client confirming the request for such document or evaluation); cost consequences for non-compliance should be presumed.
- Eliminate the requirement under Rule 17(1)(a) for a judge to conduct at least one case conference and replace it with a rule that:
 - a) Requires a case conference before a motion for substantive relief can be brought;
 - b) Requires a case management conference before the case manager if any of the parties are not represented by counsel;

- c) Dispenses with the requirement to have a case or settlement conference if a neutral evaluation conference has been held, but requires a trial management conference;
 - d) Provides authority to the case manager on his/her own motion or on motion by one of the parties to require that a case conference be held before a judge;
 - e) Allows case conferences to be scheduled at any time throughout the litigation with the consent of both parties;
 - f) Makes trial management conferences in child welfare cases mandatory.
- Provide the opportunity for counsel for the parties to have access to a judge before actually having to start court proceedings, to obtain a neutral evaluation of the issues in the case on the following terms:
 - a) The parties and counsel would have to sign a form requesting a neutral evaluation and undertake to file a brief with the court that contains all of the information and documentation required at a settlement conference.
 - b) A court file will be opened.
 - c) If the parties wish to access the court services further, then the usual documentation for the commencement of proceedings and defence of an application will have to be filed.
 - d) Completion of a meaningful neutral evaluation conference as confirmed by the presiding judge in the endorsement at the end of the conference will entitle the parties to the case to bring a motion without a case conference.
 - e) Completion of a meaningful neutral evaluation conference as confirmed by the presiding judge in the endorsement at the end of the conference will dispense with the requirement of having to have a settlement conference unless requested by the parties. However, a trial management conference has to be held before trial.
 - f) The neutral evaluation process will not affect the requirements for any automatic referral to mediation in cases that are so designated by the rules or the requirement to attend a parenting session.
 - g) A judge who has expressed an opinion on the merits of the case will not be able to preside over a motion or trial in that case without the prior written consent of the parties.
 - h) If a meaningful, neutral evaluation has been completed by a judge once the parties commence proceedings, then the matter can proceed to be placed on the trial list subject to the completion of a trial management conference.
 - Make specific provision for the opportunity for a court on motion to be able to grant an order in specified appropriate circumstances, for the case to go directly to a settlement conference after the institution of the proceedings.
 - The concept of “proportionality,” now part of Rule 2, should be further implemented in the Rules so as to provide for a very streamlined system of required documentation and process for those cases where only financial issues are in dispute and involve

combined income for the family of less than \$35,000 annually and total net assets of less than \$100,000¹⁵.

Recommendation #50:

Through legislation, presumptive orders should be enacted to maintain the status quo of the family as it existed at the time of the separation.

Some applications are initiated simply to enable the spouse to secure the status quo and not to be prejudiced by lack of action. We suggest that through legislation, (or if there is a determination that there is authority within the statutory jurisdiction of the rules committee), presumptive orders should be enacted to maintain the status quo to give the parties an opportunity to negotiate and be involved in a cooperative dispute resolution option.

Consideration should be given to make provisions in the appropriate legislation and the rules to create presumptive orders upon separation, based on standard terms usually granted by the court. These amendments would dispense with the need for parties to go to court just to preserve the status quo. These provisions could include:

- The preservation of assets;
- Full disclosure of income, assets, and liability, including documentation to substantiate this information;
- The obligation to pay table amount of support based on the line 150 income tax return immediately upon separation;
- Neither parent is allowed to move the child's residence outside of the county the parties resided in prior to the separation without the prior written consent of the other;
- Preservation of the status quo in connection with beneficiary designations relating to registered retirement savings plan, pensions, life insurance, and health benefits.

Recommendation #51:

In an effort to enhance the consistency, completeness, and accuracy of the recording of events in a file, a standard form should be developed to be completed by the presiding judge at each appearance.

The ideal situation of having the same judge on a particular file from beginning to end until trial is simply not achievable in a practical way in every jurisdiction, given the current level of judicial resources. In addition, this model, if applied to every case (especially in the smaller centres) will cause undue delay and hardship to the litigants due to the lack of availability of the case management judge in a timely manner. If having the same judge for every event on the file is not possible, then that objective can be achieved through the detailed recording of the event so as to give the next judge an accurate picture of what transpired previously and what action plan had been directed in the last event. Even if the same judge is available, a detailed record would assist him/her to remember in detail what transpired the last time that she/he touched the file. If

¹⁵ These are arbitrary figures based on families that may not qualify for legal aid, but do not have the financial resources to retain private counsel.

the Office of the Chief Justice and Council of Regional Senior Justices adopted this approach, we believe that it would lead to more meaningful appearances since one event will build on the other, rather than the parties having to start over again at each appearance.

We want to make it clear that whenever possible, the concept of one judge presiding over all of the events on a case leading up to the trial is desirable. As a second choice, if “one family one judge” is not an achievable goal, then the concept of “one family one team” could be substituted so that a team consisting of two judges, the case manager, and mediator will ensure consistency and continuity.

The second mechanism being proposed to enhance consistency and continuity is the creation of a discreet form that structures the way each conference is to be conducted. If adopted, this form could ensure that the judge will be prompted to deal with certain items and the outcome would be recorded by the court, the clerk, or on a digital recording device for later transcription. This will ensure both consistency in approach in general, and in the result of each event in particular. In addition, consideration should be given to including in the form the judge’s brief observations as to what, if anything, could have made the court appearance more meaningful or even not necessary. A similar form could also be completed at the end of a trial. These recordings would keep the judges focused on holding lawyers accountable for each appearance, and would also help researchers evaluate the system to improve the operations of the court. For example, it may be very useful if there are recommendations from the presiding judge at the completion of a trial by completing a standard form as to what, if anything, could have been done earlier in the process that would have made the trial more efficient or enhanced the chances of settlement.

We suggest that standard reports should be created for the judge to complete at each of the three conferences mandated by the Rules. The form could consist of two sections; the first would include areas to be covered by the judge at the conference, and the second part would clearly set out the outcome of the conference, including any next steps to be undertaken.

To ensure continuity of approach, and that the parties follow up on the direction of a judge given at a conference, the accurate and detailed recording of the event is crucial. Ideally, the form can be completed by the clerk or CSO in the courtroom on a computer based on the verbal dictation of the court at the conference. Until such technology is available, the judge or the clerk or the CSO can complete the form by hand. We appreciate that this process would include the expenditure of funds to make the technology available, however litigants who are used to the efficiencies created by modern technology also expect it from the justice system.

Recommendation #52:

The court’s statutory committees should determine more productive use of waiting times.

The productiveness and efficiency of a court attendance (including appearing before a Rule 39 Clerk) by a lawyer and/or a party can be enhanced if:

- Rooms are available for counsel to discuss the case and resolve all or some of the issues while waiting to go into a courtroom;

- The parties can combine the court appearance with another useful step in the progress of the file such as: attending for information about relevant community services or legal advice at the FLIC, attending parent information session or an on-site mediation;
- The waiting area has printed material available to parties to understand the court process and the benefits of cooperative dispute resolution;
- The on-site mediator or a person from the agency that provides the court mediation services uses the opportunity when counsel and the parties are waiting to discuss the services provided on- and off-site.

PART VIII: DETERMINING JUDICIAL COMPLEMENT

In conducting this evaluation, we were specifically asked to make recommendations as to the best way to determine judicial complement. Though the request for our opinion on this issue came from MAG, we are aware that the definition of judicial complement is within the jurisdiction of the Chief Justice to decide. As such, our suggestions in this section of the report are respectfully submitted for the consideration by the Chief Justice of the Superior Court of Justice.

Determining the appropriate number of judges for a given region or jurisdiction is a complicated and challenging process. Simply stated, judges, lawyers, and court staff cannot provide quality and effective access to justice if they do not have sufficient “judge time” to do it. While adequate judicial complement does not necessarily guarantee well-run courts, it provides a basic ingredient that is necessary to enable the Court to fulfill and meet its responsibilities to the public and maintain standards of excellence in a timely manner. Escalating judicial caseloads and increasingly difficult cases, especially in the area of child protection, have significant implications for public service.

There is no easy way to determine judicial complement. The starting point is to ask the fundamental question about the very concept of judicial workload and whether estimates of judicial work should be confined to specific bench tasks, or expanded to include the duties of judges that go beyond the bench. The complex, multi-dimensional external forces that impact on the functions of the judiciary further complicate this issue. As chief Justice Brian Lennox indicated in his speech on the opening of the courts on January 5th, 2004:

The issue of judicial complement is one that has always been problematic. Complement needs clearly change over time and are subject to a variety of factors, which may be capable of measurement after the fact, but are extremely difficult to predict and are even less amendable to control. Changes in legislation, policy, practices, rules, personnel, and demography, to name but a few, can and do have a significant effect on the workload of any Court. In addition, many of the changes which have the greatest impact on a Court are entirely external to it. It is in this difficult and shifting context that long-term decisions regarding judicial complement are required to be made.

We must emphasize that first and foremost the determination of judicial complement is an integral part of the independence of the judiciary and is within the exclusive jurisdiction of the Chief Justice. The goal of having an appropriate complement of judges is clear: an effective and efficient system of justice for the benefit of the public. As Chief Justice Smith remarked in her speech on the opening of the courts of Ontario in January 2006,

Without a significant increase in 2006, the Superior Court will be severely handicapped in maintaining access to justice for members of the public.

Based on the various sources of information and data collected throughout this evaluation (i.e., interviews, focus groups, confidential surveys, and file reviews), there is unanimous agreement among the judiciary, bar, and court staff that the current number of judges is not adequate to meet the objectives of the family court in *their* region. In fact, most participants interviewed are

frustrated that discussions, which in some cases began a decade ago, about the pressing need for an increase in judicial resources have produced no positive results. The obvious need, based on the enormous increase in the population of some regions with a corresponding increase in the Court's workload, was repeatedly pointed out in the course of our evaluation. The overwhelming number of those interviewed also noted the exceptional increase in number of contested child protection cases, their complexity, and extensive trial time has exacerbated the challenges faced by the courts. Moreover, most participants reported there “*is no case management system*” because judicial resources are far too scarce to implement continuity of judges for each case.

The continuity of judge is the single most important factor in case management. With one judge hearing the case each time it returns, this would make it much easier for the parties and counsel to be accountable and to save the parties and counsel from having to re-iterate the facts and issues each time the case is before the Court.

Anonymous Stakeholder FC Survey Response, 2006

Despite the best efforts of Regional Senior Judges, there is a perception among participants in the evaluation that the current assignment of judges to a given region is not based on any systematic process. This perception, regardless of the reality, greatly affects the morale and spirit of those who work in the court. Moreover, unless these perceptions are addressed, they will only further negate any efforts made by the courts to address the issue of complement. Moreover, these perceptions have created an adversarial relationship between different sites as they “compete” for judicial resources rather than work cooperatively to lobby government in support of the Chief Justice's request for an increase in complement.

The following sections review the literature related to the best practices in determining judicial complement. Recommendations will also be made as they relate to the current context and situation of the family courts in Ontario.

Judicial Workload Studies and Methodologies

Literature related to determining judicial complement emphasizes that judicial workload studies should measure what is *being done* in a case and how much judge time those tasks require, and measure that against what *should be done* in the life of a case and how much judge time should be *expended*¹⁶ on that task. While many factors influence judicial workload, the literature seems to converge on the findings that the focus for determining judicial complement must not only be based on timeliness and efficiency of justice, but also on the quality of justice.

Traditional Judicial Methods for Studying and Determining Judicial Complement

The three common methods for determining judicial workload, which in turn affects judicial complement, are: the weighted caseload method, the Delphi method, and the normative method.

¹⁶ Technical Assistance Bulletin, Volume V, No.1, 2001. Judicial Workload Estimates: Redefining the Concept of Judicial Work

1. Weighted Caseload Method

The weighted caseload method has been used throughout many jurisdictions in the United States and has been described as a best practice. Weighted caseload studies are said to be a proven and highly effective strategy for assessing the number of judges required to handle the work of a particular court. In fact, some studies strongly endorse the use of weighted caseload analysis as the “best method for assessing judicial need”¹⁷. If properly designed and implemented, weighted caseload studies have allowed courts to estimate the need for judges in a given jurisdiction.

When adopting a weighted caseload methodology as a way to determine judicial complement, the underlying assumption is that complex cases take more time than less complex cases. Based on the average time that judges spend on a particular case type, the analysis assigns heavier weights to cases that are more time consuming. This average takes all cases into account, even those where judges may spend little or no time on a case. Similarly, judges work at different paces. The important understanding of weight caseload analysis is that it represents the average time spent on “typical” cases. A summary diagram of caseload to workload is shown below, which details the factors necessary if using the weighted caseload method to determine the number of judges required to handle workload¹⁸.

Diagram 1. Caseload to Workload

Caseload and Workload Factors Needed for Study

Caseload

Number of raw filings by case type

Case Weights

Average time in minutes required to handle each type of case

Caseload

multiplied by
Case Weights

produces

Workload

Total amount of judicial case-related time associated with all cases filed

Judge Factors Needed for Study

Judge-Year

Days available per year to process cases

Judge-Day

Minutes available per day for case-related work, including time for preparation.

Judge-Year

multiplied by
Judge-Day

produces

Judge-Year Value

Total time available per judge to do case-related work during the year (1 full-time equivalent judge)

An important factor to be considered when using a weighted caseload analysis to determine judicial complement is the need to keep the case weights current. The court system is dynamic;

¹⁷ Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff*, (National Centre for State Courts, 1996), 14.

¹⁸ Minnesota Judicial Workload Assessment, 2002, National Centre for State Courts.

changes in policy, legislation, case management, or type of cases may reduce or increase the time necessary to process cases. Once weights have been established, a process *must* be in place to keep them current to ensure they accurately reflect workload.

2. The Delphi Method

The Delphi Research Method is one technique for arriving at consensus by sampling expert opinion. In Delphi studies, groups of experts, such as judges, lawyers, court personnel, and other court staff are asked to identify specific tasks they perform and to estimate the amount of time they spend completing each task. For example, judges and their support staff could be asked to identify the events required for case initiation, conferences, motions, adjudication, disposition, and review, and to estimate the time required to accomplish each event. Case weights would then be based on these estimates and applied to the caseload to determine the number of judges needed to staff court.

The Delphi method is rarely used as a stand-alone process to determine judicial workload. Rather, it is often used as a source of external validation for weighted caseload studies. For example, the Delphi approach could be used *following* a weighted caseload study to allow feedback from experts about the empirically-derived weighted caseload study. The Delphic panel of experts could (in addition to its other role) consider whether the actual time spent, or perceived to be spent, is too little, too much, or just right. If no relevant archival data is available or valid (i.e., case records) to assist with the information about judges' tasks and the frequency within a case each task is performed, then a Delphi approach may be appropriate. Delphi techniques have also been relied more heavily when the research is exploratory and when the court is first attempting to study judicial workload. Although it may not be statistically valid, this approach—combined with an analysis of number and nature of court events—can provide a picture of time to process a given caseload.

3. Normative Method

Another frequently-used approach to measuring judicial workload involves comparative analysis across analogous jurisdictions. The jurisdictions must be similar in demographics and their courts comparable in jurisdiction and procedure. Once these parameters are established and the jurisdictions are selected, it is simply a matter of selecting a stable measure (such as eligible child population and/or annual case dispositions) and dividing this measure into the number of judges available. The result is usually expressed in a case rate of judges per thousand eligible cases.

