

THE SUMMARY ADVICE COUNSEL INITIATIVE

ASSESSING ITS IMPLEMENTATION, IMPACT AND

FUTURE DIRECTIONS IN TWO NOVA SCOTIA URBAN AREAS

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“Lawyers’ fees are completely beyond the reach ... The middle class, probably even the upper middle class, have been abandoned by the legal profession. People have to be able to come to court without lawyers and truly access justice” (Justice Marvyn Koenigsberg, Supreme Court of British Columbia, March 10, 2006)

THE TASK AND THE EVALUATION STRATEGY

This evaluation has been directed at carrying out an assessment of the Summary Advice Counsel (SAC) initiative in the Family Court Division of the Supreme Court of Nova Scotia. The summary advice counsel provides summary legal advice, primarily to self-represented litigants, on family law matters. The evaluation research examined the SAC in its two different organizational contexts, specifically the Sydney Cape Breton Justice Centre and the Devonshire Court location in Halifax.

BACKGROUND

Significant major social movements appear to be changing the landscape of the Justice System in recent years. Aboriginal Justice initiatives (e.g. the Gladue court), problem-solving courts (e.g., mental health courts, drug treatment courts), and the resurgence of the restorative justice approach, to name but a few such movements, may presage a complex, fragmented but perhaps more efficient and effective post-modern Criminal Justice System. Similar evolution in Family and Civil courts has been alleged to have resulted there in a less adversarial process and a greater emphasis on conciliation, mediation and information / education. Indeed, in these latter court milieus there has been much articulation of the concept ‘client empowerment’ as well as the development of ‘self-help centers’ and their associated infrastructure. It could be argued, however, in both settings, that attention may be diverted, unintentionally and inappropriately, from one of the most pressing concerns of mainstream twentieth century Justice, namely access to Justice in the form of adequate legal representation for all citizens regardless of socio-economic status, gender, race/ethnicity and other social characteristics and circumstances. There is much concern that while funding and other resources are being provided for worthwhile special initiatives, state provided legal assistance may be increasingly restricted to fewer needy defendants by stringent income and offence criteria. A provincial criminal court judge in Nova Scotia contended in 2003 - and preliminary analyses of the data would support his statement - that fully 50% of the accused persons appearing before his court are without legal aid or private bar representation. The proportion of self-represented in Family Court may be as high or higher. An Associate Chief Justice of the Quebec Superior Court in 2006 noted that in his province, “In family-law cases, the number of people representing themselves has jumped to 40 percent from almost nothing 15 years ago”.

In a recently completed report (Clairmont, 2004), the researchers identified the dimensions of the self-represented defendant problem in Nova Scotia's provincial criminal court and the views of various CJS role players (judges, crowns, Legal Aid staff, private counsel, and others) and the self-represented defendants themselves with respect to the issues entailed and the possible solutions. It was noted there - and deemed congruent with the data - that a duty counsel system was seen, by most informants and interviewees, as central to dealing effectively with the problems identified. In the fall of 2004 a federal grant enabled Nova Scotia Legal Aid to employ full-time duty counsel at the Halifax, Dartmouth and Sydney provincial criminal courts. Issues related to the self-represented litigant in Family Court also have been of serious concern. Family Law issues are arguably more complex than those in criminal court and certainly appear to entail, on an everyday basis, more emotion, engagement and crisis whether material, personal or social. Early legal advice there may be especially relevant for the time-sensitive issues that are routinely handled in the family court setting.

The Family Division of the Nova Scotia Supreme Court, established in 1999, operates in Halifax, Sydney and Port Hawkesbury. A number of services are provided by the court for litigants including: conciliation, mediation and a parent information program. Evaluation research, carried out with respect to the Supreme Court Family Division for the period 1999 to 2001, generally yielded very positive assessments of the changes (e.g., client satisfaction with the services, stakeholders' views of the impact). Still, a large proportion of both appellants and respondents were without any legal advice (as opposed to legal information) and, as well, the evaluation report indicated that a significant concern existed with court delays and other issues associated with case processing. A needs assessment study related to self-represented litigants in the family court system carried out by the Nova Scotia Department of Justice, and published in 2004, identified several areas of concern and advanced a number of recommendations for dealing with the challenges posed by this client population. During the time that the study was being completed, several initiatives were being proposed / implemented to deal with the issues identified.

In October 2003 a pilot project was initiated in metropolitan Halifax (Devonshire Court location) whereby summary legal advice was to be provided under the direction of Nova Scotia Legal Aid in the Family Division of the Supreme Court. This initiative was basically a response by NSLA to concerns it shared with Court Services and essentially involved a reconfiguration of the NSLA budget. In April 2004 the service was established at the Family Division in Sydney (Sydney Justice Centre location) whereby the counsel was under secondment to Court Services from Nova Scotia Legal Aid. In this initiative special funding was secured for two years from the Department of Justice Canada in response to a proposal jointly submitted by NSLA and Court Service Nova Scotia. In both projects, the anticipated benefits were quite similar, specifically, meeting the unmet needs for legal advice of self-represented litigants and also trying to reduce delays associated with case processing (more generally, improving the efficiency, effectiveness and equity of the family court process).

The summary advice counsel (SAC) projects in metropolitan Halifax and Cape Breton (HRM and CBRM respectively) have targeted both the above cited shortcomings. While the two projects differ in terms of funding arrangements and organization context for the SAC role, in each case, counsel provides legal advice with respect to the *Maintenance and Custody Act*, the *Divorce Act*, the *Matrimonial Property Act*, pension legislation and so forth. It was deemed important in this assessment to determine, among other things, how these two SAC projects have impacted on the favourably evaluated other court services, as well as to examine their implications for court processing and self- representation issues. The SAC service is an element in a complex network of services provided by the Family Division of the Supreme Court, so examining it in a system framework would be crucial. For example, it was considered crucial to describe and assess the summary advice counsel as a referral source (to NSLA, private counsel, other court services, local community services) and as a recipient of referrals (from intake workers, NSLA, other governmental and community agencies). The organizational context, the difference between Sydney and Halifax as noted, might also yield significant implications for SAC service delivery and impact.

MAJOR DIRECTIONS OF THE PROPOSED EVALUATION

The first task of the assessment was to determine how the SAC role has been implemented in relation to its objectives and mandates, especially with respect to the services provided to the clients and the engagement with other Family Division services and role players. What have been the major dimensions of the SAC service? What constitutes the client base and the ‘reach’ of the service? How does SAC fit into the court system of services and referrals?

A second major task was to examine the impact of the SAC initiative. What is the impact for client needs, for the court's functioning, and for the other court services? Here it was deemed important to interview a representative sample of the diverse stakeholders, including: the lawyers providing the summary advice service, judges, court administrators, intake and conciliation staff members, private counsel, officials of kindred governmental agencies (e.g., Children’s Aid), administrators and staff of Nova Scotia Legal Aid, and representatives of stakeholder community organizations. Of course a central evaluation activity was obtaining feedback from the clients using the summary advice counsel service.

The third major task was to provide a contextual base for the assessment by comparing the organizational context, work demands and social milieu for the two projects and by examining the literature and the secondary data available. Questions explored not only the current service but also issues of the appropriate level of service to be provided and the appropriate model of service delivery as well as possible future directions for the SAC service.

SPECIFIC EVALUATION ISSUES

Consideration of the following specific five issues facilitated the achievement of the above major evaluation objectives. For each issue a set of key questions was identified along with the specified indicators and data source for the questions. They are detailed in Appendix A so the structure will be presented here only in summary form. They are:

1. *Relevance*: Is the SAC service relevant to the operation of the justice system in Nova Scotia?
2. *Costs and Productivity*: What are the costs of delivering the service in relation to caseload?
3. *Impact*: What impact have the SAC initiatives had on the Family Division of the Supreme Court and on Nova Scotia Legal Aid in relation to the issue of the unrepresented or self-represented litigant?
4. *Program Implementation*: How have the two SAC initiatives been implemented with reference to the original objectives and design?
5. *Program Administration and Operation*: Are the programs well administered and operating satisfactorily from the viewpoint of clients and stakeholders?

EVALUATION STRATEGY

The evaluation strategy employed the following methodologies in carrying out the project:

1. *Literature and program document review*. Here there was an examination of research and evaluation studies examining summary advice services in Canada and to a lesser extent North America. Also, there was a review of the program documentation (e.g., initial funding proposals, background documentation, statistical reports, etc.) for the two SAC initiatives being evaluated.
2. *Key informant interviews*. One-on-one interviews, following an interview guide (see appendages), were carried out with identified stakeholders. As much as possible, these were face-to-face interviews but roughly half the stakeholder interviews were conducted by telephone. The initial target of approximately fifteen or so interviews in each of Sydney and Halifax was almost doubled. The list of stakeholders to be interviewed was constructed in consultation with the SAC lawyers and staff of the Department of Justice (Court Services) and Nova Scotia Legal Aid. As anticipated there were multiple interviews of the summary advice lawyer and much indirect communication via e-mail through the conduit of

Policy, Planning and Research, Department of Justice, Nova Scotia. The list of stakeholders interviewed by role, not name, is appended to the report.

3. *Client survey.* Telephone interviews, using a structured questionnaire format, were conducted with a sample of clients of the SAC service in both Sydney and Halifax. The survey instrument and the “marginals” (the frequencies associated with specific responses to the questions) are appended to this report. The initial target of approximately 20 to 30 in each area was surpassed by roughly 100%. One female graduate student conducted almost all the client phone interviews. The samples of clients were constructed in collaboration with SAC lawyers drawing from their lists of clients; details are discussed in the section on survey analyses below.

4. Examination and analyses of secondary data available through the SAC contact files, and client exit surveys (available only for the CBRM’s SAC project), and also through the Civil Index, the data management system for Family Court.

All interview and other data collected were considered as confidential. To deal with issues of solicitor-client confidentiality, client interviews were only carried out with clients who agreed to participate in the study. All identifying information will be secured and removed from interview documents at the earliest opportunity to avoid accidental disclosure of identity. No individual comments in the report will be attributed to a specifically named interviewee. All interview and other confidential material will be destroyed within a year of the final report being submitted.

REVIEW OF THE ISSUES

THE UNREPRESENTED LITIGANT PROBLEM

In recent decades, provincial and superior courts in Canada have been subject to criticism from litigants, academics and legal practitioners concerning both micro-level and macro-level issues and problems. At the micro end of the spectrum, some have suggested that we ought to re-evaluate such things as civil procedure rules, to what standard the rules of evidence ought to be applied (for instance, in cases involving aboriginal rights), and the duration of docket delays. At the macro-level, some have suggested that we ought to re-assess the utility associated with the perpetuation of Canada’s adversarial system’s approach to dispute resolution (as contrasted with other systems, such as the inquisitorial system employed in some European states). One issue, however, that has commanded significant attention in more recent years has been the problem of unrepresented litigants in Canadian court processes.

While concerns about unrepresented litigants are not new to the judicial or governmental policy landscapes, they have been better articulated in recent years. The

reason for the shift in attention to the unrepresented problem could be the result of several variables but is most likely related, at least in part, to the fact that there has been considerable growth, in the past fifteen years, in the number of persons appearing in court hearings without representation. While it is true that there is little concrete data available about unrepresented litigants in Canada or abroad, that which is available is demonstrative.¹ For instance, statistics collected from the Nova Scotia Court of Appeal in 1999 reported that eight out of forty-four litigants in criminal appeals were unrepresented and twenty-three out of 114 litigants in civil appeals were unrepresented.² Statistics from the same court in 2000 reported that self-represented litigants appeared in four out of eighteen criminal appeals and five out of forty-three civil appeals.

Data collected in other Canadian provinces further exemplifies the problem of unrepresented litigants. In Ontario, data compiled by the provincial Ministry of the Attorney General reported that in the year 2003, 43.2 percent of applicants in the Family Court, Ontario Court of Justice Division were unrepresented when they first filed with the court.³ The same report suggested that the average percentage of unrepresented litigants in Ontario family courts between 1998 and 2003 was approximately forty six percent. Another study, conducted in Edmonton during the period of January to March 2001, reported that there was an average of fifty four applications per month filed by self-represented litigants in daily family law chambers in the Court of Queen's Bench.⁴ Of those motions, twenty one, on average, were actually heard per month, with the remaining motions being either adjourned or struck from the list. Of those persons who appeared unrepresented, twenty-nine percent of the applications were for an initial review of a restraining order, thirty-four percent were for a new application or a variation of child or spousal support, twenty-four percent were to compel disclosure of financial information and five percent concerned custody or access.

The unrepresented litigant problem has also been afforded increased attention in other national jurisdictions. Data collected in the United States suggests significant variation in the rate of unrepresented litigants, varying from twenty percent in some states to seventy percent in other states.⁵ A recent (and comprehensive) 2005 study conducted in Australia by the Family Court indicated that the rate of self-represented litigants there was thirty-seven percent.⁶ A report issued by the same Court for the year 2002-2003 noted that for full court appeals, forty-four percent of appellants were self-represented. The study further reported that approximately nineteen percent of applicants seeking

¹ Thompson, D.A. Rollie. "No Lawyer: Institutional Coping with the Self-Represented." Canadian Family Law Quarterly. 19.3 (2001). (QL). 1. [Thompson, "No Lawyer..."]

² *Ibid.*

³ Langan, Anne-Marie. "Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario." Queen's Law Journal. Spring, 2005: 825 – 862. 827.

⁴ Trussler, Marguerite. "A Judicial View on Self-Represented Litigants." Canadian Family Law Quarterly 19 (2001). 1.

⁵ Langan 827.

⁶ Chapter 4: Supporting Access to Justice for Cases With Merit. Australian Government – Attorney General's Department. Accessed: 4/10/2006. Available at URL: <[http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/4DCDA1BCD4747FA6CA256E3E00768EB7/\\$FILE/0ch+4+amended+access+to+justice+chapter.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/4DCDA1BCD4747FA6CA256E3E00768EB7/$FILE/0ch+4+amended+access+to+justice+chapter.pdf)> [Australia]

interim or final orders in family law children or property matters did not have a lawyer and a significant number of litigants in general family matters were unrepresented.⁷

The reasons for which a particular litigant may present to court without legal representation are multiple. Given the fact-specific nature of individual cases (perhaps even more so in the realm of family law), it would be difficult, if not impossible, to create an exhaustive list of potential factors that lead to persons appearing at court alone. Review of the literature, however, seems to suggest that there are at least six accepted categories of unrepresented litigants.