The simplicity of the normative approach makes it appealing to those involved in the process, but the method's usefulness is widely questioned among researchers. It is often the very simplicity of this approach that can undermine its utility and meaningfulness. The normative method can be easy to implement, and most jurisdictions already regularly collect the data it requires. Nevertheless, the prevailing scepticism among researchers is such that studies documenting the approach are difficult to find¹⁹. Moreover, studies using the normative method assume that the norm is a worthy goal. Finally, even if jurisdictions can be matched with respect to demographics, procedures, and types of cases, a *court's culture* (e.g., values, norms,

¹⁹ National Center for Juvenile Justice, 1998.

expectations, or simply the way things are done) is difficult to conceptualize and measure, making comparative analysis across similar jurisdictions potentially misleading. While all courts have the same type of work to do, and some may have very similar demographics and court procedures to one another, the way cases are processed (e.g., mediation referrals) can be very different, in large part because of their unique court culture or the propensities of the family law bar.

Challenges with Determining Judicial Complement

The challenges faced by the courts to determine judicial complement are complex and multifaceted. Even if financial resources were available to staff courts with the appropriate number of judges, objectively determining judicial workload is not an easy task. While many courts across the United States have used weighted caseload analyses to determine judicial workload, and hence complement, there are several limitations to this approach. First, at the heart of a weighted caseload study is the assumption that a statistical average—a composite numerical summary of a ‘representative’ sample of judges performing a particular task—provides a proper measure of time for that task. This may or may not be the case. For example, it is possible to spend a very long time doing something poorly or well. Another major limitation to determining judicial workload is that the *quality* of case processing is often not considered, or how much time a case *should* take as opposed to the time it actually takes.

The most challenging limitation inherent in traditional assessments of judicial workload is that the numerous roles a judge fulfills during a day cannot be adequately examined or captured in a workload study. Off-the-bench activities that are difficult to measure systematically in caseload studies are often vital to the judicial role: community advocacy and leadership, frequent judicial training, education, research, informal meetings and discussions about cases with colleagues and other court personnel. These other activities are equally important, yet they are often not included in the judge-year workload calculation. Finally, determining judicial workload based on the average time it takes to complete a case fails to acknowledge that there are many other components and professionals within the system that influence judicial workload and time estimates. Judges do not process or handle cases in a vacuum. Effective ancillary services, a commitment to mediation, and good representation for children and families are but a few factors that greatly affect the timeliness of cases through the system, yet traditional workload studies fail to explicitly acknowledge their impact.

Reflections and Recommendations

The following sections provide recommendations that are organized into three main categories. The first set of recommendations addresses the immediate crisis and challenge facing the five sites in Ontario that were part of this review. The second theme addresses longer-term strategies to deal with the growing concern of under-resourced and overburdened judges, and may assist in establishing innovative ways to increase judicial complement to ensure timely access to justice. Finally, important considerations and issues related to increasing judicial complements will be discussed.

A clear measure of court workload is central to determining how many judges are needed to efficiently resolve all cases coming before the court. There are no quick fixes or band-aid

solutions to determining the correct number of judges for a given court that will suffice as long-term strategies. Moreover, raw, unadjusted case filing numbers provide only limited guidance to the amount of judicial work generated by the cases. However, there can be no doubt that currently the judicial system, as it relates to the Family Court branch of the Superior Court of Justice, is in crisis. The need for more judicial resources can no longer be ignored. Increasing judicial complement will result in immediate, short-term gains. Long-term prevention, however, will require movement beyond a crisis response. This will entail determining judicial complement in an empirical way that is both useful and meaningful to the court and the consumers it serves. We urge all those responsible to implement the following recommendations; this issue is fundamental to the delivery of timely and fair access to justice.

Addressing the Crisis: Immediate Solutions

Recommendation #53:

The federal government has to respond to the current urgent need by immediately increasing the judicial complement based on the Chief Justice's assessment of the Family Court's pressing needs. The Chief Justice may consider the variety of methodologies available to determine the longer term need for judicial complement in existing or future family court sites.

To address the immediate crisis facing the Ontario FC court system with respect to inadequate judicial resources, an immediate increase in the complement must be made. This need is now a public issue, as indicated by headline stories ("Ontario desperate for new judges", Toronto Star January 11th, 2007, p. A8). Chief Justice Heather Smith of the Superior Court of Justice, discussing the impact of a shortage of judges on the public, states:

The result is an impatient public, waiting for increasing longer periods of time to have their cases heard. Justice delayed is justice denied. Judges are desperately needed at Family Court to ensure that children at risk and families in crisis get timely access to the justice system.

Secondly, the normative method should be the first approach used to measure judicial workload and determine an estimate of the number of judges needed for a given jurisdiction. Although this method is not without its shortcomings, it is straightforward and easy to do quickly. By conducting a comparative analysis across jurisdictions that are similar in demographics and whose courts are comparable in jurisdiction and procedure, parameters can be established for comparisons. Then, it is simply a matter of selecting a stable measure (such as eligible child population and/or annual case dispositions) and dividing this measure into the number of judges available.

Recommendation # 54:

A differential response by court operations to the assistance to self-representing litigants is desirable to create a more efficient system which makes the best use of judicial resources.

To address the immediate crisis of judicial complement, a differential response to the increasing number of self-represented litigants coming to court should be adopted. Self-represented litigants

are a permanent and significant part of the family court justice system and the administration has to adapt. Moreover, we need to determine the appropriate level of assistance we can provide to litigants to see that justice is as fair and efficient as it can be for those who choose to come to court on their own. By providing help, especially at the front end or the early stages of the application process, we may be able to reduce the stress on the court's resources, and make better use of judicial talent.

The justice system to date is not designed to enable common citizens to successfully manoeuvre their way to resolving a dispute. Rather, the justice system is structured for lawyers. Thus, the impact of the dramatic increase in self-representing litigants meandering through the system is felt by court staff, and by judges in particular. Court and counter-staff spend hours responding to the inquiries of self-represented litigants, ensuring that forms and procedures are understood and completed. Judges sit in courtrooms explaining the fundamental procedures and laws to self-represented litigants who may not comprehend the full extent of the law or their proceedings.

Addressing the needs of self-represented litigants is paramount to ensuring that the system makes the best use of its judicial resources. Many jurisdictions have responded to the rise of self-represented litigants by devoting new resources to the judicial system. Some jurisdictions in the United States have put in place specially-trained personnel to operate resource desks, and have designed web pages and educational videos for use by self-represented litigants. Other less costly measures, including guidelines for judges and court staff, have also been developed. Many of these ideas have yet to be fully evaluated for their effectiveness. But without innovative approaches such as these, courts will only be further weighed down, as the number of self-represented litigants coming to court shows no signs of abating. It is important to emphasize that the need for providing assistance to litigants who go to court without a lawyer has to be in place throughout the course of the file, and not just at the front end when the application is started.

Long-term Strategies to Addressing Judicial Complement

Recommendation #55:

A comprehensive program of judicial workload assessment should be adopted that includes a weighted caseload study and the Delphi method to determine the appropriate number of judges in any given site.

As mentioned previously, in our opinion, a weighted caseload study is the best method to provide critical information to help the courts make informed decisions about the appropriate number of judges to handle cases. We believe that a comprehensive program of judicial workload assessment that includes a weighted caseload study and the Delphi method is the best empirical method for measuring case complexity and determining the need for judges. For workload standards to remain reliable and accurate over time, annual review of factors affecting the case weights for specific type of cases should be conducted. This is where a Delphi committee of experts can meet on an annual basis to review the impact of new legislation or other contextual factors on judicial case weights. Specific research may be needed to quantify the impact of new laws, policies, or court procedures on weights for specific types of cases. Many factors will influence the undertaking of a more empirical approach to determining judicial resources. Some of these issues and considerations are reviewed below.

Special Issues and Considerations Related to Judicial Complement

1. Determining judicial complement requires an examination of the broader context to which judges belong.

In the long run, it is impossible to assess the need for judges without including an assessment of the needs for other people in the system, such as court staff, ancillary services, and the bar. The needs of all partners should be assessed together; a change in any one part of the system is likely to affect other parts, and may impact the overall need for resources as well as to the nature of the resources required.

2. It is not ‘just’ about numbers.

While the saying “something is better than nothing” may hold for many things, it does not ring true in the case of judicial complement. The qualifications of the persons appointed to the bench are critical. For those judges who are appointed or assigned to the family court, such qualifications include knowledge, skill, and an interest in the resolution of family law disputes. Moreover, the need for particular professional and interpersonal skills in dealing with issues germane to family law and family law litigants cannot be overstated.

We acknowledge that there is an active and principled debate about the desirability of specialization for Family Court appointments. In our opinion, this debate has needlessly polarized the bench and bar. Throughout our review, we found consensus amongst members of the bar and the family court judiciary that any judge sitting in the family court should have knowledge of Family Law and the Family Law Rules, desire and skill to deal with the family law issues in a resolution centred approach, and be aware of the ancillary services available to the court.

To ensure the Family Court works effectively, it is important that when judges not specifically appointed to the family court are assigned to sit in that court, that they are provided with a significant uninterrupted period to be part of the FC. This is necessary for a number of reasons: it gives the administration an opportunity to properly implement the case management aspects of the Rules; it allows time for the judges to become familiar with the “culture” of the court; and it gives judges and lawyers an opportunity to develop a synergy to resolve cases, a relationship that does not happen overnight and that is necessary for the litigants to reap the benefits. For these reasons, we recommend that the Office of the Chief Justice and the Council of the Regional Senior Justices adopt a policy that a judge be assigned to sit in the FC for a minimum period of six months.

In addition, a principled discussion should be taking place, that of necessity must include the federal government, to determine the percentage of the Family Court caseload that is expected to be carried out by the Family Court appointed “core” judges in any given site. In this way, the appropriate amount of the judge time that has to be made available to the court from the other superior court judges can be determined.

3. *There is a need to redefine and expand the vision and role of judges, and what constitutes judicial work.*

Recognizing the complex, multi-dimensional role of family court judges is critical to understanding judicial workload. Judges are more than just legal decision makers. The leadership dimension of the judicial role and the need for continual judicial training and education needs to be explicitly recognized when determining judicial workload as a component of best practice. Participating in meetings and community outreach should be considered as legitimate judicial activities. Off-the-bench activities are an integral part of the judicial role, yet there are often not enough resources to support these activities as required. The additional responsibilities and expectations placed upon family law judges as they fulfill their duties each day are often not considered in traditional methods of assessing complement.

4. *The rest of the system must be prepared to deal with any increase in complement.*

An increase in judicial complement requires the judiciary and MAG to determine how the increase will affect the rest of the system. The infrastructure has to exist to ensure that the judiciary can function at peak performance with the support of staff, technological resources, and facilities. Additional space, staffing, and organizational changes will need to be addressed as additional complements are added to any one jurisdiction.

5. *Foreseeable needs have to be taken into consideration.*

Any determination of judicial complement should also take into consideration predictable exigencies that are likely to occur in one or more sites in any given year. A seriously ill judge who is unable to sit for a lengthy period of time, a judge on judicial leave, a judge assigned the responsibility of conducting a public inquiry, or other legitimate reasons for a judge to be absent from the court, can cause havoc with the court schedule. Similarly, the injection of a particularly lengthy and acrimonious case, especially in the area of child protection, or a high conflict custody and access dispute, will reduce the compliment by one for a significant period of time. Consideration should be given to having the judicial complement in each region increased based on past needs created by such events so as to provide for the ability of the Senior Regional Justice to have the necessary personnel to carry out the intended tasks on each case in the system in a timely fashion.

6. *The Family Courts should not have to compete for judges.*

We are very sympathetic to the immense challenges that the Chief Justice and the Senior Regional Justices face in trying to ensure that all of the courts within in their respective jurisdictions are appropriately resourced every day. Administrative judges should not be placed in a position of having to choose whether to assign a judge to preside over a murder trial, a crown ward hearing trial, or a personal injury case of a quadriplegic, when there are not the judicial resources to have all of those cases and others proceed on a given day. The federal government is responsible for fulfilling the promise of the objectives of the family court model. That goal cannot be achieved without adequate judicial resources. No matter how efficient the family court system is, an appropriate number of qualified family court judges is essential to a system of fair

and just resolution of family law disputes. Governments should not treat the administration of justice as a business, with an eye to the bottom line. It is essential that we provide to family law litigants and their children with a system of justice that treats all members of the family with dignity and respect, in a court presided over by a judge whose workload affords him/her the opportunity time to do justice to that family in a timely fashion.

The courts do not provide the public funded dispute resolution service to litigants as consumers. The courts perform a core function of government: the administration of justice according to law.

The Honourable J.J. Spigelman, Chief Justice of New South Wales

PART IX: SUMMARY AND CONCLUSIONS

Throughout our review of the family courts in five different Ontario jurisdictions, our team members have been impressed with the dedication, skill, and commitment of all participants to create an accessible and effective justice system. All of the partners in family justice are committed to the vision of the family court to resolve family disputes in a manner that respects and understands the needs of children and parents dealing with the crisis of separation, including complex matters that involve allegations of child abuse and domestic violence. As we have outlined in this document, many promising practices have been developed to deliver local services through the initiative of service providers, groups, and committees at the various sites. Each jurisdiction can learn from innovations in other jurisdictions, and to network to provide mutual support for the challenges that often present in the family court arena. However, there is a need for the family court vision to be re-captured and renewed. To that end, we have made many recommendations that we consider to be practical and in keeping with the stated objectives of the Family Court. We have attempted, where possible, to make suggestions that build on current practices to make their implementation feasible, as well as less costly and time consuming.

The services connected to family court may suffer the burden of large caseloads, and as a result the spirit of collaboration may need to be renewed to avoid a “silo” mentality and to adopt a systems perspective. At times, one part of the system feels that another part is not meeting the needs of clients, when in reality the client’s needs may be shifting and the overall mission needs to be revisited. As well, the family court exists in a broader community context in which the attitudes and knowledge of professionals and the public at large have changed in terms of their understanding of family conflicts, mediation, and domestic violence. In some communities, the acceptance of mediation may be so widespread that many efforts are being made to settle cases by formal and informal means in the community. As a result, the courts may see more high-conflict cases that require a broader range of remedies. In other communities, heightened awareness of domestic violence and more complex allegations results in cases brought before a system not equipped to deal with all the required assessment and intervention strategies. These struggles demand a renewal of the vision with all family law justice partners being prepared to face the changing realities in their communities and to address the opportunity for innovative partnerships.

There needs to be an understanding of who is the keeper(s) of the vision and the renewal process. Working within a complex, multidisciplinary system can create a vacuum in leadership, as no one person or agency oversees the vision. Coordinating the vision leaves no one who is really in charge and the sense of collective responsibility may become too broadly diffused. Clearly, the starting point is to reconvene all the interested parties to commit to an understanding of the required accountability and leadership. A structure has to be in place for effective service delivery from the system as a whole, rather than individual components working independently. Organizational responsibility has to be well defined together with a built in evaluation system to measure performance against clear and discreet objectives.

The family court’s ancillary services have met with varying degrees of success in different jurisdictions. Overall, the objective of creating a non-adversarial attitude in the resolution of family law disputes has not been achieved. Mediation is being used primarily to meet the community needs for an expedient and inexpensive way for resolving family law disputes before

any court action is begun, and is doing very little to resolve cases that are in the court system. Given the number of proceedings received annually by the family court, the number of families using the court's mediation services is minimal. The FLIC is a successful example of coordination between different stakeholders in the system and has been invaluable in meeting the burgeoning need for information and assistance required by self-represented litigants. Its role has to be strengthened and expanded as an entry point to the family law justice system.

Looking to the future, we need to build an evaluative and renewed process if the court is to continue to meet the changing needs and expectations of the community. There has been a very significant increase in the population of this province over the last ten years. In some areas, the demographics have changed dramatically without any corresponding increase in the judiciary, court services staff, or resources. In this regard, court services staff require special mention for maintaining a high level of service and dedication; in most areas, their numbers were reduced while applications increased and the number of self-representing litigants reached unprecedented and unexpected numbers. The self-representation phenomenon in family court is a growing trend in all common law jurisdictions, and there is no indication that it is going to abate any time soon. We need a system that reacts to and accommodates this phenomenon without being seen to encourage its growth.