The first group is comprised of those individuals who appear at court alone based on financial constraints that prevent them from retaining counsel.⁸ This cohort represents the largest number of unrepresented litigants.⁹ According to Trussler, this group has been created as the consequence of the high cost of (private) legal services and cutbacks to legal aid programs.¹⁰ The end result is that many litigants have no other option but to appear unrepresented. Thompson and Reieron have suggested that the financially constrained group of unrepresented litigants may be divided into three sub-categories.¹¹ The first category, “left unrepresented by legal aid” consists of persons who qualify financially under the legal aid rules but are unable to obtain legal aid by reason of cutbacks and case priorities.¹² The majority of these persons are applicants and women. The second group Thompson and Reieron describe as the “near misses.” It is into this group that members of the ‘working poor’ fall. These are persons who are unable to afford access to private legal advice but, because of their income, are ineligible for legal aid services.¹³ The third group Thompson and Reieron have described as “good guy respondents.”¹⁴ Within this group are placed individuals who might be able to afford a lawyer but make a constrained decision not to obtain one. According to Thompson and Reieron, many of these persons are burdened by other pressing financial obligations such as excessive debt-loads or other children to support which take precedence over hiring a lawyer.¹⁵

The second category of unrepresented litigants has been described by Trussler as “recreational” litigants.¹⁶ This group consists of persons who have spare time that they are able to afford to the litigation process. A large proportion of this group consists of fathers who are disenchanted with a prior hearing or who contest their obligation to pay child support. Many of these litigants are unemployed or under-employed and some become obsessed with their court cases. Thompson and Reieron have referred to

⁷ *Ibid.*

⁸ Trussler 1.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Thompson, Rollie D.A. and Lynn Reieron. “A Practising Lawyer’s Field Guide to the Self-Represented.” Canadian Family Law Quarterly. 19.3. 531.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid* 532.

¹⁵ *Ibid.*

¹⁶ Trussler 1.

members of this group as “lawyer wannabes” who want to be treated by the court like lawyers but who often personally hold negative conceptions about lawyers and the profession in general.¹⁷

A third category of unrepresented litigants consists of what Thompson and Reiersen describe as the “do-it-yourselfers.”¹⁸ Within this group are found those individuals who regard their case as being “simple.” Members of this group suggest that the lack of complexity justifies proceeding without formal legal assistance. According to Trussler, these people “... are intelligent, or sometimes just self-absorbed, who feel that they can do better than a lawyer.”¹⁹ In some instances these persons are effective in presenting their own cases to the court, but, in other instances, their lack of legal training and experience is detrimental.²⁰

Dangerous or deluded people comprise the fourth, and perhaps smallest, category of unrepresented litigants.²¹ According to Thompson and Reiersen, members of this group have, at some point during the proceedings, crossed the line between “difficult” and “dangerous.”²² Proceedings involving these litigants tend to be prolonged and are often treated carefully by both the court and by opposing counsel.²³

A fifth category of unrepresented litigants consists of individuals who attach a negative stigma to lawyers or the legal profession in general.²⁴ Some of these individuals subscribe to societal stereotypes of lawyers being “crooked” or “untrustworthy” despite having had no personal experience with them. Others simply contend that lawyers charge too much money for the services that they render. Many of these litigants, however, will have personally had a previous negative experience with a lawyer or know personally of someone who has. In one study conducted in Kingston, Ontario discussed by Langan in the *Queen’s Law Journal*, twenty-one percent of survey respondents reported having had a previous negative experience with a lawyer.²⁵ One respondent, for instance, recorded on the survey form: “When I had a lawyer argue the same points I put forth, the situation was totally different and I started to gain some ground in court. However, as has happened to me on about three different occasions, the lawyers then find new things to fight about or a different way to fight about the same things, all for the purpose of increasing your fees.”²⁶ Another respondent to the same survey submitted: “The requirement of a court order to simply alter incorrect information at the [Family Responsibility Office] is a waste of time and money. That the legal profession supports this situation as it stands is truly shameful and indicates dishonesty.”²⁷

¹⁷ Thompson, Rollie D.A. and Lynn Reiersen. “A Practising Lawyer’s Field...” 532.

¹⁸ *Ibid.*

¹⁹ Trussler 1.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Thompson, Rollie D.A. and Lynn Reiersen. “A Practising Lawyer’s Field...” 533.

²³ Trussler 1.

²⁴ Langan 836.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid* 837.

A final category of unrepresented litigants is comprised of persons who have become participants in the current trend against the utilization of professional services in general. It was suggested at one conference on unrepresented litigants hosted in the State of Florida in 2000 that American people are moving away from their dependence on professional services, including legal services.²⁸ By extension, it was suggested that this trend has and will continue to affect the rate of unrepresented litigants in court. According to Trussler, this American phenomenon could be a precursor of what is to come in Canada but the current lack of empirical studies on the issue limits further speculation.²⁹

The effects of a growing number of unrepresented litigants in Canadian courtrooms have been felt by court administrators, the judiciary, counsel for opposing parties, and by unrepresented parties themselves. The impact of an unrepresented litigant in a court hearing is felt by all role-players and affects virtually every phase and facet of court procedure. The scope of effects was, perhaps, best summarized by Howard Rubin:

Any person has a right to represent himself or herself in a civil action. This basic right has created an ordeal in the courts arising from the statement, "I wish to represent myself." From this point on, the adversary system, upon which civil procedure rules are based is out of synchronization. The judge is faced with the task of balancing fundamental fairness and order in the proceedings. The pro se litigant must struggle with how to present his or her case. The opposing attorney must protect and advocate his or her client's interest, while meeting the legal obligation to bring the truth to the court's attention. Further, the party represented by counsel, having a right to demand vigorous representation, must cope with escalating legal costs because of numerous delays.³⁰

The participation of an unrepresented litigant in a court proceeding, it has been suggested, presents Family Court justices with four notable dilemmas or problems.³¹ First, many judges struggle to determine what standards of procedure and conduct ought to be applied to unrepresented litigants.³² While it is true that lawyers, having benefited from formal legal education, are to be expected to conform to a high standard of conduct, it is questionable as to whether unrepresented litigants, having not the benefit or experience of counsel, should be expected to conform to the same standard.³³ This determination, it has been suggested, is especially difficult in instances where one party is

²⁸ *Ibid* 838.

²⁹ *Ibid.*

³⁰ *Ibid* 839.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

represented by counsel and the other side is not. The dilemma faced by judges was well-articulated by Langan:

...If the judge chooses to relax the rules of the court for the unrepresented litigant, this might create the appearance of bias for the other party. Whether or not a judge will be lenient in applying the rules of civil procedure may depend on the reason why the person is not represented. If the person has simply chosen not to hire a lawyer, the judge is less likely to be lenient than if the person is unrepresented because of lack of resources. Judges are most likely to take this into account when deciding questions such as whether to grant the unrepresented party an adjournment.”³⁴

A second dilemma created for judges by unrepresented litigants concerns to what degree a judge ought to attempt to educate the unrepresented party on such issues as the rules of civil procedure, the rules of evidence, the court process, etc.³⁵ In many instances judges feel obligated to provide at least some information to unrepresented litigants as many litigants lack an understanding of the necessary rules and procedures. The problem, however, is that explaining legal rules and procedures to laypersons can require a significant amount of time and consequently prolongs court proceedings. According to Langan, the Judge is therefore required to balance the unrepresented party’s right to a fair trial with the represented party’s right not to have exorbitant legal fees.³⁶

Some judges have further suggested that a lack of legal representation may undermine the integrity of the justice system.³⁷ Lawyers are regarded as having a central role in the legal process as they serve as the official liaisons between judges and litigants to ensure the protection of the integrity of the court process.³⁸ Lawyers, for instance, are charged with the task of explaining the rules of evidence to clients, outlining the sequence of events in the court process, assessing whether a particular motion ought to be brought forward, explaining the importance of the oath or affirmation to tell the truth while on the witness stand, etc. Unrepresented parties do not have the benefit of a liaison to explain these and other issues and due to the fact that unrepresented litigants are not, by definition, officers of the court, judges may not rely on them in the way that they rely on lawyers to protect the integrity of the court and court processes.³⁹

Finally, a third problem created for judges by unrepresented litigants concerns the issues that are brought into the court room.⁴⁰ Litigants represented by legal counsel usually appear in front of a judge with well-defined, narrowed issues of a legal nature for the purpose of receiving a determination at law. This is not always the case, however,

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid* 840.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

with unrepresented litigants. Many judges complain that unrepresented litigants appear in family court with issues that extend well-beyond the legal domain. According to one judge cited by Langon:

So little of our work involves genuine legal issues to be truly adjudicated. At our level in family court we are a dumping ground for massive social and economic issues and for the acts of very dysfunctional families. I feel that I am more a social worker than a judge. As a result, many family law judges are overwhelmed.⁴¹

The problems created by unrepresented litigants also affect the opposing side and his or her counsel. The most obvious problem created for the opposing party and his or her lawyer is that court proceedings are often prolonged and costs are, in consequence, elevated. In most instances, unrepresented litigants are, as above suggested, uneducated in and unfamiliar with the rules of court and court procedures. In consequence, many judges spend a significant amount of time acquainting the lay litigant with these rules and procedures. Further, many unrepresented litigants delay the process because of their inability to complete required paperwork and file documents.

A second often-cited problem created by unrepresented litigants for opposing counsel relates to issues of conflict of interest. As discussed by Langon, unrepresented litigants often turn to counsel for the other side for free legal information and advice.⁴² In some situations, specific questions are brought forward but in other instances queries involve simple procedural issues. Lawyers often struggle with these questions from adverse parties due to the fact that they are prohibited under conflict of interest rules from providing legal advice to parties adverse to one another in particular dispute.⁴³ At the same time, though, the rules of conduct further require that lawyers treat adverse litigants in the same way that they would treat adverse parties.⁴⁴ Thus, many lawyers involved in proceedings with unrepresented litigants experience difficulty in achieving a proper balance between these two requirements.⁴⁵

Problems suffered by the individuals who appear at court without legal representation are numerous and not easily categorized. Review of the literature, however, does suggest that common complaints put forward by unrepresented litigants concern unfairness created by the fact that they do not understand legal rules and procedures, potential prejudicial effects created by their lack of knowledge of judicial remedies and prolonged proceedings because of their lack of knowledge. In the above-mentioned study conducted in Kingston, Ontario the most common problems reported by unrepresented litigants concerned: “difficulty understanding and filling out court forms,

⁴¹ *Ibid.*

⁴² *Ibid* 842.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

knowing and understanding court procedures, talking to and negotiating with judges and lawyers and knowing their legal rights.”⁴⁶ A recent study conducted by the American Bar Association reported that many unrepresented litigants were unaware of the fact that they were missing essential information about their case. The report stated that “research indicated that pro se litigants frequently fail to proceed with the benefit of important information about such critical matters as pre-trial relief, allocation of insurance and pension benefits and tax consequences.”⁴⁷

Canadian courts have long-recognized the complications created by unrepresented litigants and the common law has evolved, in recent years, to acknowledge the challenges presented by unrepresented litigants. Review of contemporary jurisprudence suggests that Courts are not only required to be aware of the problems associated with cases involving unrepresented litigants but are also under positive duties in such cases. In *Schubert v. Schubert*,⁴⁸ a case involving an appeal from a divorce decree, the Alberta Court of appeal set out three principles concerning how a court ought to treat unrepresented litigants. The principles concerned the issues of waiver, latitude and assistance.

On the issue of waiver, the Court in *Schubert* held that a court is entitled to order a hearing to proceed when an unrepresented party waives the right to legal counsel. In most cases the issue is whether the litigant has actually waived the right to legal counsel and whether the waiving of that right will result in undue prejudice. This principle was examined in the Nova Scotia case of *Murphy v. Gordon*⁴⁹ where MacDonnell J. stated:

When one party is represented by Counsel, and the other party is unrepresented, as was the situation in the case under consideration, it is incumbent upon the Court to make absolutely sure that the unrepresented party is not unduly prejudiced. This may require the Trial Judge to fully explain to the unrepresented party the difficulties of representing himself, and give him an opportunity to obtain Counsel, if he should so desire.⁵⁰

On the issue of latitude, the Court in *Schubert* held that it is reasonable for the Court to grant the unrepresented party some degree of latitude in the conduct of the case. Here, the court recognized that in cases involving unrepresented litigants it is often appropriate – if not simply necessary – to exceed the license customarily extended to legal counsel.⁵¹ A commonly cited example of this principle is the case of *Penman v. Rolfes*⁵², where an unrepresented mother involved in a custody and access dispute filed a

⁴⁶ *Ibid* 843.

⁴⁷ Trussler 6.

⁴⁸ *Schubert v. Schubert*, [1978] A.J. No. 59.

⁴⁹ *Gordon v. Murphy*, [1986] N.S.J. No. 467. [*Gordon*]

⁵⁰ *Ibid*.

⁵¹ Trussler 7.

⁵² *Penman v. Rolfes*, [1997] A.J. No. 1178.

lengthy notice of motion that sought forty four areas of relief. In that case, the court “took pains to ensure that the mother’s concerns were adequately addressed.”⁵³ Similarly, in the case of *Bruneau v. Bruneau*, Bielby J. held that the contents of documents prepared by unrepresented litigants should be afforded a “wide interpretation.”⁵⁴ In *Murphy v. Gordon* the Court further held that unrepresented litigants should benefit from a relaxation of the rules of evidence so that they may “give [their] story in full to the court.”⁵⁵ This was affirmed in *Schubert*.

The third and final duty discussed by the court in *Schubert* was that of assistance. The Court held that courts are obliged, in instances involving unrepresented litigants, to offer procedural explanations and assistance required to ensure a fair hearing. In instances where litigants appear unrepresented, the court is under a duty to undertake to provide procedural information and assistance within reason.⁵⁶ This duty was discussed in *Gordon*: “If the unrepresented party elects to proceed on his own, then the Trial Judge should briefly explain the Rules of evidence, and give the unrepresented party every opportunity to properly present his case, even though this may considerably slow down the work of the Court.”⁵⁷ The type and amount of assistance will vary by case. It was held by Tucker L.J. in the British case of *Russel v. Duke of Norfolk* and affirmed in *Gordon* that “the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.”⁵⁸

THE UNIQUE CHARACTER OF FAMILY LAW

The Canadian federation is regarded as employing a single legal system under which the various courts and tribunals exist and operate. Conceptually, it is generally accepted that Canadian law is divided, at first instance, into substantive and procedural law. Substantive law is then regarded as consisting of both public law and private or civil law. The public law umbrella is said to encompass criminal law, constitutional law and administrative law whereas the private or civil law category is said to include family law, contract law, tort law, property law and labour law. Despite the fact that all facets of the legal system operate using relatively similar rules and are subject to similar processes, it has recently been suggested that the family law domain is, in several ways, inherently unique from the other divisions of private law.

The Canadian legal system operates using the adversarial model of dispute resolution. Traced back historically to the medieval mode of trial by conduct,⁵⁹ the adversary system pits one party against another party or parties and relies on those parties

⁵³ Trussler 7.

⁵⁴ *Bruneau v. Bruneau*, [1993] A.J. No. 210, 1992 CarswellAlta 782 (Alta. Q.B.).

⁵⁵ *Gordon*.

⁵⁶ Trussler 6.

⁵⁷ *Gordon*.

⁵⁸ *Russel v. Duke of Norfolk*, [1949] 1 All E.R. 109 (Eng. C.A.).