In addition to the court's ancillary services, Ontario has other publicly funded complimentary services that are the envy of many jurisdictions; supervised access, the Office of the Children's Lawyer, a certificate legal aid system, duty counsel program, shelters and advocates for abused women, the Family Responsibility Office, etc. These services are an integral part of the justice system and are very valuable to its efficient operation. The timing for the use of these services, the extent of their use, and the application of their involvement in the court's operations require further scrutiny. In addition, we need to look at the nature of the cases that are causing the most activity in the courts, and determine what tools might be useful to the community, lawyers, and judges. To provide alternative remedies, other jurisdictions indicate a trend to seeking a broader range of dispute mechanisms such as publicly funded assessments (New Brunswick), parent coordination, and arbitration.

Lastly, we are convinced that all involved are up to the challenge of revitalization of the family court vision. Even in the midst of a negative atmosphere toward the family court, as evidenced by recent reports (see CDALPA family law report and the Carleton family lawyers association report), we found everyone we talked to was motivated to consider suggestions for the production of a better family law justice system. The fact that an evaluation was being undertaken resulted in a number of individuals using the team as a resource to discuss potential initiatives, and in some cases actually implementing suggestions. This augurs well for the future.

PART X: REFLECTIONS AND A FRAMEWORK FOR THE FUTURE OF THE FAMILY COURT

This assignment was undertaken to review the promising practices in five Superior Court of Justice family court sites (FC), and offer recommendations about a number of issues designated by the Ministry of the Attorney General (MAG). Our project team gathered information and observations from personal and telephone interviews with justice partners, on-line surveys, file reviews, and MAG system data. Over the duration of the project, we received a great deal of feedback in our interactions with judges and lawyers at the various locations. Our evaluation of the challenges and barriers at each site was greeted with a desire for innovation and improvements to the system; the assessment became an intervention.

A constructive by-product of the interviews has been positive changes that have occurred within the five sites under review. Encouraging stakeholders to reflect on best practices, recommendations for changes to service delivery, and identifying successes and challenges within the family court resulted in many sites adopting new practices from the ideas and discussions generated throughout the consultation process. We anticipate that continued system improvements will result as stakeholders continue to strive for excellence in operations of the FC and its services.

General Reflections and Recommendations

This report substantially adheres to the RFP's requirement to keep recommendations within existing budget allocations for the FC. However, in some areas the urgency of satisfying certain specific needs has compelled us to make proposals that we acknowledge will require additional funding. In addition, our recommendations should not be interpreted as suggesting any infringement on the inherent authority of the Chief Justice over the court and the essential independence of the judiciary. Within these parameters, we believe we can still offer the following major reflections from our study:

Reflection #1: The vision of the FC needs to be recaptured and revitalized.

Currently, the whole is less than the sum of the FC parts. The model continues to have very broad support. The original objectives of the FC included encouraging the use of constructive, non-adversarial techniques to resolve family law issues, and providing access to a range of support services. These objectives continue to be just as relevant today. Dealing with day-to-day challenges, however, has caused the stakeholders to lose the overall vision of the court, and that vision needs to be recaptured. All those in the family law justice system should hold that vision as the ideal that can be achieved in each community through individual and systemic collaboration.

Recommendation #56:

The Chief Justice is the “keeper of the vision” for the FC. To assist the Chief Justice in this mandate, The Senior Family Court Justice is ideally situated to work with the Regional Senior Justices and MAG to evaluate and implement processes so as to meet the overall objectives of the FC.

Reflection #2: A systematic and comprehensive review looking at the delivery of family justice in Ontario is necessary.

It is no longer acceptable in our society for the administration of justice to depend simply on the traditional litigation method of resolving matrimonial issues. The resolution of family law disputes should be a dynamic process that reflects the values, needs, and expectations of the community. The Family Court Steering Committee, together with designated individuals who are “experts” in family law, should report periodically to the AG and the Chief Justice of the Superior Court on global developments on the resolution of family disputes. This information, combined with the data collected about Ontario’s system of justice, will enable the system to remain current and relevant to the community’s expectations. In addition, the lack of expansion of the FC throughout the province has left Ontarians with a fragmented system of family justice. This situation cannot continue to exist indefinitely; neither should it be left to the whims of the federal or provincial party in power at any given point in time. The delivery of family justice in Ontario requires a comprehensive review looking at realistic options for the delivery of the same level of service throughout the province. It is essential that such a review involve the active participation, at a minimum, of both levels of government as well as the judiciary and the practising family law bar.

Reflection #3: The crisis in the shortage of judicial complement needs to be addressed immediately.

There is a critical need to address the inadequate judicial complement in most of the FC sites. The Federal Department of Justice, the provincial Ministry of the Attorney General, and the office of the Chief Justice of the Superior Court of Justice urgently need to work with the Regional Senior Justices at each site to develop an immediate crisis management plan to address the current stresses that a lack of judges is causing. The plan must also include the potential to look at short-term and long-term solutions. The consequences of a lack of immediate meaningful action are already evident. They include: the questioning of the FC model itself as a viable form for the delivery of family justice; the creation of a private and parallel system of family justice for those who can afford it; and the prevailing atmosphere of a lack of faith in the administration of justice as litigants.

Recommendation #57:

An immediate crisis management plan should be developed to address the problem of inadequate judicial complement and to implement a process for short-term and long-term solutions, based on an objective model of determining the appropriate judicial resources in each site currently and in the future.

Reflection #4: To enhance the efficiency of the court, it would be beneficial if the complement of core judges is supplemented by experienced, knowledgeable, motivated, and skilled judges who are committed to sitting in the FC for extended periods of time.

The current model of the FC requires that the number of core judges appointed to the family court be supplemented by other judges from the superior court. To ensure consistency, continuity, and competence in the court, it would be beneficial to have judges from the superior court who have the knowledge, skill, and commitment to sit in the court for extended periods of time. To make the case management system work effectively, the Chief justice and the Council of Regional Senior Justices could consider devising schedules that will make such an assignment into the court for a period of 4 to 6 months in duration.

Recommendation #58:

To enhance continuity of service for litigants, it would be beneficial to have experienced, knowledgeable, motivated, and skilled judges who are committed to sitting in the FC for extended periods of 4 to 6 months.

Reflection #5: The Family Law Information Centre should be the entry point into the family court system.

The Family Law Information Centre should be the entry point into the family court system for every case to ensure that all litigants, directly or through their counsel, are aware of the ancillary services to the court as well as community agencies. Information about mediation and parent education should be made mandatory. The location of the FLIC should be such that it is highly visible to litigants and easily accessible in the vicinity of the family court administration offices.

Recommendation #59:

The Family Law Information Centre should be literally and figuratively an entry point to the family justice system. All litigants should be made aware of the services it provides. Self-represented litigants would have to attend for a consultation at the FLIC and to have their documentation reviewed before proceeding to the family law counter. Lawyers would be responsible for advising their clients about the FLIC and the court's ancillary services. The FLIC should be managed by an IRC who is directly responsible to the site's court services manager.

Reflection #6: Mediation services need to realize their full potential.

There is an enormous gap between acknowledging the importance of mediation and making lawyer and court referrals to mediation services. The culture of litigation continues to dominate the process of resolution of family law problems once matters are in the court system. Although very few cases actually go to trial, lawyers continue to rely primarily on their ability to negotiate a settlement on the eve of trial, rather than to refer a case for mediation at an earlier stage. All of the partners in the family justice system have to make a concentrated and deliberate effort to enhance the use of mediation services and to instil a solution-centred atmosphere in the family court. An automatic referral to mediation should be implemented in cases involving child

custody/access, and motions to change and recalculate support. Procedures can be put in place for the court to dispense with compliance in circumstances of hardship.

Recommendation #60:

The delivery of mediation services as part of the court should be revamped to provide more local input and autonomy. This will increase the confidence in the mediators and ensure that the funding will be used based on local needs and priorities. Broader education of the public, lawyers, and judges of the benefits of non-traditional problem solving should be undertaken, combined with incorporating mediation as a required step in the court process with respect to certain types of cases.

Reflection #7: The court needs to adapt to the new reality of self-represented litigants.

The overwhelming reality of self-representing litigants needs to shape new practices. This phenomenon is sweeping North America, and we have to accept it as a new norm. To have the system run smoothly, it is essential to devise universal programs to educate litigants, as well as judges, lawyers, court staff, and those involved in the delivery of ancillary services in ways that will respect the right of litigants to represent themselves without disadvantaging those who are represented by counsel.

Recommendation #61:

Self-represented litigants should be a critical issue to address by the Family Court Steering Committee as part of their overall concerns of effective and efficient family court services and operations.

Reflection #8: Domestic violence and high conflict cases need to be seen as being handled in a differential manner.

There is a difference in perception between FC judges/lawyers/mediators and community advocates about how frequently domestic violence is being recognized and how often it leads to differential interventions. To enhance consistent detection of cases that involve domestic violence, the Application and Answer and Claim should ask for information that can provide the case conference judge with the necessary background to inquire about the issue and decide if a specific intervention might be appropriate to provide for the safety of the family members and the reduction of conflict. Without specific direction to address this important issue, the systemic pressures to settle cases and minimize the effects of violence on victims and their children could lead to improvident and unjust resolutions. The Family Justice Centre and collaboration model in Oshawa is an excellent example that other courts can use to develop best practices related to domestic violence service. Many high-conflict cases involve allegations of domestic violence. There are also high-conflict cases without these allegations that require similar screening and intervention to protect children from prolonged conflict and litigation.

Recommendation #62:

MAG, in consultation with justice partners, should develop a comprehensive plan to screen and assess risk in cases of domestic violence, and promote interventions that recognize safety and accountability as paramount.

Reflection #9: Enhanced case management is a priority for the system to function properly.

Of necessity, a “unified” family court is required to deal with a large variety of cases. It is impractical to create a process that applies universally to all cases in the system. The current differentiation of cases into standard and fast track, based on the nature of the relief sought, should be further refined to match the nature of ancillary services required, the court’s intervention, and case management to the particular needs of the family. Rather than having the nature of the relief requested dictate the track, a simple assessment tool should be developed that measures the level of conflict between the parties and the level of necessary intervention required. Ideally, all this should be done by a case manager with specific duties to explore resolution techniques outside of a trial, and to ensure that cases are “judge ready.”

Recommendation #63:

A differential approach should be adopted for the management of cases. Case management should be directed according to the level of conflict between the parties and not the relief requested.

Reflection #10: Promising practices need to be shared across the province.

Promising practices in each court location need to be shared across the province. There is currently very little communication between different jurisdictions. A formal and informal network of communication should be formed between the chairs of the Liaison and Resource Committees in each FC site to share problems and solutions. The statutory committees have to be energized to act as the local body with the responsibility of implementing the vision of the court on a practical level, and to adapt promising practices from other jurisdictions to fit into the culture of their particular site.

Recommendation #64:

Representatives from each committee should meet once year at a time and location that coincides with an annual provincial family law conference. This conference could coincide with an annual multidisciplinary conference or judges’ conference to maximize their attendance. Remote sites should be involved through videoconferencing.

Reflection #11: A comprehensive research strategy should be developed to collect data that will inform ongoing changes to the FC.

The collection of data by the administration as well as the ancillary services providers should have a specific focus. This focus should be part of a comprehensive strategy to use the information to update the operations of the court and its ancillary services to better reflect community expectations and to meet the stated objective of the FC. Statistics should be collected uniformly across the province and with a known and specific purpose to make the exercise meaningful. In addition, a component that is currently missing should be incorporated in the gathering of data: feedback from the consumers about their experiences with the family justice system.

Recommendation #65:

A comprehensive research strategy should be developed that continuously collects data to evaluate how well the family justice system is meeting its objectives. The information should be used to implement changes to the operations of the court and its ancillary services.

Reflection #12: A systematic and comprehensive Review looking at the delivery of Family Law Justice in Ontario is necessary.

It is no longer acceptable in our society for the administration of justice to depend on the traditional litigation method of resolving matrimonial issues. The resolution of family law disputes should be a dynamic process that reflects the values, needs and expectations of the community. The Family Law Steering Committee together with other “experts” from the private bar, bench, government, academia and the social sciences should report periodically to the AG and the Chief Justice of Ontario on developments globally on the resolution of family Disputes. This information combined with the data collected by MAG provide for an opportunity to keep Ontario’s system of family justice current and relevant to the community’s expectations. In addition, the lack of expansion of the FC throughout the province has left Ontarians with a fragmented system of family justice. This situation cannot continue to exist indefinitely. The delivery of Family Law Justice in Ontario requires a comprehensive plan by the Provincial and Federal government to look at realistic options for the efficient and effective delivery of the same level of service throughout the province.

Recommendation #66:

In order to make sure that the FC is uniform current and relevant; we recommend a two prong approach: first, the establishment of a council of family law experts that together with the Family Court Steering Committee can explore potential improvements to the Court based on updated information about dispute resolution in family law matters. Secondly, a Family Law Justice Review should be undertaken involving both levels of government, to create a comprehensive plan for the delivery of Family Law justice in the province for future generations of Ontarians.

We have provided overarching recommendations and reflections because we believe that the issues to be addressed go well beyond tinkering with individual parts of the system. Instead, a comprehensive framework for review of the family justice system in Ontario in a climate of openness for change is needed. This need for change is echoed in the leadership of the judiciary. Chief Justice Brian Lennox stated in his 2007 speech of the opening of the courts that there is an urgent need to review the patchwork “pattern of family courts” and establish “a clear vision and policy framework, a firm timetable for the purpose of making consistent and coherent decisions of the future of family court services in Ontario.” At the same time, Chief Justice Heather Smith of the Superior Court of Justice indicated that there is a crisis in the courts due to the shortage of judicial complement. These strong voices suggest there is fertile ground for many of our recommendations. The sentiments so elegantly expressed by the Chief Justices were also voiced by many individuals we interviewed throughout this review.

We hope that everyone, from government and judicial decision makers to front line staff, does not get discouraged by how overwhelming some of the challenges we raise appear to be. Children and families in crisis deserve our best efforts. We should not let the enormity of the task before us lead to paralysis and inaction. We are convinced that all justice partners are up to the challenge of the revitalization of the family court vision. Everyone we talked was motivated to consider suggestions for the renewal of a better family justice system. We believe this attitude and openness augurs well for the future.

APPENDIX A: EMERGING THEMES AND FUTURE CONSIDERATIONS FOR THE FAMILY COURT

ANCILLARY SERVICES AND DISPUTE RESOLUTION

We need to change the current culture of litigation.

Overview

The explicit goal behind the formation of the family court by the province of Ontario is to facilitate early and non-adversarial resolution of family law disputes. The ancillary services offered by the court, family law information, parenting information sessions, and mediation are some of the primary features intended to facilitate this objective. The vast majority of family law cases have issues that affect children. A stated purpose of the family court is to decrease the negative impact of family law matters on children.

1. Ancillary Services and the Dispute Resolution Paradigm

Based on our interviews, the data available to us on the use of the ancillary services, and the statistics published by MAG on the number of proceedings initiated in the family court each year, we have come to the overwhelming conclusion that the adversary system continues to be the method of choice when it comes to the resolution of family disputes. A paradigm shift to a non-adversarial model has not taken place in any of the sites we examined, despite the fact that the family court has been in operation in Hamilton since 1977, in Barrie since 1995, and in Ottawa, Cornwall, and Oshawa/Whitby since 1999. Table 2 summarizes the relevant mediation statistics for 2004–2005.

Table 2: Mediation Statistics for 2004–2005

	Proceedings received ²⁰	Total on-site mediations (events heard in brackets)	Total off-site mediations	Off-site mediations with no court proceedings ²¹	Off-site mediations before first court appearance
Barrie	3083	284 (3790)	134	62 (46%)	23
Cornwall	818	5 (1123)	32	18 (56%)	4
Hamilton	3303	112 (6288)	192	132 (69%)	25
Oshawa/Whitby	4729	192 (11207)	159	118 (74%)	8
Ottawa	6453	83 (8780)	129	47 (36%)	11

²⁰ These figures are based on the Ministry of the Attorney General, Court Services Division, Annual Report 2003/2004; proceedings received include all new applications in the court.

²¹ This figure reflects the percentage of total off-site mediations with respect to cases that are NOT before the court.

There are no data available for the number of totally or partially successful mediations for cases where court proceedings had been started. This data support the following conclusions that are consistent with information received by our team in interviews:

- On average, 58% of off-site mediations are for cases where no court action has been started.
- Very little mediation is happening in cases that are in court and are past the first court appearance.
- The number of cases going to off-site mediation is a very small percentage of the proceedings received in the court.
- The number of cases referred to on-site mediation is minimal compared to the number of events heard in court.

Information related to participation in the parent information sessions is even more significant: the attendance of parents in such sessions is minuscule compared to the number of cases that include children. In many jurisdictions, lawyers, and judges were unable to give us even the most basic information about these sessions, such as how often they are offered, the location, and the time of the sessions. It is evident that while all major justice partners, in theory, support mediation and parent information sessions, in reality they maintain an adversarial system mentality and do not think of the litigant's participation in these court services as a condition precedent to litigation. Simply put, there is no culture of dispute resolution apart from the litigation process. Lawyers focus on settlement negotiations during the course of the litigation, mainly settling cases between the settlement conference and the trial, but seem to dislike focusing on dispute resolutions at an early stage in the proceedings with the assistance of the court's ancillary services.

The information about the lack of use of mediation and parent information sessions points to the great dichotomy in the family court justice system: judicial resources are stretched to the limit, timely dates for conferences are hard to get, trial lists are getting longer, and the backlog of cases is increasing, yet at the same time the family law bar and self-representing litigants are not making use of the time available between court appearances to explore the merits of parent information sessions and mediation to assist with the resolution of cases.

The best practices enumerated in this report, together with the various recommendations for the improvement of the efficiency of the ancillary services attached to the family court, will not likely achieve the desired result of early resolution and non-adverse resolution of family law disputes unless there is a paradigm shift away from the culture of litigation to a dispute resolution culture. This will only happen if there is a strong commitment by both levels of government, along with professional associates of family lawyers, superior court judges, the public, and lawyers.

The federal government has stated that the purpose of their child-centred strategy is to:

...help parents focus on the needs of their children following separation and divorce. It is composed of three pillars—family justice services, legislative reform and expansion of

Family Courts. Taken together, these three pillars of the Strategy will help develop and maintain a child-centered family justice system that:

- *minimizes the potentially negative impact of separation and divorce on children;*
- *provides parents with the tools they need to reach parenting arrangements that are in the child's best interests; and*
- *ensures that the legal process is less adversarial; only the most difficult cases will go to court.*

To meet these objectives, the federal government has to work with the provincial government to develop a strategy that will tip the scale in favour of a non-adversarial solution to family law disputes. This will require that the federal authorities provide funds if there is serious commitment to the child-centred strategy. Funding pilot projects or individuals is not likely to bring about any long term change. The challenge is to change the attitude of the public and the bar, ensure that judges actively encourage and promote non-conflict approaches to the resolution of family disputes, and to provide for a system that can ensure early access to the courts for those high conflict cases or cases of domestic violence that require the formal coercive power of the court.

2. Characteristics of Effective Models for the Delivery of Mediation Services

Delivery of Mediation Services Attached to the Family Court

The Courts of Justice Act, RSO, 1990, chapter c.43 and amendments thereto at section 21.5, states as follows: The dispute resolution service – a service for the resolution of disputes by alternatives to litigation, may be established, maintained and operated as part of the Family Court. (1994, c. 12, S.8.) The section does not stipulate how the service is to be “established, maintained and operated,” except that it specifically provides that it is to be “part of the Family Court.” Generally, different models can be used to provide a dispute resolution service as part of the family court, including the following:

- Qualified mediators could be hired as employees of MAG, and the service is then operated directly as a government-run endeavour.
- MAG could establish a program whereby those who qualify for mediation according to a set criteria including financial eligibility are given a mediation certificate, which they can then take to a qualified mediator whose fees are paid for by the government according to a pre-arranged rate of remuneration.²²
- MAG could contract through the mandatory government-wide procurement process with a person, agency, or organization, with a successful service provider in turn hiring and paying the mediators as well as administering their involvement. This model is currently used by MAG to deliver mediation services in the family court.
- A roster of mediators could be established and overseen by a local mediation committee, such as has been done for civil cases in Ottawa, Windsor, and Toronto.

²² This model is currently used by Legal Aid Ontario for delivery of legal services to those who qualify financially. It is also used in New Brunswick under the court-ordered evaluations support program to obtain clinical evaluations with respect to child related matters.

Mediation Methodology

The overwhelming desire of lawyers and judges we interviewed was to have mediators conduct resolution- and solution-focused sessions with the parties. The expectation of the mediator is that he/she be knowledgeable of the potential legal outcomes with respect to the issues under discussion. In addition, the judiciary and the bar anticipate that the mediator should be familiar with the range of decisions that judges in that jurisdiction have rendered in cases involving the same issues and similar circumstances to those under discussion. This is not to say that the mediator is to provide legal advice to clients, but that with a view to achieving a fair and just result, the parties ought to be aware of the parameters within which they are operating and the potential range of results that the court is likely to consider if the mediation fails to reach an agreement. We endorse the advisory mediation methodology as being the most suitable for a court-related service, with the clear caveat that parties should always have independent legal advice before entering into a binding settlement.

Criteria for an Efficient Model

An efficient model for use in a family court to deliver mediation services should include the following features:

- The service must be seen to be an integral part of the family court.
- The mediators and the judges have to be seen to be at arm's length from each other, but working cooperatively toward a common goal.
- The service must have competent mediators with special knowledge and skills for the mediation of family dispute in a court setting.
- The roster of mediators must include professionals with expertise in the resolution of custody, access, and other child-related matters, as well as others with expertise in financial and property issues.
- Mediators must be available to conduct mediations in a timely manner. The mediation service must be able to provide a core service of mediation, but must also have the flexibility to adapt to the needs of the community.
- The mediation service must be accessible to people from all social and economic statuses.
- The service should be administered locally, with a clear line of authority with respect to accountability in terms of financial matters, as well as with respect to quality of service delivered.
- The mediations must take place in a location close to the court house that is accessible by public transportation.

Organizational Model Best Suited To Implement Best Practices

The current model for the delivery of family mediation services in the family court includes having MAG enter into a contract through the government procurement process with a service provider. This model is most suited to implement the best practices recommendations as long as the model incorporates the following features:

- The criteria for awarding the contract should be changed to include input from the bar, judiciary, and current successful mediation providers to enhance the chances that the successful recipient of the contract is likely to have the necessary skills and understanding required to mediate family disputes in a court setting.
- An existing successful private mediation provider should be part of the team that evaluates RFP submissions to evaluate a submission from a practical administrative and operational point of view based on actual experience in the field. Confidentiality and bias issues would need to be addressed.
- The bench and bar and members of the local resource committee should be used as an advisory body to have input into the selection of the service provider as well as the mediators used by the service provider in each community.
- Specific performance criteria that can be objectively measured should be set out in the contract.
- The service provider should be accountable to the court services manager with respect to the operation of the mediation services.
- A special sub-committee of the liaison and resource committees to deal specifically in mediation should be created to act as an advisory body to the court services manager and the service provider. The committee should include a judge, lawyer, court staff, counter staff, and community resource people.
- MAG should examine the best way of disseminating general information to the public about the ancillary services attached to the family court, specifically about the merits of using mediation for the resolution of family law disputes. This message to the public should also clearly indicate that mediation is not recommended in certain circumstances and that it should always be conducted with the parties having full knowledge of their legal rights and obligations under the laws of Ontario.

The Budget for Mediation Services

The budget allotted to provide the mediation services of family court should have the following characteristics:

- The budget should be managed locally by the manager of court operations;
- The budget, while staying within fixed financial parameters, should have built-in flexibility to enable local decisions to be made for the allotted funds to meet community needs;
- The budget should include a core amount for administrative costs;
- Remuneration for on-site mediators should be similar to that paid for off-site mediators;
- A 10–15% cushion should be incorporated in the allotment of funds for mediation services so that these funds can be made available during the fiscal year if the demand for mediation exceeds expectation;
- The budget should not be based on past practices, but directed toward a goal of diverting a significant number of the caseload out of the court stream into mediation.

3. Mandatory Mediation

The scope of the review required that recommendations be consistent with Ontario's fixed budget for family justice services. We believe that the vast majority of recommendations described in this report can be implemented within the Ontario's fixed budget for family justice services or implemented with some shifting of budget lines. Other recommendations, such as mandatory mediation and mediation in child welfare, would require additional money from other sources of funding, or more creative partnerships with community resources and other levels of government. While we appreciate the current budget constraints for family justice services, we feel strongly that some of our recommendations are necessary to create a comprehensive approach to the delivery of family justice in keeping with the stated objectives of the family court.

The suggestions to have the Family Court Rules changed to provide for mandatory mediation in family law matters was raised repeatedly at a number of sites and needs very serious consideration. A requirement in the Rules that certain cases be referred to mediation as part of the case management process would assist immensely in changing the culture of litigation in the family law justice system. The following ideas reflect some preliminary themes that emerged in our discussions:

Idea #1:

Mandatory mediation should be required in:

- Private custody and access disputes;
- Any Motion to Change irrespective of the subject matter; and
- Cases dealing with the re-calculation of child support.

Idea #2:

Mandatory mediation will be closed with a report required from the mediator, setting out either the terms agreed upon at the mediation or the fact that the mediation was unsuccessful. In cases where the mediation was unsuccessful, the mediator's report should also include the number of sessions held, the time of each session, and the persons who attended the sessions, together with a recommendation of any further intervention that the court should consider to facilitate the resolution of the dispute (e.g., an assessment in C & A cases, OCL appointment, independent determination of income by an accountant in support cases, etc.).

Idea #3:

Mandatory mediation may be conducted by the court-related mediation services or by private mediators in the community that are approved by the resource committee in each community, based on qualification similar to those required of the court associated mediators. Mediations conducted by a legal aid area director may also qualify based on the nature of such mediations and the qualifications of the area director or other person conducting such mediations for clients receiving legal aid.

Idea #4:

Exemption from mandatory mediation should be by court order only upon notice to the other side and based on established criteria (e.g., documented history of domestic violence).

4. Non-Court Related Mediation Services in Family Disputes Overview

Through our discussions with various stakeholders, together with our own personal experiences in the field, we know that mediation in family law matters is being conducted throughout Ontario in many formal and informal ways, including:

Legal Aid Mediations: Legal Aid area directors in many regions conduct their own mediations, sometimes referred to as settlement conferences, in files where a legal aid certificate has been issued. Anecdotally, it seems that these services are generally well received by the clients and have a high rate of success. Given the power of the area legal aid director to cancel a legal aid certificate if there is non-compliance with the request to mediate, this program bears examination when considering the issue of voluntary versus mandatory mediation.

Private Mediation: Private mediation in family law matters is generally divided into child-related areas and financial matters. Therapists and clinicians who work with children usually conduct the bulk of child-related mediation, although lawyers with a special interest and competence in the area relating to children can be found in various communities conducting this work. In most major centres in Ontario, senior family law lawyers now mediate the dispute, usually under a mediator/arbitration agreement. In addition, although not formally mandated to do so, many of the lawyers appointed through the Office of the Children’s Lawyer conduct informal mediations or bi-lateral negotiations between the parents with a view to resolving dispute “out of court.” Various religious organizations also conduct mostly informal sessions with separating couples in their congregation, designed to bring their value system into the separation and to assist the family in solving its own problems and staying out of the public justice system. Finally, caring professionals, friends, or relatives of a separating couple often assist in negotiations between the parties after separation.

Relationship between Family Court Mediations and Others in the Community:

Conceptually, one of the stated goals of the family court is to bring about a paradigm shift in the way lawyers and family law clients think when it comes to the resolution of their family law disputes. Ideally, the shift should be from litigation as the primary mechanism for resolving family law matters and mediation considered as a secondary alternative, to a process where mediation is considered to be the desired first option and the court is an alternative of last resort. The family court and the mediation services attached to it should encourage²³ the use of mediation in a variety of forms in the community to assist in bringing about a cultural change that can be ingrained in the fabric of our society.

²³ This should be subject to some clear exceptions notably in cases of domestic violence and in a process that will ensure that the participants in the process are cognizance of their legal rights and obligations.

5. Mediation and Child Protection Cases

The current mandate of the family court's mediation services does not include the mediation of child protection cases²⁴. In at least one site, mediators are nevertheless conducting child welfare mediation on an *ad hoc* basis. A survey of the literature shows that a number of local pilot projects across Canada have tested the efficacy of mediation in child protection cases, generally with results that are cautiously optimistic. In some provinces, mediation of child welfare cases has been formally incorporated into the process; these initiatives have not shown any marked improvement in the process.

Mediation of child welfare matters is much more complicated than in domestic cases for a number of reasons, including:

- The life or welfare of a child is potentially at risk;
- The CAS has a legislated mandate to protect children from harm;
- There is an enormous imbalance of power between the litigants;
- CAS clients are often very vulnerable and have a variety of socio-economic problems;
- The nature and availability of community resources that can help the parents vary from jurisdiction to jurisdiction;
- There is build-in mistrust in the relationship between the CAS and the parents;
- Once a protection application is started or a status review is required, the court has to approve any proposed solution.

The special nature of child protection litigation makes it imperative that mediators have specialized knowledge in many areas, including: legislation, the legal process, child development, community resources, family dynamics, child protection mandate, agency resources, and legal assistance available to parents. In addition, a child protection case mediator has to have a proven set of skills that are different than those usually required in assisting in the resolution of private family disputes. For these reasons, the current mediation services available in the family court should not be expanded to child protection cases. As discussed elsewhere in this report, the current mediation services are not operating to their potential in domestic cases. The focus should be on improving the infrastructure and the effectiveness of the mediation services in private litigation cases before the family court. Any mediation services to be offered for CFSA cases should operate outside of the current ancillary services contract.

Our mandate did not include an evaluation of how well the FC deals with CFSA cases. While the nature of the work definitely falls within the compressive jurisdiction of a family court, a more fundamental question needs to be asked as to whether the majority of child neglect cases require a legal solution rather than a public health one!

The current backlog of child welfare cases and the explosion of the caseloads in the last five years require a multi-faceted approach to the resolution of the important social problems of child

²⁴ The CFSA has been recently amended for CASs to consider ADR in all matters, whether or not litigation has started.

neglect and abuse. A legal solution is not the answer²⁵. We firmly believe that mediation is not a panacea for the current child welfare litigation crisis being experienced across the province. Solutions to the deluge of cases that enter the court system each week does not lie in simply improving the court system or imposing a better dispute resolution paradigm. The challenge is to reduce dramatically the number of cases that are brought before the court without placing the safety of children at risk.