⁵⁹ History of the Adversarial System. Homepage. Wikipedia. Accessed: 7/02/06. Available at URL: <http://en.wikipedia.org/wiki/Adversarial_system#History_of_the_adversarial_process>

to present evidence using which an impartial decision maker reaches a determination of the legal issues.⁶⁰ The decision maker often plays a passive role in the process and often lacks specific information about the case beyond that presented in court by the parties to the dispute. The adversarial system is often contrasted with the inquisitorial system employed in some European states in which the judge, or a group of judges, instead of the parties to the litigation, play(s) an active fact-finding role in investigating the case before the court.

The past decade has witnessed several calls for the utility associated with the adversarial system in Canadian law to be re-examined. While critics of the adversarial system have suggested that other models may be more efficient at resolving disputes involving virtually all types of legal matters, it seems that the family law realm has commanded more attention than any other. Stated simply, serious questions have arisen concerning the compatibility between the Canadian legal system's adversarial approach and the sensitive issues involved in family law litigation. The Law Reform Commission of Canada, in its 1976 *Report on Family Law*, for instance, stated in a very blunt manner that "the adversarial approach and the related notion of fault are inappropriate in the context of marriage dissolution."⁶¹ The report described the result of subjecting family law issues to the adversarial model as intensifying and exacerbating the pain and suffering and impeding the likelihood of an amicable settlement. As a result, the Commission depicted the adversary system as "one of Canada's great self-inflicted wounds" and as an approach "inherently inconsistent with the harmonious resolution of family disputes."⁶² In the Commission's view, it is an approach which should not be available "as an extension to the destructive capacity of spouses who disagree over their personal relationship."⁶³ Kathy Carmichael has suggested that there is "something almost oxymoronic" about the very structure of family law in Canada, stating that:

An adversarial process leads to bitterness and hostility which undermines the cooperation necessary for continued parenting. Research has shown that those who suffer most from an adversarial divorce are the children. The chief precursors to family dispute resolution alternatives are among others the exorbitant costs of a divorce, the emotional strain for adults and children and the long delays in the courtroom that keep people in limbo while litigating their family law matters.⁶⁴

Criticisms concerning the incompatibility of the adversarial model of dispute resolution and family law litigation in Canada and elsewhere have generally been well-

⁶⁰ Carmichael, Kathy. *New Directions: Divorce and Administrative Law*. Homepage. Canadian Forum on Civil Justice. Accessed: 6/09/06. Available at URL: <<http://www.cfcj-fcjc.org/full-text/divorce.htm>>

⁶¹ Canada. Law Reform Commission of Canada. *Report on Family Law*. Ottawa: Reform Commission of Canada, 1976.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Carmichael 1.

received. The result, in Nova Scotia, and in several other Canadian and American jurisdictions, has been a move towards a form of “collaborative” family law. Following models first introduced in California and Minnesota, collaborative law differs from the traditional practice of family law in several important respects.⁶⁵ Collaborative family law, as it is currently practiced and promoted in Nova Scotia courts, discourages adversarial adjudication wherever possible and promotes alternative dispute resolution techniques such as conciliation, parental negotiation, mediation and settlement pre-trials. In the context of the Nova Scotia Supreme Court, Family Division, for instance, much emphasis is now afforded to conciliation, mediation and parenting education programs. As stated by the Nova Scotia Court Structure Task Force in 1991:

... the philosophy [is] that family law problems should be dealt with in an informal environment less adversarial and confrontational than in other courts. The intention remains to develop support services for the Court that would enable family problems to be dealt with in an [sic] holistic manner.⁶⁶

The promotion of collaborative law in Nova Scotia has resulted in family law lawyers employing different tactics and techniques in attempting to resolve family law disputes. As suggested by Fodden, an era which was once characterized by ‘bomber-type’ lawyers who regarded their role as to “fight out” legal issues has been replaced by a cohort of practitioners who encourage settlement, communication and collegiality.⁶⁷ Divorce lawyers, for the most part, no longer perceive their role as “running a divorce mill” where the sole grounds for relief are adultery or perjury. Indeed, as stated eloquently by Fodden, “family law practice has come of age.”⁶⁸

The practice of family law is further unique, some have suggested, because of the types of legal issues involved. Family law issues are often characterized as being emotion-laden, prolonged in duration and tend to involve moderately complex issues. The emotional element especially has been cited as one variable which results in the practice of family law being quite unique from the other categories of Canadian law. As stated in one Nova Scotia Government report, “Family law issues are complex and may entail, on an everyday basis, more emotion, engagements and crisis whether material, personal or social than criminal law matters.”⁶⁹

⁶⁵ Fodden, Simon R. Family Law. Toronto: Irwin Law, 1999. (QL).

⁶⁶ Nova Scotia. Nova Scotia Court Structure Task Force. Report of the Nova Scotia Court Structure Task Force. Halifax: Nova Scotia Court Structure Task Force, March 1991. [Task Force]

⁶⁷ Fodden (QL).

⁶⁸ *Ibid.*

⁶⁹ Nova Scotia. Department of Justice. The Summary Advice Counsel Project: A Proposal for Assessing Implementation and Future Directions in Two Nova Scotia Urban Areas (Draft Copy). Nova Scotia: Submitted to Court Services, Department of Justice, 2006. 1.

The emphasis afforded to the remedial and therapeutic role of family courts is also regarded as a characteristic that separates family law in Nova Scotia from other sub-disciplines of law. According to the Nova Scotia Supreme Court Structure Task Force in 1991, by their very nature, the family courts have a twofold function – judicial and therapeutic. According to the task force it is this feature “... that distinguishes family courts from the conventional function of other courts.”⁷⁰

Finally, family law in Nova Scotia, and in other jurisdictions, has been described by some academics as different from other types of law in that it is uniquely compatible with the practice of “unbundling.” According to Professor Thompson, unbundling, referred to also as ‘discrete task representation’ or ‘limited services representation’ is where “a client hires an attorney to perform only specified tasks agreed upon beforehand by both attorney and client.”⁷¹ According to Thompson, in theory at least, family law procedures and processes are ideally suited to the unbundling theory, although he suggests that there are often fears expressed concerning issues of liability and ethics.⁷² With the rate of unrepresented litigants in Canadian courts increasing, it seems as though the unbundling of legal services will become more widespread in the years to come. Despite Thompson’s reservations, the position of most Canadian courts seems to be that it is almost always useful for an unrepresented litigant to have obtained some legal assistance whether in preparation of documents or in the form of advice on how to make a court application.

THE NATURE OF SUMMARY ADVICE COUNSEL AND SERVICE DELIVERY MODELS

With the quantifiable increase in unrepresented litigants appearing before family court justices and judges throughout Canada, many jurisdictions have had no choice but to examine ways through which the problem may be addressed. Among other options, governments and family court officials have considered the introduction and expansion of self-help centers for unrepresented litigants, amendments to legal aid financial eligibility requirements, dial-a-law telephone legal advice services as well as the provision and publication of legal information on governmental and court websites. One further option which has been afforded increased emphasis in recent years has been the duty counsel model through which summary advice is provided to unrepresented litigants.

Due to the fact that duty counsel systems vary across the country in structure and in services offered, it is not possible to provide a simple or universal definition of the term. Despite this fact, however, most duty counsel systems exhibit commonalities in purpose and in the basic level of services provided. In general, duty counsel systems, like the one currently employed in the Nova Scotia Supreme Court, Family Division, are developed and implemented for the purpose of providing free, initial legal advice to litigants who would otherwise attend court without advice and representation. In some

⁷⁰ Task Force s. 8.12.

⁷¹ Thompson, “No Lawyer...” 4.

⁷² *Ibid.*

jurisdictions, like in Nova Scotia, the service is available to all family court litigants whereas in other jurisdictions potential users are first subjected to a financial means test. Duty counsel offices are often located within or in close proximity to courthouses. Litigants without representation are able to book appointments (and in some instances simply present in person) to receive advice about legal issues pertaining to their case before the court, court procedures and processes, assistance with the completion of obligatory court documents as well as information about referrals to other legal and non-legal persons and agencies.

In many regards, the purpose of the duty counsel system may be regarded as being analogous to the ‘triage’ system employed in emergency medicine in North America.⁷³ In medicine, triage refers to “the process of sorting people based on their need for immediate medical treatment as compared to their chance of benefiting from such care.”⁷⁴ Under the triage system, nurses and other healthcare professions sort patients that present at emergency centers based on the type and seriousness of their complaint, the probability of survival and on the establishment of priority for treatment to ensure that the care provided is of the greatest benefit to the largest number of patients.⁷⁵ As suggested by Gordon MacDonald and by others, the duty counsel system in purpose and effect may be described as a “quasi system of legal triage.”⁷⁶ According to this analogy, the duty counsel’s role is similar to that of an emergency room nurse. In a fashion similar to that of the emergency room nurse, the duty counsel is charged with the responsibility of assessing each client’s situation based on his or her own factual circumstances so that he or she may objectively assess what he or she needs in terms of assistance. Once the needs assessment is completed the client is classified based on his or her individual needs. According to MacDonald, duty counsels tend to classify clients into one of three categories. In one category are placed clients who require some form of further assistance such as counseling, mediation, or private counsel.⁷⁷ The second category of clients consists of persons who either require – or are entitled only to – limited summary advice from the duty counsel or an adjournment of proceedings.⁷⁸ In the third category are placed those litigants who require the maximum level of services that may be provided by the duty counsel and the duty counsel system.⁷⁹ In the words of MacDonald:

From the duty counsel and advice lawyer’s perspective, this analogy still holds. As is the case with hospital emergency room teams, duty counsel often work in circumstances in which great numbers of people require (and demand) service in limited time frames. In the medical field, it is unusual to find a heart or brain specialist doing general

⁷³ MacDonald, Gord and Helena Birt. “Duty Counsel and the Self-Represented Litigant.” Canadian Family Law Quarterly. 19.3 (2001). (QL). 2.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

emergency room work. Likewise, the best family law specialist in town may not be the best duty counsel. Duty counsel must be able to think quickly and have a broad range of knowledge to call upon on short notice. The main strength of a good duty counsel lawyer is the ability to assess situations quickly and to make the best possible decision.⁸⁰

While it is true that duty counsel systems vary in form and services provided, the majority of duty counsel systems currently employed in North America are of one of two varieties – *per diem* (roster) or staff. The defining characteristic that differentiates the two models is that the staff model provides summary advice to unrepresented litigants using government-paid (often legal aid) lawyers whereas the *per diem* model contracts the provision of the service out to members of the private bar. Both systems have been identified as possessing their own strengths and weaknesses in their approach to the delivery of legal information and advice. The most often cited advantage of the *per diem* or roster model of service delivery concerns its inherent flexibility.⁸¹ As submitted by MacDonald and echoed by other academics and practitioners, *per diem* duty counsel systems are attractive in that they tend to be responsive to the needs and demands of the court system.⁸² Due to the fact that there are no full-time government-paid lawyers, the number of lawyers assigned can be easily and quickly altered based on the demand for the service at any given time.⁸³ The ability to alter supply in reaction to demand, it has been suggested, directly promotes cost efficiency unlike in the staff model where the cost is constant regardless of the actual demand for the service. A further advantage cited by proponents of the *per diem* model is that it takes advantage of the skills and experiences of a large cohort of lawyers with varying skills and experiences.⁸⁴ Critics of the *per diem* model, on the other hand, submit that management of the system's infrastructure and administrative intervention is more difficult than in staff model systems by virtue of the large number of lawyers involved in the system.⁸⁵ Critics further suggest that *per diem* models often experience problems related to a lack of continuation of services. A final weakness often cited concerning the *per diem* model is that such systems are vulnerable to variations in the ability and commitment of the private bar to deliver a consistent and high quality service.⁸⁶

Proponents of the staff model of service delivery often point to the fact that staff lawyers promote and ensure continuity and equality of legal services. Under the staff model, each duty counsel office is usually staffed with one (or in some jurisdictions, a number of) lawyers who deal with all aspects of the summary advice provided to all litigants. According to MacDonald, this is advantageous insofar as it promotes efficiency because a single litigant is usually not required to recite the same story to several

⁸⁰ *Ibid.*

⁸¹ *Ibid* 2.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

lawyers.⁸⁷ In addition, it has been suggested that continuity helps to ensure that the legal advice provided is both of high and similar quality amongst litigants.⁸⁸ Finally, proponents of the staff system point to the model's ability to demonstrate "some influence on the court system itself."⁸⁹ Under this heading, proponents submit that the constant presence of staff lawyers contributes to the functionality of the court's daily routine. In the words of MacDonald: "... the noticeable presence of staff duty counsel is a statement of accountability and commitment toward improvement of service for litigants and the system of justice in family law."⁹⁰

The primary criticism of the staff duty counsel model concerns the issue of conflicts of interest. In many jurisdictions, including Nova Scotia, duty counsel offices employ only one lawyer per location which necessarily limits the clientele which may receive advice. This characteristic of the staff duty counsel model is especially problematic in situations where a legal dispute involves two unrepresented litigants, neither of whom have access to legal aid or private counsel. In those situations, the duty counsel, by seeing one of the two parties, is necessarily precluded from seeing the other party to the dispute under conflict of interest and ethical guidelines. Stated simply, the duty counsel lawyer may not represent parties that are adverse to one another on the same matter. This problem was well summarized by MacDonald who stated:

There is no simple answer for conflicts in a staff model. How can two staff from the same office represent both sides of a case? Unless the concept of conflict is re-defined or there is a level of acceptance for professional distance between two staff, this model is limited in the number of litigants it can serve."⁹¹

The problem, it has been suggested by some academics and practitioners, exists even in situations where a duty counsel office employs more than one lawyer as it is generally accepted that a single law firm (or in this instance, a legal aid agency) is not permitted to represent adverse sides in a dispute. Many legal aid commissions across Canada have resolved this issue by providing access to "conflict clients" to certificates for private legal advice but the problem has yet to be addressed by most duty counsel systems. There has been some debate in the literature concerning the issue of whether a conflict arises only when the summary advice lawyer provides 'specific' legal advice or whether it also accompanies the provision of 'general' legal advice. This debate was articulately summarized by Horsby, Gray and Greacen:

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

When a lawyer provides some measure of assistance to a self-represented litigant, the next question is whether he or she does so within an attorney-client relationship. If the lawyer provides nothing more than general information, such as that which may be looked up in a self-help book, it may be reasonable for the litigant to conclude there is an attorney-client relationship. On the other hand, fact-specific advice, form preparation, and advocacy all suggest the lawyer is assuming representation within the scope of that relationship. It is important for lawyers to have a common understanding about the status of the representation with the self-represented litigants and not suggest his or her services are something they are not.⁹²

The specific role and function of a duty counsel lawyer in Canada is dependent on the model of service delivery employed in a given jurisdiction and the level of service provided. Generally speaking, Canadian duty counsel lawyers serve three primary functions: to provide legal advice and legal information, to represent clients at court and to serve systemic roles. It is important to note, however, that not all duty counsel lawyers serve each of these three functions. In Nova Scotia, for instance, family court duty counsels do not, except in very rare circumstances, appear at court proceedings.

Concerning legal information and legal advice, family law duty counsel often provide clients with advice concerning court procedures and processes, case management, the law, the need for counsel and the existence of external governmental and community support agencies. Duty counsel often explain to clients the importance of obtaining full representation if that is possible and often refer clients to the legal aid system or to private lawyers.⁹³ Many duty counsel assist clients in completing paperwork and with the filing of court documents and, in some jurisdictions, duty counsel are permitted to draft and prepare documents such as guideline support applications and answers, support variation motions, etc.⁹⁴

In some jurisdictions, such as the Superior Court of Justice (Family Court) in Ontario, duty counsels are scheduled to appear with clients at court proceedings. In jurisdictions where duty counsel attend court hearings they often attend with litigants for the purpose of requesting adjournments, they argue motions, they attend temporary care and custody hearings, default, garnishment and “show cause” hearings and assist in summary hearings involving matters related to custody, access and support.⁹⁵ Generally speaking, duty counsel that are permitted to appear at court proceedings do so only when the legal issues involved are not overly complex and time-consuming.⁹⁶

⁹² Hornsby, William, Cynthia Gray, and John Greacen. “Self-Represented Litigants and the Ethics of Lawyers, Judges and Court Staff.” The Future of Self-Representation: Report From the March 2005 Summit. Ed. Paula L. Hannaford-Agor. Williamsburg: National Center for State Courts, 2005. 71.

⁹³ MacDonald 3.

⁹⁴ *Ibid.*

⁹⁵ *Ibid* 4.

⁹⁶ *Ibid.*

Under the heading of “systemic functions” MacDonald has suggested duty counsel, in performing client-related functions, affect the performance of the aggregate judicial system.⁹⁷ Specifically, he suggests that duty counsel do so in four ways: by enhancing access to justice, by acting as social/behavioral filters, by promoting efficiency and by performing the role of a communication nexus.⁹⁸ On the issue of access to justice, it has been suggested that duty counsel systems, by providing summary legal advice about the issues arising in disputes and exploring with clients potential alternatives (e.g. mediation, negotiation or litigation), represents an effective and non-threatening means for unrepresented litigants to access justice.⁹⁹ On the social and behavior filter role, MacDonald points out that self-represented litigants often attend court with “unrealistic expectations” concerning what the court can do and concerning what outcomes are reasonable on the facts of the case.¹⁰⁰ Duty counsel, suggests MacDonald, are helpful in that they provide unrepresented litigants with “a realistic assessment of their propose course of action or argument. If unsuccessful in dissuading a party from pursuing a goal or process that is doomed from the outset, duty counsel and advice lawyers can prepare the person to face a result he or she might not have anticipated or have been willing to accept.”¹⁰¹ On the issue of efficiency, some academics have suggested that the duty counsel system is significant in that it moves matters along in court and reduces the number of adjournments which consequently often reduces the overall number of litigants in family court and the amount of time required per case.¹⁰² Finally, duty counsels serve as an important liaison between the litigant and court officials. In the words of MacDonald:

Duty counsel and advice lawyers also perform a role as communication switchboard relaying information between the court administration, the local legal aid office, and the private bar. This is particularly noticeable in areas where there are full-time duty counsel or where *per diem* duty counsel are available each day.¹⁰³

A significant challenge faced by many duty counsel is the lack of information held by other court players about the duty counsel system and its role. Studies conducted in Ontario and in other jurisdictions report that most judges, for instance, receive little if any formal education or literature about the existence of the duty counsel system. Instead, what education and knowledge they do receive tends to be on an “ad hoc” basis from the duty counsel lawyer himself or herself or from litigants who reference the service in the court room.¹⁰⁴ One of the most common misconceptions held by judges

⁹⁷ *Ibid* 5.

⁹⁸ *Ibid*.

⁹⁹ *Ibid*.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*.

¹⁰² *Ibid*.

¹⁰³ *Ibid* 6.

¹⁰⁴ *Ibid* 7.

often concerns the scope of the duty counsel role.¹⁰⁵ Some judges, it seems, are of the erroneous opinion that duty counsel are able to assist all litigants with all types of family law legal issues. In reality, however, some issues are either too complex to be handled by the summary advice lawyer and other matters may fall outside of the services offered by legal aid. Further, many judges are unaware of the practical effect of the staff model's conflict of interest problem.¹⁰⁶ In fact, some judges despite knowing that one party to the dispute already sought advice from the duty counsel nonetheless refer the adverse party to the duty counsel as well. Finally, in jurisdictions that employ financial means tests to determine litigant eligibility, many judges are unfamiliar with the requirements and erroneously heighten the expectations of clients who are ineligible for summary advice assistance.¹⁰⁷

Members of the private bar also commonly hold erroneous views concerning the role of summary advice lawyers. As discussed by MacDonald, this may be attributed to a traditional view which saw the role of duty counsel as simply assisting litigants to obtain legal representation (whether it be private or public) and to assist them in obtaining an adjournment to facilitate that.¹⁰⁸ According to MacDonald, the traditional view held that "acting as a duty counsel lawyer meant that a lawyer would not perform services that a 'real lawyer' would."¹⁰⁹ The perpetuation of this view by some members of the private bar, it may be suggested, has created a situation whereby the duty counsel system and duty counsel lawyers are afforded less legitimacy than they are perhaps entitled.

Finally, unrepresented litigants themselves often lack sufficient knowledge about the duty counsel system. In many instances, litigants proceeding through the family court system are unaware of the existence of the service until it is expressly brought to their attention by a court officer. Once made aware of the service, many clients still do not fully comprehend the scope of the summary advice lawyer's role.¹¹⁰ Some litigants are of the erroneous assumption that once engaged, the duty counsel lawyer will "take over" the file and follow it through the various phases of the court process.¹¹¹ Further, some litigants in jurisdictions that provide advice but not representation nonetheless expect that the lawyer will attend at court hearings. At the other end of the spectrum, some clients simply regard the duty counsel "as another hurdle to leap over in the course of getting before a judge so that they can tell the judge 'what really happened.'"¹¹² The bottom line is that the vast majority of litigants do not understand the limitations placed upon the role of the duty counsel without first being properly educated and informed.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

THE SAC INITIATIVE IN NOVA SCOTIA

The timing and rationale for the SAC initiatives have been noted above. In metropolitan Halifax, the first site, court administrators and senior justices met with officials from Court Services and NSLA – some respondents referred to “a summit meeting” – to discuss problems of severe backlogs and inefficient judicial “down-time” associated with the growing phenomenon of unrepresented litigants. Related issues such as the timeliness of legal counsel and the frustration at intake and conciliation in staff having to deal with client demand for legal advice not just legal knowledge (the latter being all that they were mandated to provide) were also considered serious, increasing problems. A few of the influentials reported that their advancement of the SAC initiative was related also to their desire to realize the different kind of family court envisioned in recent reforms. In that respect they saw SAC as both helping to focus clients and separate the legally salient from the other issues family court clients frequently become wrapped up in, and empowering the clients to better manage their case (perhaps along with engaging “unbundled” legal services at strategic points in the court processing of their case). The major objectives for the two major players, Court Services and NSLA, appeared to be (1) to facilitate the client’s being “better prepared when they come to court”; (2) to provide better access to legal counsel for all persons in family court, and (3) to exercise a kind of “tough love”, encouraging clients to focus on the legal issues, avoiding unproductive and inappropriate emotionalism, and closing early or redirecting unwarranted cases. There were many other objectives, according to documents and the interviews conducted for this assessment, which could perhaps be subsumed under the objective that the SAC initiative should contribute to a more effective, efficient and equitable family court system.

The primary goal of the SAC initiative, according to government research reports (e.g., Policy, Planning and Research, June 2005), was to improve the Justice response to the self-represented litigants by assisting these latter persons regardless of their income and eligibility for legal aid; only persons who already had obtained the services of a lawyer were considered to be ineligible for the SAC services. The SAC lawyer was to provide free summary advice counsel, whether on the phone or in person, and, where appropriate, to refer the clients to other sources – Legal Aid or private counsel - for more specific and involved legal advice. The SAC lawyer’s client contacts were expected to be of short duration (roughly half an hour or less) and not to entail any courtroom representation. From the beginning it was expected that SAC services would be on a ‘first past the post’ basis, that is, provided only to the one party in a case who had first contacted SAC; the other party would be required to seek legal advice either via legal aid or private counsel. The specific ways in which the SAC service was to assist the client included “helping the client to understand legal terminology, educating clients about how to start an application or respond to one, explaining the potential implications of a court order, educating clients about court procedures, assisting clients with legal documentation and assisting clients with other aspects of their issue / case” (ibid, 2005). Of course there were many anticipated benefits for other court role players (conciliators, judges) and for the court process itself – these will be discussed below.

The two SAC lawyers were full-time NSLA employees prior to their SAC appointment. The Sydney SAC is a veteran legal aid staffer, well experienced in family court matters, while the Halifax SAC is a younger man who, previous to working with NSLA, had been a conciliator at the HRM family court. As NSLA professionals (the Sydney SAC's secondment to Court Services ended in April 2006 and both SAC lawyers now have the same formal employment status) they exercise considerable autonomy in their work. While each is located in a separate office in the basement of their respective courthouse, they operate in different milieus (e.g., in Sydney conciliators meet separately with each party whereas in Halifax most conciliation meetings are joint meetings) and, as will be seen below, have different workloads (metropolitan Halifax has almost four times the population of CBRM). The ambience of the court systems and networking of the role players is somewhat different by site. For example, unlike the Halifax SAC, the Sydney SAC lawyer's scheduling is assisted by the court administration and he often discusses cases with clients by telephone. At the same time the commonalities in the two SAC role and court system involvement are profound. Chart 1 for example which locates the SAC role in the court process applies equally to Sydney as to Halifax. Referrals come largely to SAC from intake while case flows between conciliation and SAC are approximately equal. The case flows between SAC and the judicial level are much less frequent.

SACS' CLIENT CONTACT ACTIVITY

Tables 5 and 6 describe the features of the SAC client contact activity for each site over two fiscal years, 2004-2005 and 2005-2006. Table 5 deals with Sydney and table 6 with Halifax. In the analyses below, the researchers were occasionally limited in making comparisons over time and between agencies since there was no direct access to these data files and thus researchers dealt with what was made available to them.

The Sydney client contacts increased considerably in 2005-2006, going from 368 to 615. Available data do not identify the key areas where the numbers increased though the data do suggest that both telephone contacts and scheduled visits (i.e. appointments) increased while walk-ins diminished, testimony perhaps to the increased institutionalization of the SAC project. In 2004-2005, 6% of the 368 client contacts accounted for 47 or 13% of the contacts. Roughly 8% of the 615 contacts in 2005-2006 were repeat users within that year and they accounted for roughly the same percentage of contacts (13%) as did their counterparts in 2004-2005. It can be seen from table 5 that while the numbers increased there was little change between the two periods, in terms of percentages for gender and age of clients, income level, eligibility for legal aid as reported by the SAC lawyer, referral sources to SAC, and family court issues dealt with. The Sydney SAC dealt with more 'new order' situations in fiscal 2005-2006, and while the bulk of the cases handled continued to concern custody / access, and child support, spousal support and matrimonial property division cases increased noticeably. The clients in both years typically had low incomes (nearly two-thirds being eligible for legal aid

according to SAC) and were in their late thirties. Both sexes were clients but females more so (58%). About half the clients had two or more children. Generally, the contact between SAC and client took less than thirty minutes (for between 57% and 67% of the contacts) and in only 3% of the cases did it exceed one hour. The major referral source for SAC was court staff (intake and conciliators) which accounted for three-quarters of all referrals to SAC. The judiciary or courtroom referrals contributed about 5% while sources identified as “the community” accounted for another 5%; a full fifteen or so percent of all referrals came from “other” sources, including Nova Scotia Legal Aid. Specific referrals were made by the Sydney SAC in 37% of the contacts and – underlining the system character of SAC as part of court processing - these referrals were made back to the court process in about half the cases while the remaining referrals were about evenly split among NSLA, private counsel and other organizations such as Children’s Aid and Community Services. The available data for 2005-2006 do not disaggregate the referrals made by the SAC lawyer but it is stated elsewhere that the largest recipient of the 500 plus SAC referrals was conciliation and intake while referrals to private counsel well exceeded the 12% of the referrals to NSLA..

The Halifax data on client contacts indicates about a 15% decline from 2004-2005 to 2005-2006 in face to face contacts and also an increase in scheduled versus walk-in contacts (82% to 18%). The differences by fiscal year in terms of most contact features and the characteristics of the clients were modest. Females accounted for between 57% and 60% of the client contacts, the median age was about 41 years old, and the eligibility of the clients for legal aid remained about 30%. As for contact features, the dominant pertinent legislation entailed remained the Maintenance and Custody and Divorce Acts, and the percentage seeing SAC who were seeking a new order as opposed to a variance was basically identical in each period (47% to 53%). The more notable modest changes were in terms of income levels (in 2005-2006 fewer clients reported annual incomes of less than \$20,000), and client role (a higher percentage of applicants in 2005-2006). There did appear to be a significant change in sources of referral to SAC, namely an increase in referrals from NSLA (coded as ‘Other’); intake and conciliation however remained the two major referrals sources. In terms of referrals made by SAC, those to conciliation and intake increased substantially from 9% of the total in 2004-2005 to 31% in 2005-2006. Both these changes – more referrals from NSLA and more referrals to conciliation and intake – suggest deepening institutionalization of the SAC program. Referrals to private counsel, by protocol, were never made to specific lawyers but rather to the Bar and/or to the Yellow Pages; such referrals declined slightly in 2005-2006 but still occurred in about a quarter of the client contacts.

Comparisons of Sydney and Halifax client contacts indicate a clear difference in contact mode; SAC in Sydney used both telephone and face-to-face modes for discussion of cases while in Halifax telephone contacts basically focused on scheduling meetings or referrals. At both sites client contacts via ‘walk-ins’ declined, testimony perhaps to the greater awareness and routinization of the SAC service. The two area contact profiles were quite similar in terms of percentage female, and number of children among the clients. They differed significantly in terms of average age as the Halifax clients were typically older (i.e., 42 years of age to Sydney’s 38), in annual income level (almost two

thirds of the Sydney clients had an income of less \$20,000 where only about a quarter of the Halifax clients were in that income category) and in eligibility for legal aid assistance (approximately 75% eligibility in Sydney versus 30% in Halifax). There were differences too with respect to referral sources and referrals made. While in both sites the major referral source was intake/conciliation, the contribution by courtroom and community/other referral sources differed; however the data would have to be disaggregated more to clarify these patterns, especially to sort out referrals from Legal Aid as opposed to other non-court-based referrals. As for referrals made by SAC lawyers, the number one referral source – intake and conciliation – was also the number one recipient of SAC referrals. Overall, while significant differences were found in some respects between sites, there was clear evidence in both for the institutionalization of the service, for its incorporation in the court process system (receiving and sending referrals to intake/conciliation), and for congruence to intended SAC objectives (reaching a large pool of clients and providing them with limited general legal advice).