6. Ancillary Services and Domestic Violence

Overview

Some of the most complex cases before the family court involve allegations of domestic violence. These cases present enormous challenges for judges, lawyers, and mediators in assessing which cases may be appropriate for mediation and which ones need to be screened out for fear of endangering a victim of domestic violence or maintaining a power imbalance between parents in the mediation process. Some of these cases may require court ordered assessments and more immediate access to the court to support safety planning and appropriate interventions (counselling). In our meetings, many community agencies expressed some reservations about the lack of consistent training and knowledge about domestic violence and the impact of this violence on adult victims and their children. These problems were sometimes magnified by a lack of coordination and information-sharing among criminal, family law, and child protection proceedings. At times, CASs were reported to be inconsistent in defining where their role begins and ends in intervening in private family law matters when there appears to be serious risk to adult victim and children. Some professionals feel that victims of domestic violence are coerced into mediation since there is no alternative except litigation that may not be affordable or may be limited through legal aid. There was a repeated concern that some settlements are reached that may not be in the child's best interest in these circumstances. Some batterers are seen to use the system to drain abuse victim emotionally and financially. A compounding problem is the need to access multiple services such as counselling, housing, and economic support which overwhelm victims in their pursuit of needed resources.

A Promising Practice

The Durham Region offered some hope for promising practices in this difficult and controversial area. Durham has played a leadership role in research, training, and resource development in regards to domestic violence, with the family court as an important partner. Some community and court initiatives were motivated by the aftermath of a tragedy in which a father killed a young boy during a contested access visit. This tragedy brought together many community and court partners to examine more effective policies and practices, and is well-publicized on the Family Violence Prevention Council of Durham Region website (<http://www.durhamresponsetowomanabuse.com/>).

One important outgrowth of this work has been the development of the concept of a Family Justice Centre which offers one-stop shopping for victims of domestic violence with multiple

²⁵ The complexities of the legal services issues in Child Welfare cases are clearly set out in the study done for the Ministry of children and Youth Services by Wayne Herter B.A. .L.L.B. and Judith van Leeuwen B.A., M.S.W. in a report entitled Review of Legal Services: Children's Aid Societies of the Hamilton Niagara Region, January 2006.

needs from the court and community services. Named *DRIVEN (Durham Region's Intimate-Partner Violence Empowerment Network)*, this concept is being spearheaded by the Durham Regional Police Service, which responds to at least 3000 domestic violence reports each year, often involving young children and family law disputes. These cases require many services, including Domestic Violence/Sexual Assault Care Centre, Children's Aid Society, Partner Assault Response Program, Crown Attorney's Office, area shelters (Denise House, Bethesda House, Herizon House, YWCA), Family Law Information Centre, Catholic Family Services, Violence Prevention Coordinating Council, Probation and Parole, Income Support, and Housing Services. These agencies must currently be accessed one at a time. The services are located at various sites within the region. As well, three different courthouses may have to be accessed. Victims/survivors contemplating making a break from an abusive relationship are subjected to hours/days of difficult negotiation within this system, without assistance or a guide. Some service providers are not aware of other agencies. The result, in some cases, is that the resources necessary to effect change are too difficult to access. Unfortunately, for this reason alone, many victims remain with or return to their abuser.

A "One-Stop Shopping" Model

San Diego, California has adopted a model which addresses these issues and provides a "one-stop shopping" approach (www.familyjusticecenter.org). This model has been running for approximately two years. Agency representatives are housed within the same building and coordinated by a central computer. Under this model, a client is registered at the front desk and appointments are scheduled as necessary. Childcare and food are offered immediately, as is medical care if required. Should a client leave prior to attending all appointments, the computer alerts staff and efforts are made to locate the client and provide support to ensure completion of the process.

The concept of the Family Justice Center in San Diego took many years to implement and is now being initiated in Durham Region. This innovative model is being implemented in three stages:

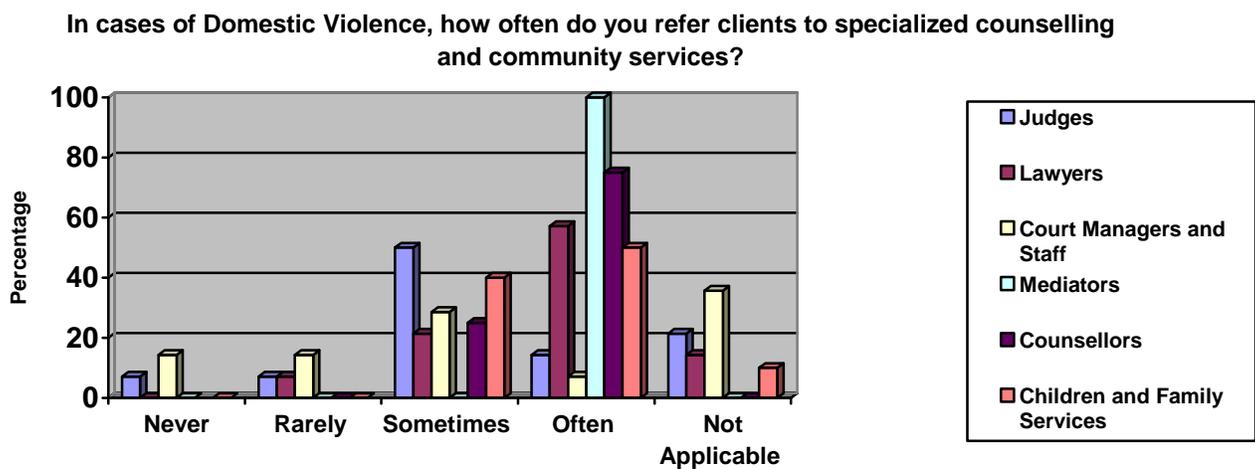
1. Starting on October, 2005, and on the second Tuesday of every month from then, members from service agencies who assist victims/survivors and their children are invited to set up a desk at a common location. The morning (9 a.m.–12 p.m.) will be an opportunity for agencies to network with and learn from each other.
2. In June of 2006, members of the public were invited for the sole purpose of gathering information about community resources. To ensure a safe environment for all involved, the following schedule was implemented:
 - a) Women and children were invited to attend between 9 and 10 am
 - b) Men and children were invited to attend between 11 and 12 noon
3. In January of 2007, the model was expanded to provide a partial one-stop shopping model in which victims/survivors visited one designated location and not only collected information about community resources, but actually met with and received the services of agency representatives (i.e., initial consultation).

The opening of the Family Justice Centre will be achieved when the Durham community is convinced that this model is the best and only way to provide quality service to victims/survivors of spousal/partner violence. Community leaders (mayors and city councillors) will be called upon to create a permanent home for the multi-disciplinary service Family Justice Centre (e.g., several floors of a centrally located office building).

Many community agencies within the Durham Region have already voiced their desire to participate. It is anticipated that all agencies will join and help create a better way for the Durham community to respond to this pervasive problem.

Our Findings: The Survey Results

Stakeholders were asked whether they referred clients to specialized counselling and community services in cases of domestic violence. All mediators surveyed (100%) indicated that they often make referrals to specialized counselling and community services in cases of domestic violence, followed by 75% of counsellors. Fifty-seven percent of lawyers and 50% of individuals working within children and family services surveyed indicated that they often make these referrals while judges and court managers/staff stated they rarely make referrals to specialized and counselling community services (14% and 7% respectively).



File Review Data

Files were reviewed for references and documentation of domestic violence and issues related to high conflict between respondent and applicant. Requests for a restraining order were also reviewed. Overall, in 14% of all files reviewed (63 cases), references to domestic violence were recorded and documented. In 11% of these cases, a request for a restraining order was made. The majority of the files with references to domestic violence were fast track files (70%). In 98% of the files related to domestic violence and restraining orders, females were the applicants with a median income of approximately \$21,000 (range \$0–62,000). Moreover, in 84% of these cases, children were involved.

Conclusions

From our file review data, the profile of an abuse victim is that of a woman who most likely has children in her care, has no significant assets, and has an income of approximately \$21,000 annually. Cases of domestic violence are complex and require special attention by the family law justice system. In cases where there is an allegation of abuse, the person raising the issue should be referred to specialized services. It is troubling that only 14% of judges “often” direct such a referral. Family courts should coordinate their responses to domestic violence cases with those of the criminal courts, where victim witness programs are used and prosecutors are vigilant in making referrals to programs for abusers, victims, and children. More judicial and legal education is needed to teach the courts and counsel the necessary skills to identify victims and make referrals to community services as part of the appropriate court order. Once abuse has been confirmed, it is critical that batterers are referred to programs in the community; the formal authority of the court has to be used to bring about change in the abuser’s behaviour since batterers very seldom self-refer to such agencies.

7. Ancillary Services and the Self-Representing Litigant

Overview

Given the high number of self-represented litigants in family court, this issue intersects critically with all of the court services. As the number appears to be increasing, the intersection between these litigants and service delivery is a critical consideration. The following findings are from the file review data examined as part of this evaluation.

Self-Represented Applicants and Respondents

There are an increasing number of self-represented litigants throughout family courts in Canada and elsewhere across North American. This raises the question of whether the system is prepared to provide coordinated and accessible services that meet the unique challenges that these litigants bring to effective and timely resolution of family law disputes. The Nova Scotia Department of Justice, for example, has addressed this challenge by starting an initiative called *The Self-Represented Litigants Project*. This project involves reviewing the court’s practices, protocols, procedures, and forms, and over the next two years it will include developing a consistent strategy to improve services to self-represented litigants that are effective and understandable.

The data in the current file review was re-analyzed with respect to self-represented litigants to further our understanding of the nature and trajectory of cases where both applicant and respondent are self-represented. Files were selected where both the applicant *and* respondent were self-represented at the time the application was made, and throughout the court proceedings.

Litigant Characteristics

A total of 136 files were characterized as self-represented (where both parties, applicant and respondent, were self-represented). On average, self-represented applicants and respondents were 40 years of age. The median income for self-represented litigants was \$26,800 (slightly higher

than the overall sample of \$22,000). Self-represented litigants were married in 67% of the cases, while 22% were living common law, similar to the overall sample findings. They had on average one child, although the number of children ranged from none (in 18% of the cases) to a high of 5 in one file.

File Characteristics

Total Number of Judges per File and Court Appearances:

To determine how many different judges “touched” a file, the total number of judges per file where both parties were self-represented was counted based on the orders made by a judge on the endorsement page(s) of the court files and/or final orders. On average, the median number of judges per file was three, slightly higher than the two judges per file for the overall sample. The total number of court appearances was collected as a measure of how many times a case went before a judge, even if the court appearance was adjourned. Across all files reviewed, the median number of court appearances was four, twice the median of court appearances found in the overall sample. Court appearances ranged from zero to a high of 13 in one file.

To determine whether the length of time a file remains in the system as well as the complexity and nature of the case is related to the number of judges per file, further analyses were explored. The file review indicated that in files where three or more judges were involved, the median number of weeks from the date of application to the date the final order was made was 58 weeks (range of 9 to 165 weeks), slightly higher than the overall sample of 55 weeks. This is in contrast to 28 weeks where two or fewer judges were involved on a file (which is significantly higher than full sample, which was 17 weeks). The file review data also showed that in 27% of the cases where three or more judges were involved, domestic violence was documented as a serious concern (similar to the findings of the overall sample (25%)).

Involvement of OCL:

Of the cases where self-represented litigants had children (107 cases), 21 of these cases (20%) involved the OCL, much higher than the overall sample where 9% of cases involved the OCL. In 43% of the cases where the OCL was involved, there was a documented reference of domestic violence (nine cases) and in six of these cases (67%) a request for restraining order was made. Sixty-three percent of the files with OCL involvement were fast track. Custody and access was the primary reason for starting the court application in 35% of these cases, with 12% of these cases requesting support or a reduction in support payments (e.g., motion to vary). Applications started because of divorce proceedings occurred in 6% of the cases where the OCL was involved. In 47% of these cases, two or more of these issues were reasons for the application started. These findings are similar to the overall sample with OCL involvement.

High Conflict Files:

Files were reviewed for references to and documentation of domestic violence and issues related to high conflict between respondent and applicant. We also reviewed whether or not a request for a restraining order was made. Of the files reviewed where both the applicant and respondent were self-represented (31 cases), 23% references to domestic violence were recorded and

documented, higher than the overall sample of 16%. In 18% of these cases, a request for a restraining order was made. The majority of these files were fast track files (73%). In 73% of the files related to domestic violence and restraining orders, the applicants were females with a median income of approximately \$24,000 (range \$0–62,000). This percentage is lower than the overall sample, where in 98% of the files with reference to domestic violence, the applicants were female. Moreover, in 90% of these cases, children were involved.

Referral to Mediation Services:

Files were reviewed for evidence of an order made to mediation services (either on-site or off-site). Similar to the findings in the overall sample, an overwhelmingly small number of self-represented files (five files; 4%) contained information that indicated a referral to mediation services was made.

Case Conferences:

The total number of case conferences held from the time the application was filed to the date the final order was made was recorded. In 27% of the files reviewed (37 files), self-represented litigants did not have a case conference. This is significantly lower than the full sample of files reviewed where more than half of the files did not hold at least one case conference. In fact, 60% of self-represented files had anywhere between one and three case conferences, with 13% of files having four or more case conferences.

Settlement Conferences:

The total number of settlement conferences held from the time the application was filed to the date the final order was made was recorded. Settlement conferences were held in a significant number of files where both applicant and respondent were self-represented (44%, 51 cases). In these instances, on average, one and a half settlement conferences were held per file. The majority of files had one settlement conference (57%), although the number of settlement conferences reached a high of seven in one file.

Trial Management Conferences:

Information was recorded on whether a trial management conference was held at some point during the course of the application. Overall, trial management conferences were held for self-represented litigants in 14% of the files reviewed (19 cases). Almost half of these cases went to trial (nine cases; 47%).

Motions:

The total number of motions, urgent motions, and use of Form 14B Motions was recorded. On average, there was one motion per file, ranging from zero to a high of seven motions per file. In addition, Form 14B motions were used in approximately 32% of the files reviewed (42 cases) and urgent motions were used much less frequently (12%; 16 cases).

Dismissal Orders:

Files were reviewed for a notice of approaching dismissal order and a final dismissal order. In 4% (six files) of self-represented files, a notice of approaching dismissal order was present. Of these six files, five (83%) received a final dismissal order. Similar to the findings of the overall sample, data related to dismissal orders is difficult to interpret and understand because of the many reasons, known and unknown, related to why a dismissal order is made.

APPENDIX B: SURVEY RESULTS

The following section describes the data collected as part of a stakeholder survey distributed to participants over a five-month period (February–May 2006) in electronic or paper and pencil format. Court managers and administrators, court staff, and the Advisory and Technical Group assisted with the data collection to ensure that the survey was made available to stakeholders across the five sites. The Advisory and Technical Groups also provided valuable feedback on the survey.

The purpose of the survey was to collect information related to the ancillary services (e.g., family mediation services, FLIC services, and parenting information sessions) and the operations of the family court branch of the Ontario Superior Court of Justice. The survey was divided into two parts. Part I dealt with the ancillary services to the family court and Part II was related to the court operations. Only those individuals with regular involvement with the operations of the family court were asked to complete Part II.

Many parts of the data reported in this section have been reported elsewhere in this report. We felt, however, that a report of the survey results should be included in the Appendix as a standalone section. It is important to note that the data reflected in this section are the opinions of the participants, and are not necessarily those of the authors. However, they do reflect the general sentiments of people in the justice community.