SACS' PENETRATION LEVEL

The key objective of the SAC initiative has been to impact on the problem or challenge of the unrepresented litigant in family courts. An important question then is what is the penetration level of the program – at the simplest level, how many of the unrepresented ‘pool’ does it reach? Clearly the SAC lawyers have been busy. In Halifax there have been, on average, roughly 19 face-to-face contacts per working week in addition to the equivalence of several hours a day devoted to telephone communications (Policy, Planning and Research, December 2005); in addition there have meetings with FLIC and preparation of hand-out or presentation materials. On average, per week, several of the face-to-face sessions have been emergencies as defined by court administration officials (e.g., the duty conciliator) or have been responses for timely legal advice to clients as requested by conciliation or the “courtroom”. The Halifax caseload has been substantially greater than that of Sydney, understandably since, as noted above, the metro population is almost four times the Cape Breton population served by the SAC lawyer in Sydney. The Sydney SAC lawyer has had a lower caseload but, assuming that telephone contacts have been advice sessions, the differential (12 to 19 substantial contacts per week) is much less than the population differential, reflecting perhaps demand factors associated with the client characteristics, namely less income, younger adults, more geographically dispersed clientele in the Sydney court). The SAC lawyer in Sydney until April 2006 had been seconded from NSLA to Court Administration and, accordingly, could be expected to have been even more involved in the court processing system (e.g., intake/conciliation, FLIC) than his Halifax counterpart.

While there is little doubt that the SAC lawyers have been busy and have dealt with many family court parties who otherwise would have been unrepresented or at least

less timely represented, it has been difficult to develop a definitive penetration rate, Unfortunately the Civil Index 2, the main court administration data management system, does not refer to the SAC contacts. It is also complex to determine how many of the SAC contacts represented a net gain in the sense that they were not persons who otherwise would have obtained legal advice through NSLA or private counsel. It is not unusual for such service programs to be proportionately utilized more by the more active and less disadvantaged; indeed such a pattern of use is referred to as “Director’s Law” in social policy circles. The interviews with clients discussed below will shed some light on this dimension of penetration, especially whether the clients would have had recourse to other legal advice were the SAC service not available.

Policy, Planning and Research, Nova Scotia Department of Justice, has carried out some interesting research on penetration. One brief study involved persons scheduled to see a conciliator at the Halifax court being asked to complete a questionnaire about services accessed to that date (Court Services, April, 2006). This was done for the month of March 2006. It was reasoned that having a scheduled conciliation appointment meant that the person would have been screened for having an appropriate case and would have had an opportunity to access court-based services including the SAC service; accordingly, the response could yield information on the penetration of the SAC service. The research resulted in a rather disappointing 21% completion rate; that is, some 79 of the approximately 384 persons with scheduled conciliation meetings for that month filled out the questionnaire. It is not clear how representative the sample is of the larger pool of conciliation clients. In any event, 84% of the sample reported that they were without legal representation at that time. Thirteen of the 78 providing usable responses reported that they had used the SAC service. Assuming that the SAC users were those without legal representation at the time of their scheduled conciliation session – a reasonable assumption – the penetration rate would be 13 of 64 or roughly 20%. Since conciliators, as noted above, have been a significant source for SAC referrals, it could be expected that more SAC referrals would have been made at the conciliation stage so the figure of 20% would clearly underestimate the penetration level and indeed it might well be after conciliation more in the vicinity of 30%. While the issue of determining penetration levels remains problematic, this limited research carried out by Policy, Planning and Research clearly found that the users of the SAC, among the sample completing the questionnaire, were very positive about it providing them better understanding of the issues in their cases and meeting their needs; not a single SAC user reported being dissatisfied with the service or see it as falling short in meeting his or her needs.

In another research effort, Policy, Planning and Research staff approached the penetration issue more deductively, comparing, at the Sydney site, the expected conciliation load with the actual number of consultation held by the SAC lawyer, and concluding, as in the above research, that penetration was between 20% and 40%. If the percentage has indeed been close to 40%, then that would be impressive penetration since, it must be recalled, the SAC protocol limits the service to only one party in a case; given this ‘first pass the post’ policy and given that persons in cases involving Children Aid and other child protection agencies would always have their legal representation

through NSLA, the deduction suggests reasonably high penetration by SAC with respect to the unrepresented or self-represented pool of persons.

More recently, at the request of the researchers Policy, Planning and Research carried out an empirical examination of penetration at the Sydney site. Because SAC clients' names were available in Sydney – they were not available in Halifax – it was possible to link up the Civil Index and the SAC client contact list there. Cases recorded on application and intake forms (pre-conciliation) for the months of September 2004 and September 2005 were examined. Then the Sydney SAC contact lists were combed for evidence of SAC use by either party while the Civil Index was further checked for evidence of legal representation for either party. The results are presented in table 4B. The penetration rate was 25% in 2004 and it increased noticeably to 32% in 2005. Indeed, if cases where both parties indicated on the Civil Index to have legal representation were deleted from the pool, then the penetration rate on a case basis, would probably increase substantially (assuming that in a high percentage of such cases the parties had such representation basically from the beginning of the court processing). This modest project then is congruent with the evidence above and overall it can be reasonably hypothesized that the penetration rate in both sites would be at least about 35%.

SAC AND CLIENTS' EVENTS AND DOCUMENTATION

A potential impact area for the SAC initiative concerns the activities of clients with respect to court processing. It has usually been advanced that SAC consultation would give direction, prioritization and focus to the applicant's (or respondent's) actions in family court. Such a presumption could be interpreted as suggesting that SAC clients would be less likely than their counterparts – everything else being equal – to have fewer activities. The researchers in collaboration with Policy, Planning and Research specialist Rob Roe explored the possibilities. The latter developed a measure of total activities measurable through the Civil Index data system. The measure took into account the number of events (there are 160 events codes on the Civil Index) and the number of filed documents associated with each case for 120 cases in the Sydney family court. The cases were selected from the period April to September 2004 (subsequent to the initiation of SAC in Sydney) and were followed through on the Civil Index for the period up to September 2005 (by which time one could reasonably presume that the case would be closed). The Sydney site was chosen because SAC client names were only readily available at that site. The 120 cases were selected to create a sample of 40 cases in each of three mutually exclusive groupings, namely group one where one of the parties had a SAC consultation, group two where neither of the parties either discussed the case with SAC or had other legal representation, and group three where both parties were represented by legal counsel. The results are depicted in table 7. They indicate that the total activity score was much greater (more than double, 1512 to 656) for those who met with SAC than for those who did not and were also unrepresented. The difference is

profound also with respect to the subcategories of filed documents (606 to 377) and events (906 to 656). Indeed, the table shows that the SAC clients' total score was significantly higher than that of the 40 cases where both parties had legal representation (1512 to 1388), though the latter grouping had more filed documents (883 to 606).

One could consider the quantity of activities (events and documents) associated with cases from two perspectives, namely (1) SAC as separating the wheat from the chaff, focusing the client and reducing court load, or (2) SAC as empowering clients to do all that is appropriate. The above evidence points to the second perspective as the more empirically likely result. While both perspectives have occasionally been advanced in discussion by authorities concerning the benefits of SAC, many observers / stakeholders both inside and outside the court system would undoubtedly delight in the results found, emphasizing that SAC serves the clients not just the court system. Of course, one has to be cautious since the sample was small, not representative in a rigorous fashion, with no controls for case type, and limited to one time period and one site. Still the result is very interesting. One senior knowledgeable court official in Sydney, upon reviewing the results, commented that she was not surprised that SAC clients had more activities than the group two parties since unrepresented clients miss a lot and are often off-base and over-the-hill in others. In her view the major benefit of SAC for the court system is not any promise of reduced workload but rather that court staff is able to send clients to SAC for screening and direction on legal issues, a tremendous relief for intake / conciliation staff who are neither trained nor mandated to do so.

PRE- AND POST-SAC IMPLEMENTATION USE OF LEGAL REPRESENTATION IN FAMILY COURT

It was not a stated objective of the SAC initiative that it either reduce or increase the use of other legal counsel (whether legal aid or private counsel). Nor was there any consensus among stakeholders and informed others as to the likely empirical patterns in these regards though perhaps there was widespread hope that at least for the more serious cases, the SAC consultation would lead to clients seeking and obtaining legal counsel. The data management system for Supreme Court, Family Division, does not record the use of SAC services by clients so it is an imaginative exercise to directly access the impact of the SAC initiative with respect to the issue. One strategy is to examine all cases involving the conciliation function (the intake level is less adequate because there appears to be a significant weeding-out of court clients at that phase) for specific periods of time pre-and post – SAC implementation, download the cases and search through the Civil Index 2 data management system to identify type of representation for the parties. That procedure was adopted by Roe of the Department of Justice's Policy, Planning and Research in generating the numbers below in Table 3. The data have to be interpreted cautiously since conciliation codes are many and changes have occurred in the codes over

time. An additional factor is that the data as available do not take into account the different types of cases before the court (e.g., custody, child support etc). A third caution is that court administrators are themselves skeptical about the reliability of the self-representation data in the Civil Index 2 system; as one observed, “the system has a flaw in that it cannot keep track of the change [in self-represented status]”.

Since the data had to be handled manually, only a few time periods could be examined in each of the pre and post periods. It was decided first to examine the two April months before and the two April months after the SAC implementation in both sites. The above cautions immediately become apt when the total number of cases in the pre and post periods is noted in table 3. For both Sydney and Halifax, the data suggest a major, unexpected decline in cases going to conciliation. Apart from the decline in overall numbers the changes were modest. For Sydney, the rank ordering of legal representation options remained the same in the pre and post periods but there is an indication that self-representation may have increased (i.e., from 80% to 87%) though the difference does not meet the standard for statistical significance. Essentially the same results hold for the Halifax cases so it would appear that, if anything, the SAC service has modestly reduced recourse to expert legal advice in the family courts. A surprise for the writer at least was the small number of cases in both jurisdictions, both before and after SAC implementation, where a litigant was represented by a legal aid lawyer – overall legal aid was apparently involved in only about 25% of the cases.

Table 4 represents an elaboration of the above findings. Here more conciliation categories are utilized in generating the numbers. Whereas table 3 was based on the codes “conciliation meeting” and “conciliation meeting-joint”, here the additional codes of “conciliation adjourned without a future data”, “conciliation consent reached”, “conciliation referral to a lawyer”, and “conciliation referral to mediation” were included. It may be noted the number of cases for the same time periods increased significantly – roughly 30% for each of the four categories (each of the two sites, pre and post). The same pattern of decline in total conciliation cases from pre to post SAC implementation holds, though less sharply. Such a pattern, reflected in both tables, suggests either a decline in cases going to the family courts or that more screening of appropriate cases has occurred since the SAC implementation.

Table 4, as table 3, shows that the changes with respect to legal representation have been modest. There has been a modest decline in the number of cases where both parties were self-represented (SRL) – still the majority situation - and a modest increase in the proportion of cases where only private lawyers (at least one private lawyer) were involved, namely from 16% to 25% in Sydney and 14% to 18% in Halifax. These latter changes were offset by reductions of the same absolute magnitude in cases involving both private counsel and legal aid lawyers. As in table 3, legal aid lawyers were involved in roughly 25% of the family court cases, given the operationalization based on there being a conciliation meeting of any sort. It may be noted that conciliation is mandatory in the family court process and only waived where each party is represented by legal counsel and an ‘agreement’ on issues has been attained (in these instances, the conciliator still ‘case manages’ the file but there is no actual meeting with the clients).

Not shown in table 4 is an interesting pattern of legal representation, namely whether one or both parties were represented by legal counsel. In both Sydney and Halifax, and in both the pre and post SAC implementation periods, it was most common for one party to be represented and the other not. Indeed, that ‘imbalance’ was significantly greater in the post-Sac period; in Halifax 83% of the cases fell into that pattern of imbalance in the post period compared to 67% in the pre-period while in Sydney the figures were 67% to 56%. The implications for SAC assessment here are unclear since it is not known at this point whether it was the unrepresented party in such cases who accessed the SAC service. It would be counter to the program’s objectives, one would think, if SAC with its ‘first past the post’ policy exacerbated the differences in the parties’ access to legal advice that existed prior to its implementation.

Table 4B was developed to assess the court activities of SAC clients in comparison to persons who were unrepresented but it sheds some light on the representation issue as well. The data relate to the application and intake stage, not conciliation, and show that at that level there has been only modest change in legal representation, basically a slight increase in the proportion of cases where both parties were unrepresented or self-represented and in cases where only one party was represented. The differences are not great and, given the widespread testimony to the frequent failure of the Civil Index in adjusting as changes in representation occur, it is probably wisest to posit that the SAC initiative has had, at best, modest impact on the representation issue in a general sense.

Prior to the implementation of the SAC role in Supreme Court Family Division in Halifax, the administration there had completed an in-house assessment of legal representation by stage in the court process, from intake to conciliation to hearings / trials. The main finding was that the proportion of people unrepresented declined as people advanced through the stages. Such a pattern underlines then the caution to be exercised in interpreting patterns of representation based on the Civil Index since changes do clearly occur and the question of whether they are recorded is important. It would have been very interesting to determine whether that downward slope of self-representation advanced in the in-house assessment would have been impacted – made somewhat steeper perhaps – as a result of the SAC initiative, and then to see whether extrapolation to the Sydney court would have been validated as well. At this point the crucial data to test such speculation are not available. There is some indirect data that suggest the impact would probably be modest. In fiscal 2005-2006 the Halifax court SAC lawyer reported making referrals to either private counsel or to legal aid in roughly 40% of the SAC client contacts (25% to private counsel and 15% to legal aid). These figures are quite comparable to the pre-period involvement of private counsel and legal aid in the Halifax courts’ conciliation data discussed in table 4 above. To have impacted on the steepness of the ‘representation line’, it would be necessary for SAC users of other legal services to have been supplemental to the number of people who, from the onset, had private counsel or legal aid (a possibility in the former case but much less so in the latter given the close collaboration of SAC and NSLA) and not be offset by the attrition from SAC referral to the client actually engaging private counsel or legal aid (presumably

attrition in the former would be greater than in the latter). In sum, then, no major change in the level of representation by process stages would be the likely impact. The issue of whether the SAC initiative has resulted in clients involved in more serious, complex cases becoming more likely to obtain legal counsel as a result of SAC advice cannot be addressed in the data available to the researchers but it can be noted that SAC lawyers have contended that that would indeed be the case.

SYDNEY SAC CLIENTS' EXIT ASSESSMENTS: SEPTEMBER 2004 TO MARCH 2006

Client exit evaluation data, for an eighteen month period, were made available to the researchers through Policy, Planning and Research. Only a few questions were asked of the clients who usually filled out the form at the courthouse and the sample of clients was limited to the Sydney site. The sample represented more than 20% of the SAC's in-person consultations. It was not possible to determine the representativeness of the sample. Still, some 204 usable client feedback forms were available and were analyzed. The large majority of the respondents not surprisingly were applicants (74%) and females (58%, identical to the percentage females in total Sydney SAC contacts). The grouping was evenly split between those who had received advice from a lawyer in the past and those who had not. The clients were very positive about the SAC service. They considered that the SAC encounter had brought them better understanding of legal issues (virtually all agreed and 75% strongly agreed), and better understanding of court processes (only 5% did not agree but the proportion strongly agreed fell to 55%). As for making it 'easier to apply to NSLA', the sample was fairly evenly split among those agreeing (65), strongly agreeing (59) and reporting 'don't know' (54); some 17 respondents disagreed. The large majority appreciated SAC making quicker legal advice available to them – 70% strongly agreed. Roughly 80% strongly agreed that the SAC service was easy to use and a slightly higher percentage strongly agreed that it was helpful, and that they would recommend it to others. Not surprisingly, then, roughly 98% of the respondents agreed that overall they were satisfied with SAC, a whopping 90% strongly agreed.