Participants

One-hundred and one participants completed Part I of the survey related to the ancillary services to the family court. Forty-one participants completed Part II. Data is presented by stakeholder category:

- Judge
- Lawyer
- Court manager/staff
- Mediator
- Counsellor
- Children and family services

The category of lawyer includes the private bar, duty counsel, advise lawyer, and legal aid. The category of court managers/staff includes trial coordinator, court services, court administration, and court counter staff. The category of children and family services includes child protection managers and social workers, family support workers, individuals who work at supervised access programs, violence against women agencies, and victim services programs. Table 3 shows the distribution of stakeholder participants by evaluation site. *It is important to note that three participants did not indicate which stakeholder category they belonged to, thus their data was not used.*

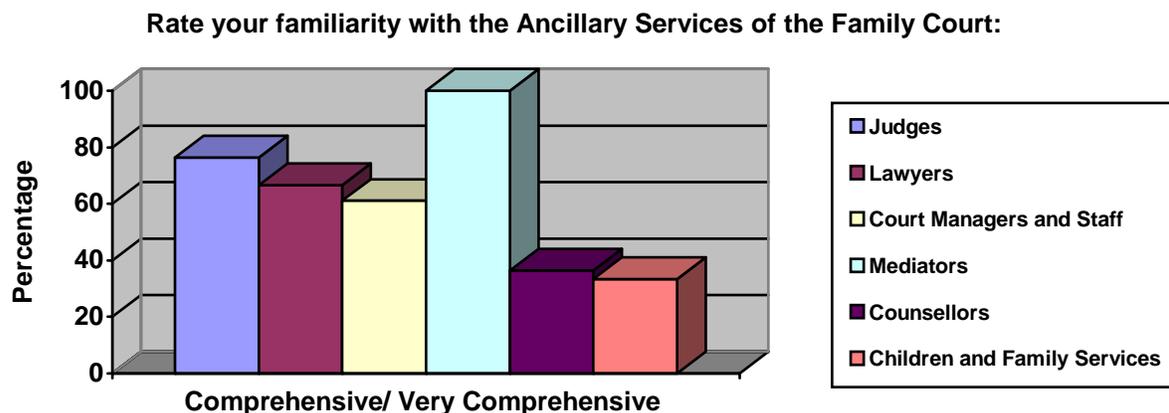
Table 3: Number of Participants Who Completed the Survey by Evaluation Site

	Barrie	Cornwall	Hamilton	Oshawa	Ottawa	TOTAL
Part 1: Number of Participants	30 (30%)	7 (7%)	13 (13%)	40 (40%)	11 (11%)	101
Part 2: Number of Participants	10 (24%)	4 (10%)	8 (20%)	13 (32%)	6 (15%)	41

PART I: ANCILLARY SERVICES

1. Overall familiarity with the ancillary services of the FC

Participants were asked to rate their overall familiarity with the ancillary services (family mediation services, FLIC, and parent information sessions) of the family court. Responses ranged from minimal to very comprehensive familiarity with the ancillary services. As shown in the graph below, 76% of judges rated their familiarity with the ancillary services as either comprehensive or very comprehensive. Approximately 67% of lawyers and 61% percent of court managers/court staff rated their familiarity with the ancillary services as comprehensive/very comprehensive. On the other hand, counsellors and individuals who work within children and family services rated their familiarity with the ancillary services as much lower, 36% and 33% respectively. All mediators who responded to this question rated their familiarity with the ancillary services as very comprehensive (100%).



2. Effectiveness of Services

Stakeholders were asked to rate how much they agreed that the ancillary services of the family court (i.e., family mediation, FLIC services, parent information sessions) are effective and beneficial to clients. Stakeholders were also asked to rate the effectiveness of service by the advice lawyer and court services staff.

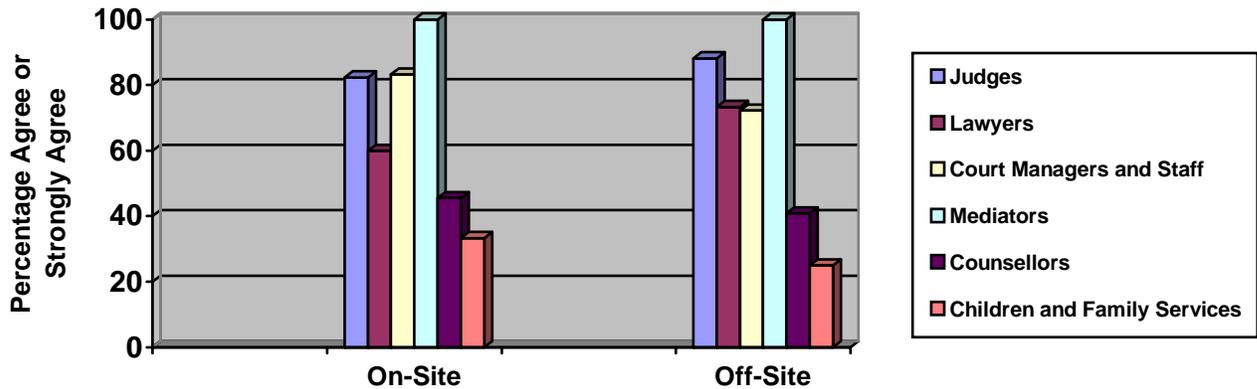
On-Site Family Mediation Services

Approximately 83% of judges and court managers/staff surveyed indicated that they agreed/strongly agreed that on-site mediation services are effective and beneficial to clients. On the other hand, only 60% of lawyers responded in a similar fashion. Only 46% counsellors and 33% of individuals working within children and family services agreed/strongly agreed that on-site mediation services are effective and beneficial to clients. However, this could be accounted for by their lower level of familiarity with the ancillary services overall (36% and 33% respectively rated their familiarity with the ancillary services as comprehensive/very comprehensive). All mediators who responded to this question strongly agreed that on-site mediation services are effective and beneficial to clients.

Off-Site Family Mediation Service

A slightly higher percentage of judges (88%) agreed/strongly agreed that off-site mediation services are effective and beneficial to clients as compared to on-site mediation services (83%). The remaining percentage of judges (12%) *strongly disagreed* that off-site mediation is effective and beneficial to clients. A higher percentage of lawyers (73%) agreed/strongly agreed that off-site mediation services are effective and beneficial to clients compared to their responses for on-site mediation services (60%). Similar to on-site mediation services, all mediators surveyed (100%) strongly agreed that off-site mediation services are effective and beneficial to clients. A lower percentage of court managers/staff (72%) surveyed agreed/strongly agreed that off-site mediation services are effective and beneficial to clients compared to their opinions regarding on-site mediation services (83%). Similar to on-site mediation services, less than half of counsellors (41%) and individuals who work within children and family services (25%) agreed/strongly agreed that off-site mediation services are effective and beneficial to clients.

Family Mediation Services are Effective and Beneficial to Clients



FLIC Services

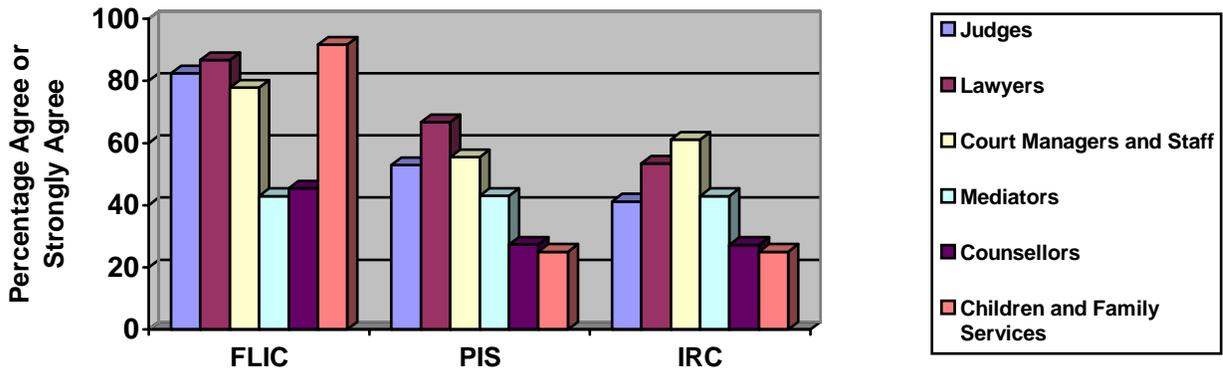
The vast majority of stakeholders surveyed agreed/strongly agreed that FLIC services are effective and beneficial to clients. For example, a high percentage of both lawyers and individuals working within children and family services felt that FLIC services are effective (87% and 92% respectively). Similarly, 82% of judges and 78% of court managers/staff agreed/strongly agreed that FLIC services are effective and beneficial to clients. Surprisingly, a much lower than expected percentage of mediators surveyed agreed/strongly agreed that FLIC services are effective and beneficial to clients, similar to the responses of counsellors (45%).

Parent Information Session

As shown in the graph below, respondents were more uncertain about the effectiveness of parent information sessions (PIS) as compared to the effectiveness of FLIC services. Fifty-three percent of judges and 56% of lawyers surveyed agreed/strongly agreed that PIS are effective and beneficial to clients, while a slightly higher percentage of lawyers (67%) gave the same rating. Similar to their responses on the effectiveness of FLIC services, 43% of mediators surveyed agreed/strongly agreed that PIS are effective and beneficial to clients, while 27% of counsellors and 25% of individuals working within children and family services agreed/strongly agreed.

A high percentage of individuals working within children and family services (53%) responded that they did not know at all whether PIS were effective or beneficial to clients. Similarly, 35% of counsellors and 26% of court managers/staff surveyed responded in a similar fashion. Eleven percent of judges responded that they did not know at all whether PIS were effective or beneficial to clients.

**FLIC, Parent Information Sessions, and Information and Resource Coordinator
Services are Effective and Beneficial to Clients:**



Information and Referral Coordinator Services

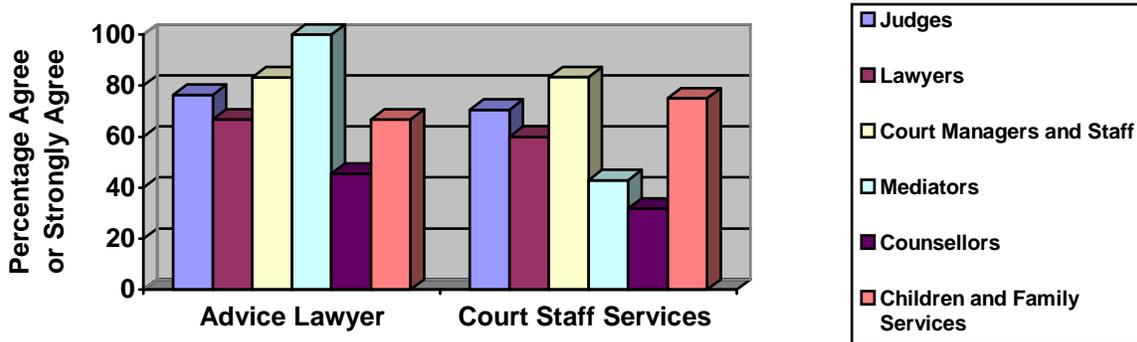
Similar to the overall ratings of PIS, the majority of stakeholders surveyed indicated they were uncertain of the effectiveness of Information and Referral Coordinator Services (IRC). For example, 41% of judges and 53% of lawyers surveyed agreed/strongly agreed that IRC services are effective and beneficial to clients. Sixty-one percent of court managers/staff and 43% of mediators agreed/strongly agreed that IRC services are effective and beneficial to clients. Similar to their responses related to PIS, 27% of counsellors and 25% of individuals working within children and family services agreed/strongly agreed that IRC services are effective and beneficial to clients.

Overall, a high percentage of stakeholders surveyed responded that they did not know at all whether IRC services were effective: 44% of judges, 33% of lawyers, 16% of court managers/staff, 30% of counsellors, and 47% of individuals working within children and family services.

Advice Lawyer Services

The majority of stakeholders surveyed agreed or strongly agreed that services provided by advice lawyers are effective and beneficial to clients. For example, 100% of mediators and 83% of court managers/staff surveyed agreed/strongly agreed that advice lawyer services are effective and beneficial to clients. Sixty-seven percent of both judges and individuals working within children and family services agreed/strongly agreed that this service is effective and beneficial to clients. A much lower percentage of counsellors surveyed agreed/strongly agreed in the effectiveness of services provided by the advice lawyer (46%).

Advice Lawyer and Court Staff Services are Effective and Beneficial to Clients:



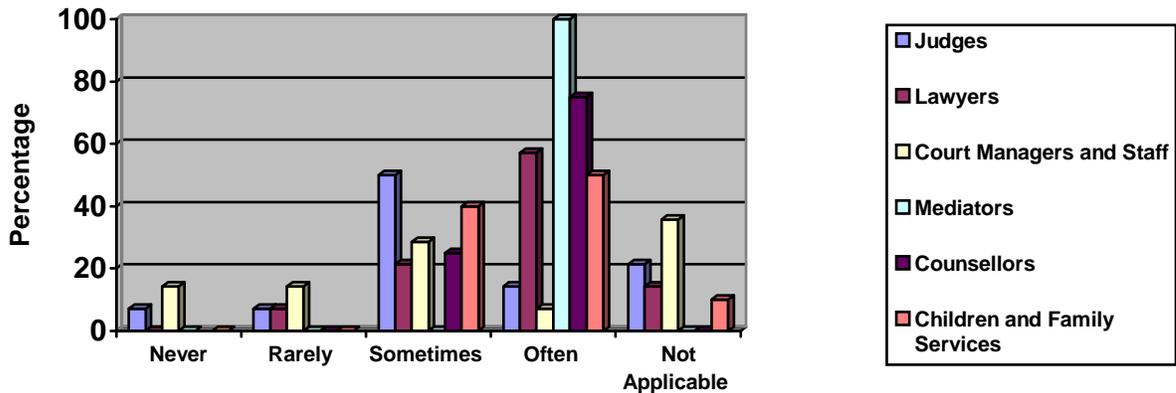
Court Staff Services

Individuals working within children and family services, as well as court managers/staff, agreed/strongly agreed that court staff services are effective and beneficial to clients (75% and 83% respectively). These ratings were similar to those provided by judges (71%). On the other hand, a much lower percentage of mediators and counsellors surveyed agreed/strongly agreed that these services are effective and beneficial to clients (43% and 32% respectively). Sixty-percent of lawyers responded that they agreed/strongly agreed that court staff services are effective and beneficial to clients.

3. Domestic Violence

Stakeholders were asked whether they referred clients to specialized counselling and community services in cases of domestic violence. All mediators surveyed (100%) and 75% of counsellors indicated that they often make referrals to specialized counselling and community services in cases of domestic violence. Fifty-seven percent of lawyers and 50% of individuals working within children and family services surveyed indicated that they often make these referrals. Both judges and court managers/staff surveyed do not often make referrals to specialized and counselling community services (14% and 7% respectively).

In cases of Domestic Violence, how often do you refer clients to specialized counselling and community services?

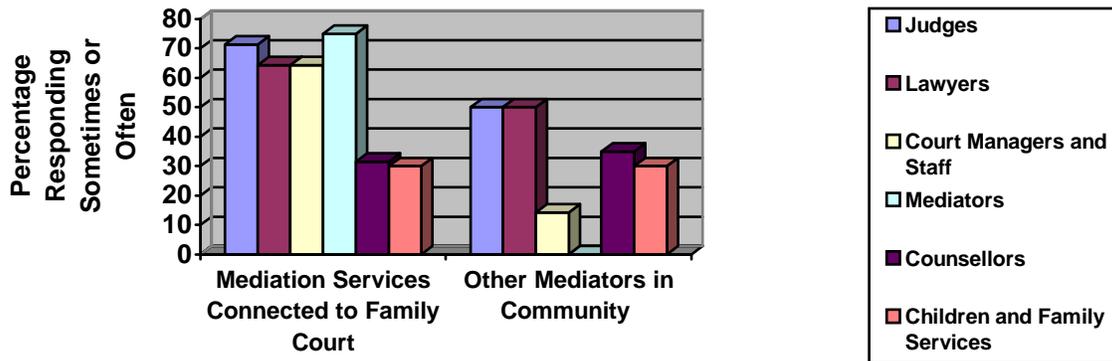


4. Mediation

Referrals to Mediation

Stakeholders were asked how often they refer clients to mediation services connected to the family court (off-site and on-site mediation), as well as other mediation services within the broader community. Almost all stakeholders surveyed indicated that they refer clients more often to the mediation service providers connected to the family court than to other mediators in the community. For example, 71% of judges surveyed indicated that they sometimes/often refer to mediation services connected to the family court, while 50% make referrals to other mediators in the community. Seventy-five percent of court-connected mediators surveyed indicated that they often refer clients to mediation services connected to the family court and rarely make referrals to other mediators in the community. Sixty-four percent of lawyers surveyed indicated that they sometimes/often refer clients to mediation services connected to the family court, in contrast to 50% who make referrals to other mediators in the community. Counsellors and individuals working within children and family services refer clients to mediation services connected to the family court and other mediators in the community at about the same rate (counsellors: 32% and 35% respectively; children and family services: 30% and 30%). Sixty-four percent of court managers/staff surveyed indicated that they sometimes/often refer to mediation services connected to the family court, in contrast to 14% who make referrals to other mediators in the community.