In this sample, 70% of the respondents reported that they would not have received legal advice in their case were it not for SAC. By far the main reason (72%) for this belief was that "I could not afford a lawyer". Respondents were asked to check off from a list of four possible factors which factors (all applicable could be checked off) would account for their belief that they would otherwise not have obtained legal advice. Two other possible factors were checked off, namely "I don't qualify financially for legal aid (30%) and the unlikelihood of timely legal aid (20%). There are some ambiguities in the results (e.g., why would people believing themselves eligible for legal aid so often cite affordability as a factor?). Few persons suggested any improvements to the service but these few referred to better promotion of the service and multiple SAC lawyers to deal with the conflict (first-past-the-post) issue.

In comments accompanying their responses the enthusiasm for the SAC service was very evident. A number of respondents saw the SAC as crucial to their efforts as self-represented litigants. Many shared the view of one who said, “I was thankful for the advice given and better equipped to handle the next stage of the legal proceedings”. In the same vein, another respondent commented, “I represented myself in court and have a return date for court. The information provided by SAC enabled me to be more prepared with proper court procedure. This is a fantastic program which, in my opinion, will benefit many people who have no place to receive information”. Others pointed to timeliness of the accessible legal advice provided by SAC; one respondent commented, “It took a lot of worrying and stress off me quickly whereas if I had to wait for legal aid I would have been stressed a lot longer”. A number of respondents specifically drew attention to the value of SAC for people such as themselves who fell between the legal service cracks – as one said, “There are people like myself who don’t qualify for legal aid but definitely cannot afford it [private counsel]. I am very thankful”. Clearly too, respondents seemed well aware that the SAC initiative was a pilot project and urged that it be continued.

Tables 1, 1B, 2 and 2B depict cross-tabulation used by the researchers to isolate possible, interesting variation in responses. Table 1B and 2B explore possible gender effects in the respondents’ assessment of the SAC service and their views on securing other legal counsel. There was virtually no gender difference in respect to the assessments of SAC, undoubtedly because of the shared high level of satisfaction. The differences on accessing other legal counsel were equally hard to find on a gender basis though not surprisingly males were modestly more likely to claim that they would not have been eligible for legal aid (26% to 17%). Tables 1 and 2 report the cross-tabulations based on role, whether applicant or respondent. The skewed distribution of the roles and the high general level of satisfaction combined to minimize any difference in satisfaction with the SAC service. As for the questions on accessing other legal counsel, again differences were hard to find but respondents were more likely (60% to 46%) to claim that “I cannot afford to pay a lawyer”. Cross-tabulations were also carried out with ‘past experience with a lawyer’ as the independent variable but no differences, not even modest differences, were found between those who had had and those who had not had past experience.

Chart 1

The SAC in Family Division: Central Model of Case Flows

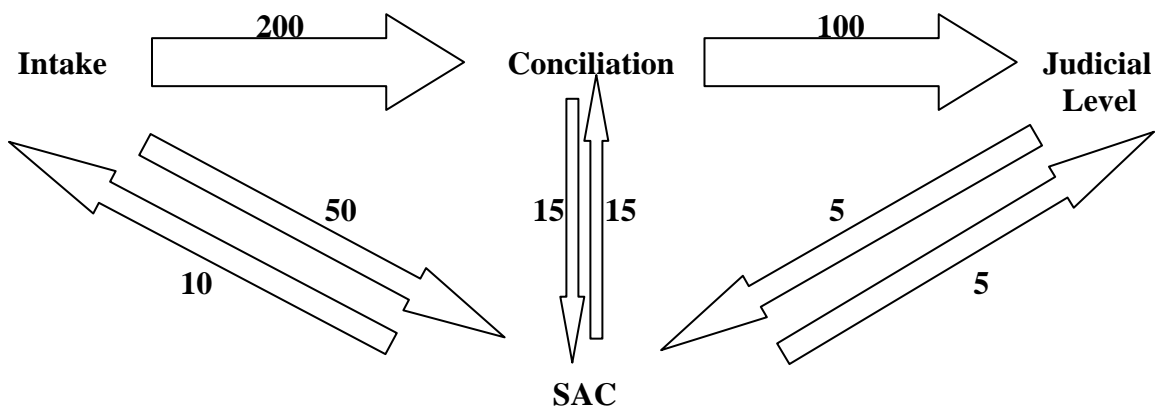


Table 1(A)

Cape Breton Feedback

Perspectives By Client and Role

Theme	Response	Applicant		Respondent	
		#	%	#	%
1. SAC Improved Understanding of Legal Issues	SA	110	73	29	78
	A	35	23	8	22
	D/SD	6	4	0	-
	DK	-		-	-
2. SAC Improved Understanding of Crt Process	SA	83	55	20	54
	A	59	39	17	46
	D/SD	4	3	-	-
	D/K	5	3	-	-
3. SAC Made Applying to NSLA Easier	SA	39	26	10	27
	A	47	31	9	24
	D/SD	14	9	1	3
	D/K	51	34	17	46
4. SAC Sped Up My Legal Advice	SA	103	68	24	65
	A	34	22	9	24
	D/SD	6	4	2	5
	D/K	8	5	2	5
5. Overall Satisfied w/ SAC Service	SA	128	85	34	92
	A	15	10	3	8
	D/SD	3	2	-	-
	D/K	5	3	-	-

Table 1(B)

Cape Breton Feedback

Perspectives By Client Gender

Theme	Response	Female		Male	
		#	%	#	%
1. SAC Improved Understanding of Legal Issues	SA	85	69	78	80
	A	32	26	19	19
	D/SD	3	2	-	-
	DK	3	2	1	1
2. SAC Improved Understanding of Crt Process	SA	65	53	55	56
	A	48	39	42	43
	D/SD	5	4	-	-
	D/K	5	4	1	1
3. SAC Made Applying to NSLA Easier	SA	34	28	25	26
	A	35	29	29	30
	D/SD	10	8	7	7
	D/K	44	36	37	38
4. SAC Sped Up My Legal Advice	SA	79	64	69	70
	A	32	26	19	19
	D/SD	3	2	11	5
	D/K	9	7	12	5
5. Overall Satisfied w/ SAC Service	SA	103	84	80	82
	A	13	11	16	16
	D/SD	3	2	-	-
	D/K	4	3	2	2

Table 2(A)

Cape Breton Client Feedback

Client Perspective By Role

Were the Following, Factors?	Response	Applicant		Respondent	
		#	%	#	%
1. I would not Qualify Financially for Legal Aid	True	28	18	12	32
	False	123	82	25	68
2. Legal Aid Services Don't Really Apply to My Legal Issues	True	6	4	1	3
	False	145	96	36	97
3. Legal Aid Would Take Too Long to Get	True	21	14	3	8
	False	130	86	34	92
4. I cannot Afford to Pay a Lawyer	True	69	46	22	60
	False	82	54	15	40

Table 2(B)

Client Perspectives By Gender

Getting Other Legal Advice

Were the Following, Factors?	Response	Female		Male	
		#	%	#	%
1. I would not Qualify Financially for Legal Aid	Yes	21	17	25	26
	No	102	83	73	74
2. Legal Aid Services Don't Really Apply to My Legal Issues	Yes	7	6	1	1
	No	116	94	97	99
3. Legal Aid Would Take Too Long to Get	Yes	21	17	8	8
	No	102	83	90	92
4. I cannot Afford to Pay a Lawyer	Yes	60	49	51	52
	No	63	51	47	48

Table 3

Pre- and Post-SAC Implementation Use of Legal Representation

	Pre-Period*		Post-Period	
	Sydney	Halifax	Sydney	Halifax
Total # Cases w/ Conciliation Code	117	220	52	147
# and % of Cases Involving a SRL[†]	92 (80%)	193 (88%)	45 (87%)	137 (93%)
# and % of Cases Involving a Private Lawyer	37 (32%)	46 (21%)	19 (36%)	28 (19%)
# and % of Cases Involving a Legal Aid Lawyer	32 (27%)	48 (22%)	16 (31%)	35 (24%)

* The pre-period includes only April 2002 and April 2003 while the post-period includes only April 2005 and April 2006.

[†] SRL refers to self-represented litigants

Table 4

Pre- and Post- SAC Implementation Use of Legal Representation*

	Pre-Period [†]		Post-Period	
	Sydney	Halifax	Sydney	Halifax
Overall # of Cases	160	270	128	239
# and % of Cases Where Both Parties SRLs	92(58%)	165 (61%)	67 (52%)	142 (59%)
# and % of Cases Involving Only Legal Aid Lawyers	22 (14%)	47 (17%)	19 (15%)	43 (18%)
# and % of Cases Involving Only Private Lawyers	26 (16%)	39 (14%)	32 (25%)	44 (18%)
# and % of Cases Involving Both a Legal Aid and Private Lawyer	20 (13%)	19(7%)	10 (8%)	10 (4%)

* This table is adopted from the reports of R. Roe, Nova Scotia Department of Justice.

[†] The pre-period includes only April 2002 and April 2003 while the post-period includes only April 2005 and April 2006.

Table 4 (B)

Sydney Family Court Application and Intake Features, September 2004 and September 2005

Feature	September 2004 Cohort N=106 Cases*	September 2005 Cohort N=107 Cases
Used SAC	27 (25%)	35 (32%)
Self-Represented	39 (36%)	41 (38%)
Both Represented	27 (25%)	21 (20%)
One Party Represented	40 (38%)	45 (42%)

* The Unit for all numbers is cases.

Table 5

Profile of SAC Client Contacts, Sydney

Characteristic		2004 – 2005	2005 – 2006
# Client Contacts Including Telephone-Made Contact	Total	368	615
	Telephone	31%	41%
	Walk-In	39%	14%
	Scheduled	29%	45%
Minutes Per Contact	< 30 Minutes	67%	57%
	> 60 Minutes	3%	3%
Gender of Client	Percentage Female	59%	58%
Age of Client	Median Age	38 Years of Age	38 Years of Age
Age Range of Clients	Range	16 Years to 73 Years	19 Years to 70 Years
Children Per Client	None	9%	12%
	One	38%	43%
	Two	38%	31%
	≥ Three	15%	14%
Client Income	< \$ 20 000	66%	63%
	>\$20 000 <\$30 000	14%	17%
	> \$30 000	20%	20%
Client Eligibility for Legal Aid	Eligibility	50%	50%
Referral Source	Court Staff	77%	75%
	Judiciary	3%	2%
	Community	5%	6%
	Other	15%	17%
Focus of Contact	New Order	52%	65%
	Variance	48%	35%
Issue Dealt With	Custody & Access	63%	61%
	Child Support	48%	49%
	Spousal Support	10%	17%
	Property	12%	20%
	Other	1%	4%
Relevant Legislation	<i>Maintenance & Custody Act</i>	63%	65%
	<i>Divorce Act</i>	24%	26%
	<i>Matrimonial Property Act</i>	13%	21%
	Support Orders	10%	4%
	Other	8%	3%
Referrals Made To	Conciliation/Intake	47%	N/A
	NSLA	19%	N/A
	Private Counsel	17%	N/A
	Other	17%	N/A

Table 6

Profile of SAC Client Contacts, Halifax

Characteristic		2004 – 2005	2005 – 2006
# Client Contacts	Telephone Calls	9659	-
	Person-to-Person	1023	875
Mode of Contact	Telephone*	-	-
	Walk-In	27%	18%
	Scheduled	73%	82%
Gender of Client	Percentage Female	57%	60%
Age of Client	Median Age	41 Years	42 Years
Age Range of Clients	Range	-	-
Children Per Client	None	7%	10%
	One	29%	38%
	Two	38%	37%
	≥ Three	25%	15%
Client Income	< \$ 20 000	33%	24%
	>\$20 000 <\$30 000	17%	20%
	> \$30 000	50%	56%
Client Role	Applicant	72%	80%
	Respondent	28%	20%
Client Eligibility for Legal Aid	Eligibility	31%	29%
Referral Source	Court Staff	72%	60%
	Judiciary	10%	8%
	Community /Other	18%	32%
Focus of Contact	New Order	47%	47%
	Variance	53%	53%
Relevant Legislation	<i>Maintenance & Custody Act</i>	45%	37%
	<i>Divorce Act</i>	37%	36%
	<i>Matrimonial Property Act</i>	7%	10%
	Support Orders	2%	2%
	Other	9%	15%
Referrals Made To	Conciliation/Intake	9%	31%
	Court Admin	14%	19%
	NSLA	19%	12%
	Private Counsel	28%	23%
	Other	30%	15%

* In Halifax telephone contact was basically for scheduling and informational purposes. The SAC lawyer did not typically dispense legal advice in this manner.

Table 7

Civil Index Recorded Activities (Events and Documents Filed) By Three Exclusive Groupings, Each of Forty Clients

Nova Scotia Supreme Court, Family Division – Sydney

	Group 1 SAC		Group 2 No Lawyer		Group 3 Both Parties Represented	
	#	%	#	%	#	%
Documents	606	40%	377	57%	883	64%
Events	906	60%	279	43%	505	36%
Total Score	1512	100%	656	100%	1388	100%

Source: Policy, Planning and Research, Nova Scotia Department of Justice, Draft Version, July 2006

STAKEHOLDER ASSESSMENTS

It can be seen from the enclosed table that a wide range of stakeholders were interviewed. There were two different approaches to the interviews. The senior researcher's interviews were all in person, averaged about 90 minutes and were wide-ranging. These were initial project interviews and, accordingly, the interview topics concerned access for the evaluators, suggested research strategies, inquiries about people to interview, and the availability of secondary data. The objectives were to gain an appreciation of the context for the evaluation as much as to ascertain the respondents' assessments of the SAC initiative. The research associate's interviews were both in-person and by telephone, with the majority by telephone. In these interviews a standard interview guide was followed adjusted for the respondent's role (see appendix). In the write-up that follows, in each category there will first be a summary of the views drawn from the standard interview guides; these will be followed, in each category, by additional information and assessment drawn from the less structured interviews.

(a) STAKEHOLDERS WITHIN THE COURT SYSTEM

(i) JUSTICES

All told, eight justices were interviewed including the Chief Justice Nova Scotia, the chief justices at the Halifax and Sydney Family Courts, the two other justices at the Sydney court and three others from the Halifax court. All eight interviews were in-person. The first accounting draws from the interviews using the standardized interview guide.

A.

This category of interviewees was comprised of three justices of the Nova Scotia Supreme Court, Family Division in Halifax. All interviewees in this cohort were interviewed in-person using the "judges" instrument reproduced in the appendix to this report. Interviewees were first asked to describe or assess the seriousness of the unrepresented litigant problem in Nova Scotia family courts. All three justices concurred that the problem is a serious one. One justice described the problem as "huge" while the other two justices described the problem as "very serious." All three justices were asked to rank the seriousness of the problem using an increasing integer scale where one represented a minor problem and ten represented a serious problem both before and after the implementation of the SAC system. The first justice ranked the problem as a ten prior to the introduction of the SAC system and as an eight subsequent to implementation. He commented: "... unrepresented litigants were a huge problem before the introduction of the SAC system and continue to represent a huge problem today. I think that the SAC system has helped but it still continues to be a major, major, major problem because of the severe limits that have been placed on what SAC lawyers can

actually do.” The second justice ranked the problem pre-SAC as a nine and as a seven post-implementation. She commented:

The unrepresented litigant problem is very serious. There are [*sic*] an increasing number of unrepresented litigants coming to court. The numbers are growing and there is a big gap area of people who cannot afford private counsel but do not qualify for legal aid. (...) The SAC has helped considerably but the problem of unrepresented litigants is still a serious one. We’re sticking a finger in the dyke, really.

The third justice interviewed quantified the problem as a ten prior to the introduction but did not assign a numeric coefficient post-implementation, suggesting that the problem is still a very serious one. She described the problem of, and consequences relating to, attending court without counsel as follows:

These people tend to come to court not understanding the system and without the properly-completed documentation. This leaves the court in a position of trying to piece together the case in order to arrive at the most appropriate decision. Most people are moving in the direction of consulting a lawyer for an hour or two [unbundling] and then returning to court to present their case. I think that this means that the judge then has to be careful not to enter the advocate realm. The judge must ensure that litigants understand the court process and the proceedings. If a litigant chooses not to be represented and the result [judicial decision] is based on information provided ... that may or may not be a result that is fully informed if the litigant is self-represented. If there is a lawyer on the other side the playing field is not equal. It is true that some people can effectively represent themselves but, in my experience, the majority of people get into issues that are not relevant and most are unable to adequately put the relevant information before the court. This, I think, makes the duty counsel system *essential*. If people are going to be unrepresented – and I *fully* understand that many people have no choice but to be unrepresented – there needs to be somebody to whom we can refer these individuals.

Each interviewee was then asked to describe what, in his or her opinion, represented the objectives of the SAC system and the role of the SAC lawyer. One justice suggested that the primary purpose of the SAC system is to provide litigants with “... the information that they need to represent themselves to the court in an appropriate fashion.” She suggested that the SAC system is particularly useful in that it assists litigants in determining what the legal issues are in a matter and assists them in narrowing those issues. The other two justices admitted not knowing what the objectives of the SAC system are, although one stated that she assumed it to be “to provide summary legal advice to people to help them understand the basics of the legal process.” The third justice was critical of the lack of communication during and subsequent to the introduction of the SAC system, stating that:

... there may have been some minor consultation at some point in the process but we were basically just informed that this system was being introduced. We did not have a representative on any committee that came up with this system. The judges did not have any role in defining the job description or the limits. Everything was done by the administration.

Concerning the role of the SAC lawyer all interviewees suggested that it is dual in purpose – to “assist unrepresented litigants” and to “smooth out” the functioning of the court, although respondents varied on which of those two objectives was paramount.

All three justices concurred that the SAC system was “properly and appropriately implemented but each offered some minor criticism concerning the manner in which the system was introduced. One judge was critical of the fact that the system simply removed one lawyer from legal aid and was not afforded a true operating budget. The other two justices were critical of the fact that judges were not consulted prior to the implementation of the system but both agreed that the end result has been a positive one for litigants and for the court. One stated: “To my knowledge, judges were not consulted before the system was implemented and we were not asked whether or not we felt the system would work. The bottom line, though, is that we were glad when we heard this was happening.”

Each interviewee was presented with a list of defining characteristics of the SAC system and was asked to agree with the statement, disagree with the statement, or provide commentary. On the first statement, “free legal advice is provided to litigants on a ‘one shot’ basis” one justice agreed, one indicated that she did not know and the third stated that the ‘one shot’ rule was not rigidly followed in practice. Concerning the statement that advice is provided only in person, one justice indicated that he did not know and the two other justices were of the opinion that some of the advice is provided by the SAC lawyer over the telephone. All three interviewees reported that they were aware of the fact that SAC lawyers do not attend court proceedings. One of the interviewees stated that this is proper because permitting duty counsel to attend at court would be “treading into the area of legal aid.” Another justice, however, stated that she would prefer SAC lawyer to be able to attend court: “I would *love* it if he/she could attend court hearings – that would be wonderful. One’s retention of information – especially legal information – is limited. I think it helps as is, but, it would be better if the lawyer could go into the court room. It would save the court giving legal advice.” Concerning the statement that SAC lawyers limit their advice to legal advice and not social, emotional, or economic advice all justices seemed to suggest that they should do this in theory but, in practicality, probably do not. One commented: “I am not sure that as a lawyer you can avoid providing some information about this kind of stuff or that you can avoid referring clients to the correct people.” Two of the three justices reported that they were unaware of the fact that the SAC lawyer is precluded from seeing both parties to a dispute. When informed of this, one justice described it as a “serious problem” and another as “most

unfortunate.” One justice, however, suggested that, in actuality, there may be no conflict problem as the duty counsel are only providing summary advice. She stated:

SACs are providing summary advice – they aren’t going to court and they aren’t staying on the files. Since this is the case, there may, in fact, not actually be a conflict. The lawyer may feel ‘uncomfortable’ offering advice to both parties but I’m not sure doing so would actually constitute a conflict, *per se*. Bottom line, though, is that there really should be two SACs.

All three interviewees reported that they refer clients directly to the SAC lawyer, although two reported doing so much more regularly than the third. One justice indicated that she refers two to three clients per day on days during which she sits in chambers. The second justice was unable to provide a per-day or per-week number but suggested that it would be more than she could count. She reported that she referred few clients to the SAC initially but a letter was subsequently circulated to justices reminding them of the existence of the service and encouraging them to refer clients – “that took care of that problem,” she stated. The third justice reported that he does refer clients to the SAC lawyer but often does so with reservations:

I basically tell them that Paul is downstairs, that they can see him and that they would likely profit from such a visit. They are always very happy to hear about it. In some instances, however, I am reluctant to refer to Paul because I do not know what his job description is and what his limitations are. He is a really good guy but I just don’t understand what his actual role is in the court process. I am reluctant to send someone down when I don’t know if Paul will actually be able to help. The judges should be completely informed regarding what SACs do and what the limitations are on the position.

Each justice was asked to describe, at a macro-level of analysis, the impact of the SAC system on family court processes. All three justices reported that the SAC system has affected court processes but the interviewees varied on the degree of impact. Two justices held that the introduction of the SAC system represented an important step forward but further suggested that the system must be expanded. In the words of one justice:

It is the beginning of an effort to more effectively use the court’s time and assist the client to get through the court process. (...) The duty counsel is so necessary and so minimal at this time. It is a small inroad as to what needs to happen. Court time is expensive and people need to be prepared for court.

Another justice held that if provided with adequate resources the SAC system could have a significant impact on court processes and the unrepresented litigant problem – “If there were sufficient resources to do it properly for each self-represented litigant, the position

on your scale of one to ten would move down to a three. That would only happen, however, if there were enough lawyers to handle everyone.”

After having discussed the impact of the SAC at a macro level, interviewees were asked to comment on specific results. When asked if the SAC system has resulted in fewer cases proceeding to court hearings, a decline in the number of court appearances per matter, or a change in the number of privately-represented clients all three justices indicated that they had no way to make such assessments. All three justices suggested that the SAC system has likely resulted in “fewer or more narrowly defined issues” per case. One justice indicated that the implementation of the SAC system has likely reduced the number of legal aid-represented clients, stating “I would think that fewer clients would require the services of legal aid if they see the duty counsel lawyer and if, consequently, they are able to present their own cases on straight-forward issues.” Further, all three justices suggested that the SAC system has resulted in better-informed litigants.

When asked if the duty counsel system, as it currently operates, is capable of providing to litigants specific as opposed to ‘general’ or ‘generic’ legal advice, one justice reported that based on her observations, the SAC lawyer does provide specific advice to clients. The second justice stated that the thirty minute limit on client appointments makes the provision of specific advice nearly impossible and identified that as a “major and dangerous problem.” He stated:

The system is deficient in that respect. Legal advice cannot be given in twenty minutes. Litigants need more than that. Generic legal advice is not possible of being translated into the specific information that the litigant is expected and required to give to the court. Litigants are not trained to convert generic advice into specific information or specific actions. I suppose you could say that a little information could be dangerous.

The third justice agreed that a little information can be dangerous but held that, by definition, there is no such thing as ‘general’ legal advice as there are always caveats presented concerning every proposition.

All three interviewees were asked to assess the impact of the SAC system on judges, court staff and litigants themselves. Concerning judges, interviewees suggested that the SAC system has been beneficial for them because it has reduced the amount of conflict in court, it’s heightened their comfort levels because they now have a person to whom they can refer unrepresented litigants for assistance and it has increased court efficiency because litigants are appearing in court better informed and educated. No disadvantages were submitted by any of the interviewees. All three justices submitted that the SAC system has positively benefited court staff. These benefits were well-summarized by one justice:

The SAC system allows court officers to do their jobs and it helps to ensure that they are not acting as lawyers when they are not lawyers. It results in less time being wasted on issues that should not be before the court. It narrows the legal issues. It gives the client a more realistic idea as to what the court process can do. It allows clients to understand that the court cannot settle all of their problems. The SAC is useful because court officers and employees are always willing to bend over backwards to assist unrepresented litigants but in many instances the people doing the bending-over do not have the proper legal expertise.”

The only disadvantage cited concerning the impact on court staff was that the SAC service is not available at all family courthouses in Nova Scotia.

All three interviewees agreed that the SAC system has been beneficial for litigants who have used the service and all interviewees further agreed that there were no disadvantages for litigants in introducing the system. The justices suggested that the system has been advantageous in that it equips litigants with important information concerning court processes and the law, has for many clients reduced the adversarial mindset, tends to increase the confidence level of many litigants and has promoted the potentiality of cases proceeding using the ADR route. The benefits of the SAC system for litigants were summarized by one justice as follows:

Having information explained to them in a less threatening environment. Less time is spent on running after irrelevant issues. The issues, when they appear before the court, are better and more narrowly defined. Litigants are calmed down. They are given tools which help them to effectively present their case. They are given direction as to where they should go. Some of the litigants who see the SAC lawyer are more comfortable in court (...) It is useful in that there is now someone to explain the court process.

Interviewees were asked to assess the impact of the SAC system on private counsel and on Nova Scotia Legal Aid. All interviewees suggested that the SAC system has had, and will continue to have, positive benefits for private lawyers because it promotes communication between the parties, enhances the probability of dispute resolution and reduces the awkwardness of having to deal with an unrepresented litigant. In the words of one interviewee:

...I do know that it is always very awkward for counsel to talk to unrepresented litigants, regardless of whether or not they have received summary legal advice. It's very uncomfortable, in fact. As a lawyer I

always hated doing it. This system gives private lawyers some comfort that the opposing unrepresented litigant has received some advice.

Interviewees identified no negative impacts associated with the SAC system for private lawyers.

Concerning the impact of the SAC system for Nova Scotia Legal Aid, all three interviewees held that the SAC system will decrease pressure on the legal aid system and result in a decreased number of legal aid applications, although the justices varied on how significant that decrease will be. In the words of one interviewee:

Having Paul Stordy, I think, removes a lot of people from the legal aid list. Legal aid is now seeing the clients that they will actually be going to court with. It removes from their list the whole group of people who can be dealt with in thirty minutes. It's one stop shopping in many regards.

The only disadvantage of the SAC system for legal aid, as cited by one justice, was that the introduction of the system resulted in "NSLA losing one body which they probably need to deal with their own case load.

All of the justices interviewed indicated that the current SAC model which precludes two unrepresented parties to a dispute from both using the service creates inequality. According to one interviewee:

It is a problem in that it is discriminatory and gives one side an advantage that the other side or other party does not have. To the extent that the advice is helpful it follows automatically that it would have been equally helpful to the other side. It is going a small distance to remedying the deficiency as it relates to one party or one side but not for the other side.

The same interviewee, however, suggested that one could argue that no conflict is, in actuality, created by permitting both sides to see the same SAC lawyer. He stated:

In the context of the SAC, though, perhaps we could just ignore the conflict based on the fact that the litigants are not being fully represented. The conflict would be more serious if the SAC lawyers were providing full legal representation to the users. If the SAC are

performing a limited role I would suggest that a Chinese wall would be good enough. You could have a code that would say that the SACs may not speak to each other about the opposing parties to a given dispute. If, however, we move into a system where the SACs start to attend court with clients this approach would not work because you would have to ensure that the two sides be entirely independent.

On the issue of remedying the conflict of interest problem, if indeed one exists, the justices suggested that there be two SAC lawyers per court house, that a certificate system be introduced for conflicted parties or that conflicted parties be permitted to telephone the SAC lawyer at another courthouse for advice. On the telephone suggestion, however, it was submitted by one justice that the quality of telephone legal advice is necessarily inferior to that of in-person advice.

Each of the three justices interviewed recognized that family law is unique from other practice areas in that it tends to promote collegiality, communication and settlement. One of the justices reported that ADR has gained popularity in Nova Scotia family courts in recent years and that it is bound to grow at a fast pace. He suggested that the duty counsel will, undoubtedly, play a part in the growth of ADR but suggested that its involvement in the evolution of the family court system will likely be minimal because "... duty counsel lawyers will promote settlement conferences with a judge, etc. but they are primarily there to assist litigants who anticipate going to court at some point." Another justice submitted that the SAC system will have both positive and negative influences on the evolution of the family court system. She stated:

I think that it will be positive in so far as it will be useful in debunking certain erroneous myths ... telling people, for instance, that the judge does not expect litigants to come to court for the purpose of going in and going into full battle. The SAC lawyer is able to explain to litigants that they will be expected to resolve issues in a certain and appropriate type of way. But, if the duty counsel lawyers adopt the philosophy and encourage one side of the dispute to be conciliatory and encourage that side to try to resolve the matter you may see situations where clients feel pressured to resolve matters that really should be presented before a judge in court.

When asked to describe ways in which the current duty counsel model might be improved or enhanced, the interviewees offered a variety of suggestions. Specifically, they suggested that more SAC lawyers be hired, that the conflict issue be remedied, that the severe restrictions currently placed on the SAC job description be loosened, that SAC lawyers be permitted to assist in the drafting of legal documents, that they be permitted to attend at court hearings and that efforts be made to ensure that litigants see the SAC lawyer before their matter is placed on the court docket.