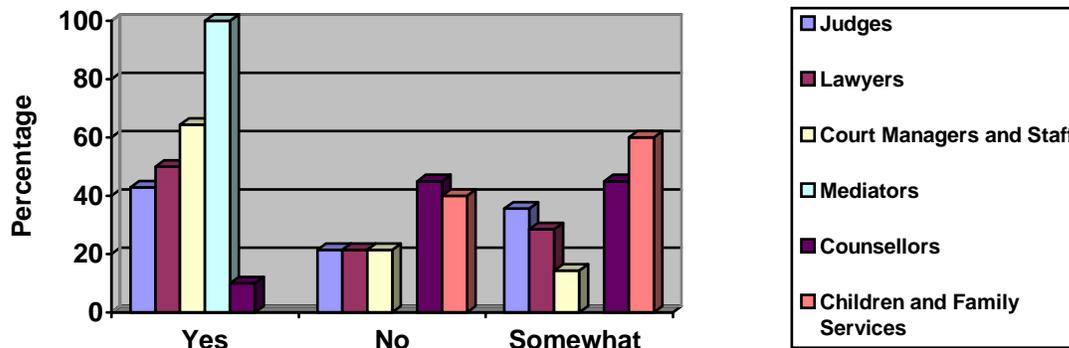
How often do you refer clients to Mediation Services?



Roster of Family Mediators

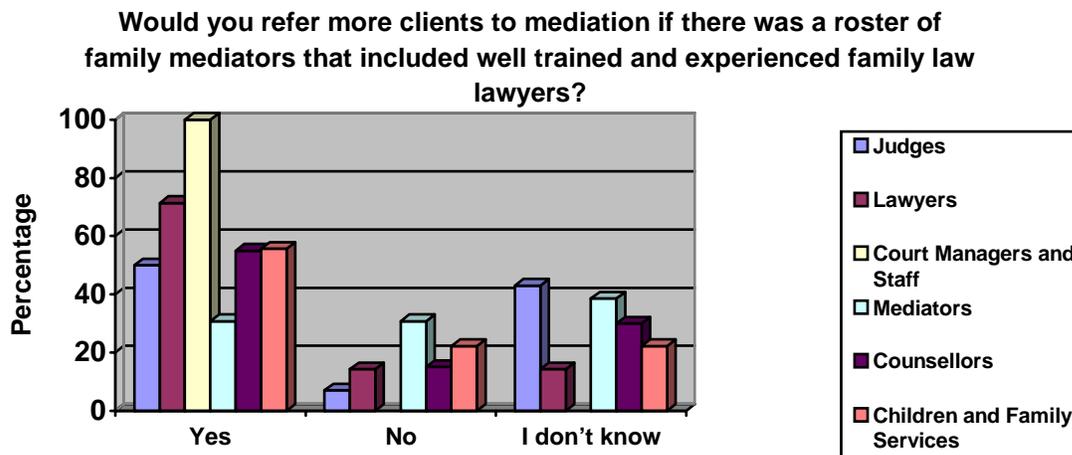
Stakeholders were asked whether they were aware of a roster of family mediators in their community to whom they could refer clients. Respondents were asked to reply yes, no, or somewhat. All mediators surveyed (100%) indicated that they are fully aware of a roster of family mediators in their community. On the other hand, 43% of judges and 50% of lawyers surveyed indicated that they were aware of this roster of family mediators. Very few counsellors were aware of the roster (10%), and no one surveyed who worked within children and family services was aware of such a roster of mediators. Sixty-four percent of court managers/staff responded that they were aware of a roster of family mediators in their community.

Are you aware of a roster of family mediators in your community?



Stakeholders were also asked whether they would refer more clients to mediation if there was a roster of family mediators that included well-trained and experienced family law lawyers. All court managers/staff surveyed (100%) indicated that they would make more referrals to mediation services if such a roster of family mediators existed, in contrast with 50% of judges and 71% of lawyers. Thirty-one percent of mediators and approximately 56% of counsellors and

individuals working within children and family services surveyed indicated they would make more referrals if a roster existed.



5. Effective Qualities of Ancillary Services

Participants were asked to identify and describe any qualities of the ancillary services that currently contribute to the service working effectively for the benefit of the client. Individual responses open-ended were first broken down into category of respondent (i.e., judge, lawyer, mediator, etc.). We then identified themes based on the individual responses made by each stakeholder. Participants wrote as little or as much as they wished to describe the effective qualities of the ancillary services. Most participants gave multiple responses for each service.

On-Site Mediation

Overall, across all respondents, stakeholders identified the following effective qualities of on-site mediation:

- ✓ *Accessibility*
- ✓ *Well-trained, competent personnel*
- ✓ *Cost-effective*
- ✓ *Efficient and non-complex issues*
- ✓ *Other*

Off-Site Mediation

Overall, across all respondents, stakeholders identified the following effective qualities of off-site mediation:

- ✓ *Accessibility*
- ✓ *Well-trained, competent personnel*
- ✓ *Cost-effective*
- ✓ *Resolution-oriented and complex, individual solutions*
- ✓ *Child-focused*
- ✓ *Other*

FLIC

Overall, across all respondents, stakeholders identified the following effective qualities of FLIC services:

- ✓ *Accessibility*
- ✓ *Well trained, competent personnel*
- ✓ *Valuable sources of information*
- ✓ *Efficient and cost-effective*

Parent Information Sessions

Overall, across all respondents, stakeholders identified the following effective qualities of Parent Information Sessions:

- ✓ *Accessible*
- ✓ *Informative, practical, and user-friendly*
- ✓ *Cost-effective*
- ✓ *Child-focused*
- ✓ *Other*

IRC

Overall, across all respondents, stakeholders identified the following effective qualities of IRC:

- ✓ *Accessibility*
- ✓ *Well-trained, competent personnel*
- ✓ *Informative*

Court Counter Services Staff

Overall, across all respondents, stakeholders identified the following effective qualities of court counter services staff:

- ✓ *Accessibility*
- ✓ *Efficiency*
- ✓ *Well-trained, friendly, and competent staff*
- ✓ *Informative and knowledgeable information*

6. Suggestions for Improvement for Ancillary Services

On-Site Mediation

- Make referrals to mediation mandatory
- Increase advertising to public and provide greater outreach to community agencies
- Increase space (especially in cases of domestic violence—provide separate places for respondent and applicant)
- Increase funding for extending service hours and ensure hours mirror/exceed court sitting time
- Provide better training, education, and creditability of mediators in the area of family law
- Increase the number of mediators available in more situations
- Ensure appropriate referrals are made (especially in the cases of domestic violence or power imbalance)
- Other

Off-site Mediation

- Increase advertising of service to public and provide greater outreach and networking between agencies
- Make referrals to mediation mandatory (some agree only in cases of CP)
- Provide better training, education, and credibility mediators in the area of family law
- Decrease the cost and increase the number of hours and amount of funding available per case
- Increase awareness around issues of power imbalance and domestic violence
- Increase involvement of bench and bar, and include more local lawyers to do mediation (lawyers on family law roster)
- Increase the availability of more mediators
- Other

FLIC

- Provide computer access to information and regularly update user-friendly materials/hands-on tools for all adults, including material for adults with limited reading and writing abilities and language barriers
- Improve the location within the courthouse and provide more space within FLIC office (e.g., designate rooms for victims of violence, provide separate rooms for applicant and respondent, parents and children; provide a confidential front desk)
- Ensure advice/information provided by FLIC staff is consistent, including a more supportive and understanding approach to dealing with FLIC clients
- Increase staff availability, hours, FLIC days, and time to serve clients, especially ensuring that hours mirror or exceed courtroom hours
- Increase advertising of services to public and community agencies
- Other: notably, provide a clearer definition of the scope of services provided by the centre and what the FLIC lawyers can do; ensure more stringent reporting to MAG—

accountability; ensure all self-represented litigants attend and provide more help to them

Parent Information Sessions

- Make sessions mandatory for all parents, especially in cases of custody and access
- Provide more comprehensive, longer, intensive, skill-based sessions
- Increase advertising of the service to the public
- Put in place a mechanism for referring parents who need additional resources, and a follow-up process to ensure the best interests of the child are met (e.g., mandatory recommendation to engage with community-based counselling and CP services as required)
- Increase staff and funding of service and decrease cost of service to parents
- Other

IRC Services

- Increase the number of highly competent, motivated pro-active staff that are properly funded (hired and trained by MAG)
- Increase advertising to the public and community agencies
- Increase the amount of information provided about other services offered and present information in user-friendly formats
- Other

Advice Lawyer and Legal Aid Duty Counsel

- Increase the competency and expertise of lawyers and counsel, and ensure ongoing training and mentoring of counsel (use consistency of information as an example, and provide training in domestic violence issues)
- Increase the availability of counsel hours and the number of duty counsel available to assist with high volume (e.g., provide two full-time duty counsel)
- Decrease the cost and increase the amount of time duty counsel can spend with clients (e.g., remove any restrictions about who can see duty counsel)
- Increase compensation to staff and expand the role of legal aid assistants

Court Counter Services Staff

- Increase training, education, and expertise of staff (includes: ensuring that consistent information is provided; training in issues with respect to domestic violence)
- Increase the number of staff available at the counter (ensure back-up staff are available when the counter is overburdened)
- Promote the staff's positive attitude and increased teamwork
- Other (e.g., provide a clearer definition of what advice they can provide, hold consistent meetings so staff can be informed/updated)

- Provide improved counter space, including a more confidential front counter and more open wickets

7. Services to Make Family Court More Useful/Beneficial to Clients

Ancillary and Related Services

- Mandatory mediation and arbitration services
- Parenting coordination services and mandatory parenting information sessions
- Mandatory family law training for lawyers at FLIC (e.g., family law rules, insight awareness, sensitivity to the mediation process)
- Higher threshold for duty counsel and advice lawyer eligibility
- On-site legal aid application process (in addition: increase legal aid funding to assist clients with divorce issues; grant more legal aid certificates; increase pay to legal aid lawyers for improved and efficient service)
- Streamlined access to OCL
- Improved resources at FLIC (e.g., computers and videos)
- Private roster mediators and lawyer referral services
- Divorce coach
- Subsidized mediation

Human Resources and Operations

- More family court judges
- Family court to schedule its own events in the family court
- Mediators available for child protection matters
- Case management services/master/clerk (e.g., for children involved in high-conflict/separation/divorce)
- FLIC open 5 days/week and mandatory attendance for all self-represented litigants
- Increased staff (e.g., paralegals available to help complete forms, assist clients)
- Protected waiting area for victims of violence
- Maps/diagrams of different levels of courthouse
- Photocopying/Fax services for litigants on-site
- Removal of mandated single filing line at court services counter

Children, Family, and Victim Services

- Social services on-site (Ontario Works, housing services, John Howard Society)
- Family Court Clinic
- Accessible psychological assessments, parenting assessments, custody evaluations, and counselling referral information (gives everyone a certificate and finds their own assessor)
- On-site services for victims of domestic violence (e.g., outreach worker, liaison and safety plan coordinator, escort to and from court when ex-partner is attending)
- Justice circles

- Intake desk for mental health services
- Interpretation services
- Police liaison
- Mental health professionals (psychologists, social workers, conflict manager/conflict counsellor)

Forms, Information, and Procedures

- Information for programs offered at CAS
- On-site resource services (e.g., better information about what services are available and how to use them; more direction about how to complete forms; person at FLIC to assist with completion of forms)
- Courses on required court process documents and timelines for services
- Self-help kiosks/overhead television for litigants
- Ongoing marketing of services (but also of satellite offices)
- Cross-cultural information forms and pamphlets (e.g., accommodate the different languages)

Other

- Financial planning
- Amendment to financial statements (e.g., when less financial information will suffice)
- Food and snacks
- Technology (e.g., courtroom, drafting documents, audio visual material in waiting room)
- Childcare, play space for children, diaper-changing/feeding area

8. Best Practices for Delivery of Court-connected Mediation and Information Services to Make Family Court More Useful/Beneficial to Clients:

Mediation Services

- Mandatory referrals to mediation (e.g., participate in at least two mediation sessions prior to starting any court action; culture that embraces mediation as the ‘norm’; more mediation practised in the community)
- Independent review/audit of mediation services (on/off-site) to measure effectiveness and success rates
- Advertisements of court mediation services
- CSO to act as a liaison between clients and mediation services (ability to assess client readiness and appropriate referrals)
- Ensuring clients are not pushed into mediation prematurely or inappropriately

Information Services

- “Floater” staff person at front counter assisting clients with documents while they wait in line
- Hands-on service by counter staff
- Increased space and use of technology within courthouse and related services
- Comprehensive website detailing services provided and access to certain documents
- Holding staff accountable for their interactions

Resource and Liaison Committees

- Focusing discussion at monthly meetings on services and programs for clients

Training and Education

- More training in issues related to domestic violence
- Increased education for all stakeholders in the system

Other

- Separate areas within courthouse/waiting rooms for applicant and respondents
- Combining child protection cases with custody and access (both cases are often combined and frequently require comprehensive mediation service)
- Keeping to courtroom schedules and ensuring lawyers are not double booking
- Limiting the number of repeated no-shows to court
- Better and more pending return to court in between conferences or awaiting conference dates

9. Improvements to Overall Delivery of Family Mediation and Information Services to the Public:

Ancillary and Related Services

- Mandatory referrals to mediation
- Approved roster of qualified mediators
- Increased availability of qualified mediators
- Dedicating two mediators to court every day
- MAG to pay service provider a monthly fixed fee to cover core costs for the delivery of mediation services
- Increased off-site hours per case for mediation services
- Increased staffing at FLIC
- Increased Parenting Information Sessions (offer array of times and days)
- Better paid legal aid lawyers to obtain more effective legal advice

Forms, Information, Advertising, and Procedures

- Directory of services for the public at FLIC with well-trained staff to assist client with the referrals
- Task force to compile recommendations for best practices stakeholders should follow
- More advertising and promotion of services offered in specific places (e.g., churches, schools, gyms; coordinated marketing strategy that invites community service providers to orientation sessions)

Child, Family, and Victim Services

- Efficient access to psychological services (assessments and evaluation) and OCL
- Centralized services for victims of domestic violence

Philosophical Considerations

- More specialized approach to the area of conflict resolution in family law cases
- Acceptance of philosophy that the adversarial system may not be the best method of approaching dispute resolution in cases of family law
- Greater credibility of services and the system
- Re-vamping of the process of family court to make it more user-friendly
- Experienced family court judges who instill the requirements of mediators before or after a case conference

Training and Education

- Increased education and training of all stakeholders regarding the impact of domestic violence on families
- Increased education and training of all stakeholders regarding the Family Law Act and Rules
- Educating the community and the local bar about the positive benefits of mediation
- Training of Rule 39 clerk with mediation availability
- Routinely checking that staff receive adequate training and education on all areas of family law to ensure delivery of qualified service

Other

- More space/rooms for mediation and information sessions
- Making interpreters and more staff available to assist with clients who have difficulty reading or understanding the processes and forms of family court

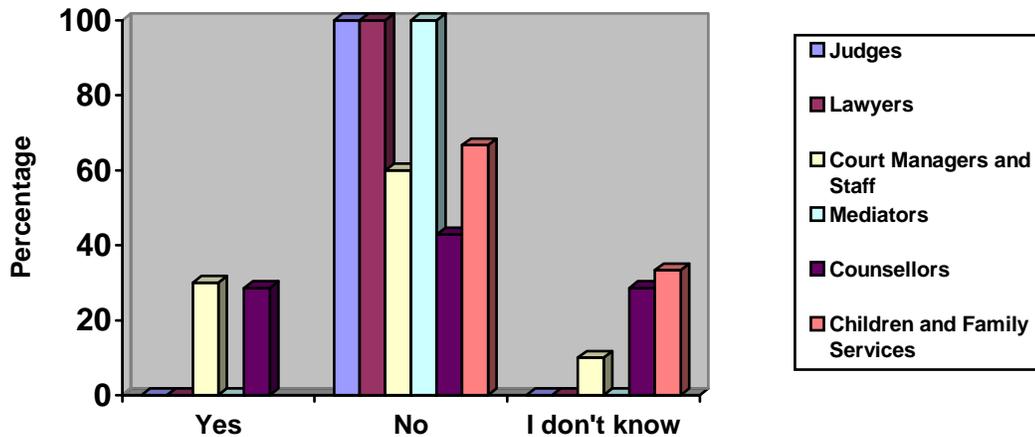
PART II

Part II of the survey was completed by individuals who have regular involvement with the operations of the family court (41 respondents). Respondents were asked to provide either quantitative ratings or qualitative answers (describe responses in their own words).

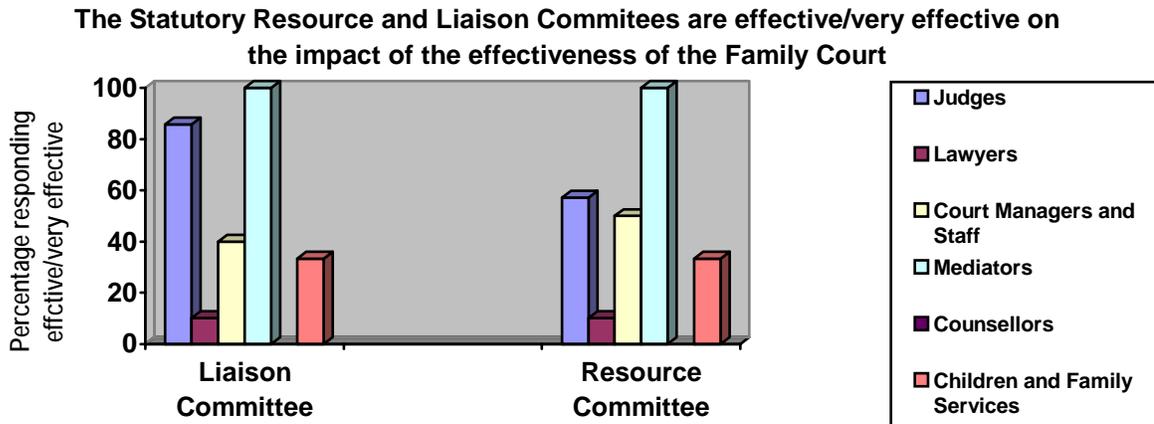
1. Judicial Complement

Issues surrounding judicial complex are complex and multifaceted. Respondents were asked whether the current number of judges in their jurisdiction is adequate to meet the objectives of the family court. Not surprisingly, the vast majority of participants surveyed reported that the current number of judges is not adequate to meet the objectives of the family court. All the judges, lawyers, and mediators surveyed (100%) agreed that the number of judges is not adequate. On the other hand, 67% of individuals working within children and family services and 60% of court managers and staff reported that the current number of judges is not adequate in their jurisdiction. Less than 50% of the counsellors surveyed reported that the number of judges is adequate to meet the objectives of the family court.

Is the present number of judges in your jurisdiction adequate to meet the objectives of the Family Court?



2. Liaison and Resource Committees



Changes to Improve the Efficiency of the Liaison and Resource Committees:

Liaison Committee

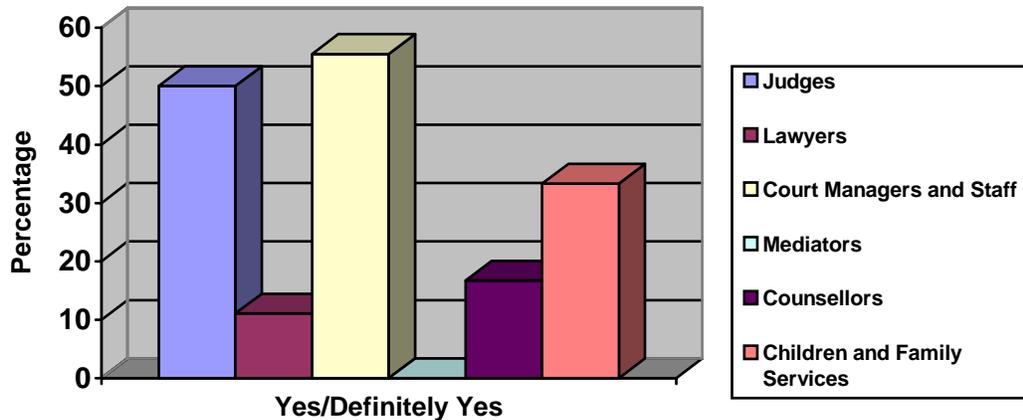
- Established/statutory authority to implement change or ideas
- Increased local and senior regional judiciary involvement
- Increase coordination, communication, and involvement between other court committees
- Provincial uniformity and autonomy of practice to develop local solutions to local problems
- Providing the committee with operational information (e.g., statistics) to allow a solution-focused approach, rather than reactionary
- Having public members and front line counter staff attend meetings

Resource Committee

- Increased judicial involvement
- Budget/minimal funding increase (e.g., stipend for the chair and/or secretarial support to minimize the commitment of the committee members; support of projects to enhance experiments and local initiatives to promote continuity by rewarding community members (honorarium/recognition) from related disciplines)
- Increased coordination between court committees
- Established/statutory authority to implement change/ideas
- Established goals and objectives of committee
- Having front line counter staff attend meetings
- Combine with liaison committee

3. Case Management System

In your opinion, is the present case management system in the Family Court effective in the resolution of family conflicts?



Current Case Management System Best Practices:

- Continuity of judge for each case and sufficient, dedicated judicial complement to manage cases effectively
- Effective scheduling and case management systems
- Commitment from all stakeholders to ensure effective and efficient delivery of service and compliance with the Rules (e.g., commitment to the process; comply with rules, strict compliance with filings; dismissal notices and orders done as per rules)
- Training and education for all stakeholders in the various aspects of family law and the Rules (e.g., booster courses)
- Specific examples: reduce the number of adjournments granted at each stage of the case management process; hold a “final” settlement conference a week before the trial; do not allow motions without a case conference; provide authority at first appearance court

Changes to Improve the Efficiency of the Case Management System:

Improved Case Management

- One judge case management system (continuity of judge for each case)
- Case management master
- Individual case management

Resources

- Increased judicial complement (designated family court judges)

Forms and Procedures

- Removal of the notice of approaching dismissal
- Notices of approaching dismissal done by assistants to the trial Coordinator
- Modify financial statements (i.e., removal of irrelevant information)

First Appearance Court

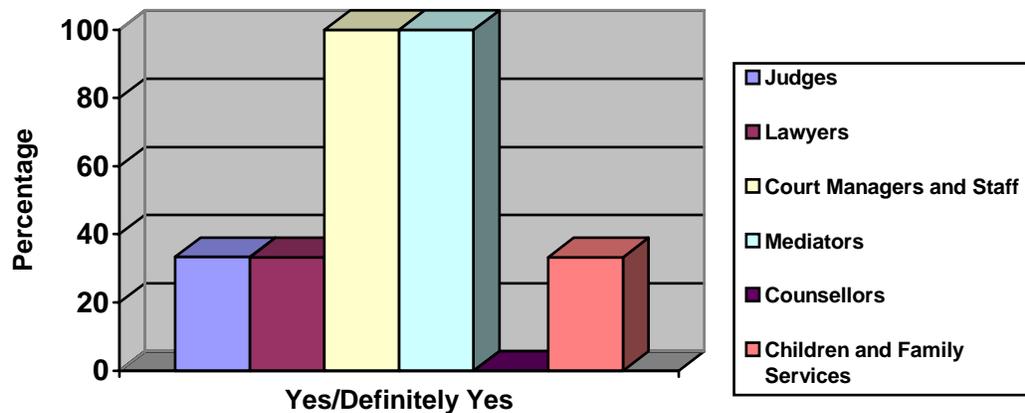
- Authority at first appearance courts to require a disclosure agreement (and compliance) before moving on to a case conference
- Enhanced first appearance courts where judges preside
- Ensure experts or masters preside on first appearance court
- Removing court support or counter staff as “presiders” at first attendance courts

Other

- More time spots for case conferences

4. Family Court Counter

In your opinion, is the service provided to lawyers at the Family Court Counter efficient?



Current Family Court Counter Best Practices:

- Well-trained, competent counter staff who provide consistent information to litigants (including training for legal assistants and paralegal secretaries)
- Drop-off and pick up area for orders to be issued
- Single file lines and the introduction of Frank computer systems (e.g., separate line for self-represented litigants)
- A well-run and accessible FLIC (e.g., FLIC diverts many unrepresented clients and frees up counter time)
- Insistence by bench of compliance of Rules

Changes to Improve the Efficiency of the Family Court Counter:

Training and Education on Rules and Preparation of Court Documents

- For lawyer support staff (e.g., paralegals and legal secretaries; staff should always have correct file number and correct fees)
- Counter staff generally (consistency of staff important)

Counter Changes

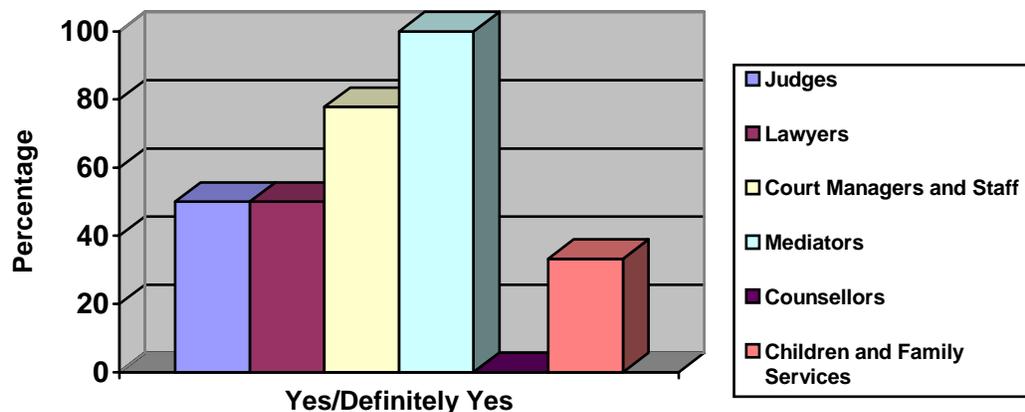
- One counter line/window to deal with lawyers
- Counter times to coincide with court staff hours

Operational Changes

- Access to computer system SUSTAIN (to track files, orders, etc.)
- Decrease cost of photocopy to lawyers to reflect actual cost

5. Self-represented Litigants

In your opinion, is the service provided to self-representing litigants at the Family Court Counter efficient?



Family Court Counter Best Practices for Self-represented Litigants:

- Referral to the FLIC and duty counsel
- Friendly, competent, committed, and knowledgeable staff
- Consistent and available resource information (e.g., the use of checklists for standard processes)
- Providing self-represented litigants with direction and guidance about the process and what is expected of them
- Separate line/window for self-represented litigants
- On-site legal aid applications

Changes to Improve Efficiency of Family Court Counter for Self-represented Litigants:

Human Resources

- Increase staff at family court counter and open more wickets during FLIC days (describe how more staff can lead to better service to deal with clients—more time with them)
- Volunteers for semi-literate clients

Forms, Information, and Procedures

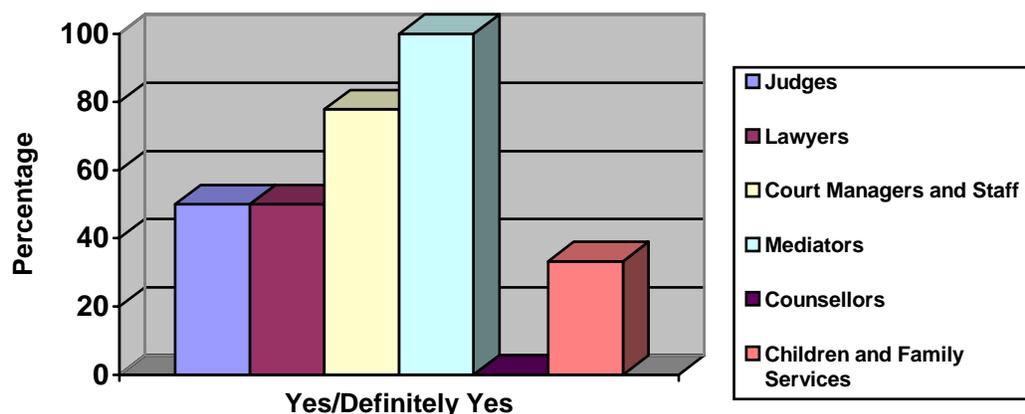
- Removal of Part 1, Part 2, Pleadings, and Financial sections of the Continuing Record
- Self-help kiosks/computers
- Increased “hands-on” assistance from staff
- Mandatory referral to FLIC (e.g., counter staff should file documents, not deal directly with self-represented litigants who require substantial assistance; forms should be reviewed at FLIC first so they are complete)

Training and Education

- Ongoing training for staff at counter (about how to best serve self-represented litigants)
- Clear definitions about what advice can and should be given to self-represented litigants at the counter

6. Institutional Litigants

In your opinion, is the service provided to institutional litigants at the Family Court Counter efficient?



Family Court Counter Best Practices for Institutional Litigants:

- Faxing/mailing of file lists prior to attendance at counter
- CAS clerks pulling their own files behind the counter (with staff updating computer and checking work)
- Process servers or institutional clerks familiar with the filing process

Changes to Improve Efficiency of Family Court Counter for Institutional Litigants:

- Electronic programs for forms
- Separate line at counter for institutional litigants
- Minimizing repeated requests from institutional litigants for photocopying of same files
- Increasing staff numbers (and promoting an attitude of efficiency of service)
- Making available private meetings rooms to ensure confidentiality

7. Resolution of Family Conflicts

Family Court Best Practices Facilitate Resolution of Family Conflicts:

- Individual case management (bench and bar committed to settlement)
- On-site mediation referrals/information sessions and mediation settlement conferences
- Specialized family law judges with strong judicial negotiating skills
- Open motion lists and first appearance courts
- Minimizing the number of case conference adjournments

Changes to Improve Efficiency of Family Court to Facilitate Effective and Timely Resolution of Family Conflicts:

Human Resources

- Increase judicial complement and resources (specialized, qualified, and skilled family court judges)
- Case management master
- One judge case management system (continuity of judge)
- Specialized family law layers, legal aid panel, and well-trained mediators

Ancillary Services

- Mandatory referral to FLIC for self-represented litigants
- Mandatory, onsite parenting information sessions
- Mandatory referral to mediation

Other

- Minimize repeated motions (costs to be ordered more often in such cases)
- Providing an inexpensive and efficient approach to working with clients who do not qualify for legal aid
- Reassignment and accountability of first appearance courts to the judiciary
- Increase the number of orders made rather than recommendations