All three justices indicated that they believe that the summary advice counsel system ought to be renewed, perpetuated and expanded and all three interviewees suggested that the system is providing a valuable service to an important group of previously neglected litigants. According to one justice, the SAC system has effectively assisted individuals by addressing a real need of the family court system. The importance of continuing the operation of the SAC system was described by one justice as follows:

The non-renewal of the summary advice counsel system, I think would be a very regressive step. We have *so* many people coming into the system without legal representation ... that puts everyone in a bad position. The court can only do so much for unrepresented litigants – it can't provide legal advice ... it's a really bad situation. You end up in a situation where both the unrepresented party and the represented party feel disadvantaged. The represented party feels disadvantaged because the Judge appears to pay more attention to the unrepresented party – it appears that the Judge is speaking to that party directly. It affects the perception of bias and fairness remarkably. The SAC system, at least, enables us to maintain that arm's length relationship.

B.

The other five justices interviewed generally reinforced the key themes advanced by the above three Halifax Family Court judges. Those themes were that (1) the unrepresented litigants have posed a very serious problem for the Family Court and that the SAC initiative has reduced it – from a 10 to 7 or 8 – but not eliminated it; (2) that there was not much consultation with them concerning the dimensions of the SAC role prior to its implementation; (3) that the SAC initiative has been directed at providing legal counsel and focusing the legal issues of clients on the one hand, and facilitating a better case flow for the court on the other hand; (4) that the features of the SAC role as outlined to them by the interviewer are indeed its main features ; (5) that each justice has referred parties to SAC; (6) that while the impact of SAC is difficult to assess with respect to reductions in appearances or adjournments, it has resulted in better informed litigants and increased the “comfort level” for judges and other court staff; (7) that in the future, they should be better informed about SAC, that a certificate solution should be implemented to solve the FPP problem and that the penetration of SAC to all unrepresented persons appearing before them should be realized.

There was much consensus as well among the Sydney Family Court judges and the senior justices in Halifax on the seven main points. Four of the five indicated that they too were not much involved in discussions leading up to the SAC initiative - the phrase “I did not participate in any discussion or planning for the SAC but was notified in memos”, was spoken by a senior Halifax justice but could well have been uttered by any of the four. It was also noted that there have been no general meetings of the judges to

discuss SAC or review its parameters. Still, they concurred in the need for the SAC initiative and, like their colleagues above, considered that problems associated with lack of representation were major and still persist to a significant degree; one justice commented, “it [lack of representation] is bedeviling the judges”. Here several judges referred, usually in a negative sense, to underlying macro factors that have fuelled the problem in contemporary society, such as the high costs of private counsel, the low threshold for legal aid, the empowerment movement and the resistance in political circles to more mediation.

All the Sydney judges and one of the two in Halifax also said that they referred litigants to SAC, one noting that “I have adjourned for that purpose” while another stating that “at pretrial where there is less formality I will directly say to people , go to FLIC or go to SAC”. The judges all agreed with the characterization of the SAC role as presented to them by the interviewer. One Sydney judge did note that “SAC clients can go back [for a second meeting] if there’s a need”. They recognized the FPP problem, appreciated its premises (e.g., that the difference between SAC providing ‘merely’ general rather than specific legal advice is a very slippery distinction) and generally offered the same solution (i.e., legal; aid certificate for the other party to purchase private counsel). They appreciated the “general vs. specific legal advice mandate”, several connecting that distinction to the need to avoid liability problems. They did not see a significant feature of SAC as engaging much in non-legal referrals; as one judge stated, “Social issues? Well, would the SAC know”?

The judges were all enthusiastic about the SAC project. A senior Halifax justice reported that he of course hears views all the time from Family Court judges and others and they have been quite supportive, finding the program valuable. While acknowledging that the forms available to the judge do not record whether the litigant has had SAC consultation, the judges believed strongly that it has impacted on the quality of the litigants’ presentation at hearings and trials (e.g., “the presentations are better and they are more appreciative of discretion”). Several judges referred to SAC’s major contribution as helping litigants focus their case and realize what the law can do and what it cannot do. One judge said, “yes, it’s a kind of tough love that requires a certain type of person in the SAC role”. Certainly there was widespread consensus that “knowing that people have had access, that is comforting given the responsibilities of a judge”. Most judges acknowledged the benefits of SAC for all the court players (intake / conciliator. NSLA) as well as the clients, and indeed one judge went so far as to opine, “SAC is the oil in the wheel [of Family Court case processing]”.

The judges did identify possible secondary data measures to examine, such as the number of adjournments or appearances, how much repeat usage is happening (one judge observed that there is a hard core of repeat users in Family Court) but they did so with little enthusiasm, suggesting a skepticism based on the complications of the issue and the shortfalls of the Civil Index. Instead, they advised “ask the clients”.

The judges, like the three whose views were discussed earlier, held that it would be a shame to lose the SAC and they hoped that it would not happen. There were few

suggestions for change or extension of the SAC role. The only real issue advanced here was solving the FPP problem and there the certificate solution was popular.

One of the Halifax judges, a senior justice instrumental in the realization of the SAC initiative, was somewhat unique in that he basically addressed the larger vision. In his mind there is a transformation going on in the nature of Family Court, away from an adversarial model to one where there was more emphasis on conciliation and alternative dispute resolution. In that scenario, the SAC initiative, as well as “unbundling legal services”, has an important role as a complement to hearings and trials.

(ii) COURT ADMINISTRATORS

There were four senior court administrators interviewed in-person, two in Sydney and two in Halifax. Three of the interviews were substantial and extended beyond 90 minutes while the other was quite brief. The court administrators reviewed the history of the SAC initiative. Basically they rooted it in the growing problem of the unrepresented litigant caught in the middle between a low legal aid threshold and a high priced private counsel. But additionally, they observed that the modern family court has become much more complicated; the required forms for matters have sometime quadrupled and the litigants have become more demanding. These macro factors created major headaches for court administrators causing much backlog, and associated expensive judicial downtime, as well as generating much stress among court staff who could not provide – and were not mandated to provide – legal advice. The slippery slope between legal information and legal advice took its toll on court staff and required action by the senior administrators. All agreed that the judges were the up-front prime movers in the movement for change which resulted in the SAC project. It was noted too that SAC while perhaps the most important was just one of the several changes that have taken place at Family Court since 2000 in an attempt to better respond to clients and the representation problem.

The administrators considered that SAC has been implemented as planned and agreed with the features advanced in the interview. They considered that while there may be some referral by SAC to social agencies and helping organizations, that was more an administration responsibility; as one administrator commented, “That’s the job of my group” (presumably intake staff etc). They were all very positive about the SAC initiative. In their views the clients have been well served and are better prepared (i.e., make better presentation) in conciliation and at hearings / trials. The court staffers are much more at ease and the judges can be more confident that the unrepresented person in front of them has had access to legal counsel. One administrator commented that SAC has been important even for senior administrators since it provides the organization with greater legal capacity, someone who can be informally and readily approached for legal expertise (she added, “we make sure we do not abuse it; we have a good relationship with SAC”). Another referred to the significant “emotional benefit for my people” (intake and conciliation) and advanced that “conciliators have been greatly helped and are more successful”.

The only SAC problem identified was the FPP one. One administrator offered that his organization was working on minimizing the FPP problem by organizing “group days” for clients where all service providers, including the SAC, would be present, and where at least some general legal advice could be communicated. As for the future, well, there was a sense that, if the SAC project was discontinued, the old, big problems of backlogs and stress would re-emerge. They thought too that a change to a roster model would not yield the same level of networking and collaboration that has marked off the SAC role in the court system at either site.

The administrators were not optimistic that the Civil Index could provide good measures for issues such as the SAC impact on conciliation (which they considered to have been significant) or on representation and adjournments at hearings and trials (which they considered to be quite complex).

(iii) INTAKE WORKERS AND CONCILIATORS

There were seven intake workers and conciliators interviewed over the two sites, three in-person and four by telephone using the standardized interview guide..

A.

The cohort of interviewees consisted of two Supreme Court, Family Division intake workers and two conciliators. Each of the four interviewees was conducted via telephone using the ‘court staff’ instrument, reproduced in the appendix to this evaluation. Interviewees were first asked to assess the significance of the unrepresented litigant problem. All interviewees regarded unrepresented litigants as posing problems to the functioning of the family division. According to one intake worker, the problem of unrepresented litigants is particularly challenging for court officers and court staff because they are not permitted to provide legal advice and often experience difficulty in distinguishing between legal advice and legal information. The SAC system, she submitted, has served to reduce that problem by providing a lawyer to whom court staff can refer unrepresented litigants. This sentiment was echoed by the other interviewees, all of whom noting that prior to the implementation of the SAC system, court staff had no referral options available.

Interviewees identified the objectives of the SAC system as being to provide legal information and assistance to unrepresented litigants, to provide guidance to litigants and to provide a service to which court staff can refer litigants. All interviewees held that the system was properly and appropriately implemented, with one interviewee stating that there “are some gaps,” the particulars of which she did not disclose. Two of the interviewees accredited the successful implementation of the SAC system in Sydney to the lawyer that currently fills the position. According to one interviewee:

I think that they hired the right person in that he is very experienced, knows the judges, knows the court process, worked as a conciliator and knows the roles of the players well. He understands the law really well. This combination of qualities is very important to a program like this. People with less experience *could not* provide the same kind of service. Having a senior seasoned person doing this is bang on – perfect.

Concerning the implementation of the Halifax service, one intake worker stated: “In Halifax, SAC has been a *God send* for us. It was implemented properly and there have been absolute *no* problems to date.”

All of the interviewees acknowledged that the family court system is unique from other areas of law in its emphasis of communication, collegiality and settlement. All interviewees further suggested that this inherent and unique character of family law is likely to influence the future evolution of the SAC system, especially given the emotional-nature of the issues involved. According to one conciliator:

Often people do not really understand why they are there or what their rights and obligations are. They really need to hear the information from a professional. Without that advice, people are scared and do not know how to cooperate with the other person, what position to take, etc. It is hard to move from fighting to talking to a less adversarial approach without someone explaining to you how to do that. [The duty counsel lawyer] can really help people get a better understanding of the importance of working together. It promotes settlement in a bunch of different ways. Working in the system for as long as I have, I really see the benefits of this system. It is great.

The conciliators and the intake workers, like the justices, were presented with a list of SAC ‘defining characteristics’ and were asked to agree with, disagree with, or comment on each. In reference to the statement that the SAC lawyer provides advice on a ‘one shot’ basis, all interviewees disagreed, suggesting that the SAC lawyer exercises discretion and, when required, meets with clients on more than one occasion. All interviewees, however, did agree that client meetings tend to be limited to thirty minutes in duration and are always conducted in person as opposed to over the telephone. One interviewee emphasized the importance of in-person appointments, stating that “If it is over the phone you tend to get different information and a different feel for what is happening ... the advice must be given in person.” All interviewees further agreed with the statement that the SAC lawyer does not attend court hearings and none of the interviewees expressed any concern with that limitation on the SAC role. Concerning the statement that advice provided tends to be exclusively legal and not social or economic in nature, two agreed while two submitted that the reality in family law is that the social and economic cannot be separated from the legal. All interviewees reported having been

aware of the conflict problem with one interviewee suggesting that the current state of affairs creates an unfair advantage for one unrepresented litigant over another in situations where both parties are not eligible for legal aid and cannot afford private counsel. She stated: “The conflict issue is a problem [that creates] an unfair advantage. Even if they aren’t going to do anything, one party may go down to see [the duty counsel] just to exclude the other party. I don’t hear of that often but I do have respondents that come in and we have to explain to them that because he saw the applicant he can’t talk to them – they are always disappointed with that.”

When prompted further about the conflict problem, one intake worker took the same position as one of the justices, submitting that close examination of the model might suggest that there exists no conflict in the summary advice lawyer seeing both sides to a dispute. She suggested that:

Due to the fact that [the duty counsel] is only providing initial advice and information, and due to the fact that he is not representing parties in court, I think that he should, actually, be able to talk with both parties. I can see how it would be a conflict if he was representing a party throughout the process but this is a free service and, as such, I think it should be available to both parties to the dispute.

On the issue of remedies, interviewees suggested a certificate system to deal with conflicted parties or a requirement that there be two duty counsel per court house. One conciliator submitted that “if you are committed to having a service like this, you should have the ability to refer to more than one SAC lawyer.” He further indicated that as a temporary ‘band-aid’ solution some court officers are encouraging conflicted parties to contact private lawyers that provide free consultations: “We are prohibited from giving out the names of specific lawyers but I often do tell them to go to the yellow pages because some lawyers do offer free initial consultations. It would be better, though, if we could see those conflict cases separately here at the court house.”

All of the interviewees stated that unrepresented litigants require assistance with the rules of civil procedure and with the completion of obligatory documents. One of the three, however, suggested that the paper-completion assistance should be provided by the intake workers who are trained to provide that support, leaving the SAC lawyer to answer legal questions. The remaining three interviewees held that paperwork assistance is an important and appropriate aspect of the SAC lawyer’s function, one stating:

... people usually don’t have a clue what they are talking about. It has nothing to do with how smart you are and it has *everything* to do with your knowledge of the legislation and the jurisprudence. That is why people go to law school. This is a foreign land for people who don’t have law degrees. Without help, people will not come to conciliation

and people end up filling out the wrong forms which takes up time and money.

At the macro level of analysis, interviewees were in concurrence that the SAC system has positively affected the processing of court cases, suggesting that it has enhanced the court's efficiency has allowed processes to function more smoothly and has "cut down on the frivolous or needless applications at the intake end." Concerning the effect of the SAC system on their own work as court officers and staff, interviewees commented again on the fact that they now have a lawyer to whom they can refer litigants that require legal advice as opposed to legal information. One conciliator suggested that the SAC system has been of extreme benefit to the process of conciliation, stating that "... knowing that there is a lawyer on site that can be accessed in twenty minutes can defray a volatile situation or facilitate a meeting of the minds." Concerning the benefit for intake workers, one intake worker stated: "It's resulted in a huge weight being taken off of front line workers because often clients are unrepresented and extremely needy. It was always difficult for us to turn them away. With Paul there it is an added service that we have to offer – keeps the peace."

On the question of advantages of the SAC system for judges, the interviewees submitted that as a result of the introduction of the SAC system, judges are required to spend less time explaining court rules and procedures to litigants. According to one conciliator, this now permits judges to focus more time on other facets of the legal process, including settlement. A further advantage cited by one intake worker was that the SAC system promotes and facilitates court readiness by ensuring that clients have properly prepared and filed documents prior to their court hearing. Concerning disadvantages for judges, one conciliator suggested that many judges seem to want some of the restrictions placed on the SAC to be removed – "I think they would like more access to the SAC lawyer to be able to refer people quickly. They would like to have more of him, available more often. When they see a need they would like to be able to pick up the phone and call him. They would also likely like to see him have a greater role in settlement conferences." Further, one intake worker suggested that judges are sometimes frustrated by litigants who "are getting limited and not full legal advice."

Interviewees described the benefits of the SAC system for litigants as introducing them to the rules of civil procedure and the law, helping litigants to understand what to expect when they appear at court and educating them about their rights, entitlements and responsibilities. One conciliator suggested that the SAC system "really touches on every aspect of the client's involvement in the court process." The only disadvantages of the system cited by interviewees were the thirty minute time limit imposed on client meetings and the fact that some litigants who really require full legal representation may be lead to believe that they can proceed on their own based on the summary advice provided.

When asked for their express criticisms of the SAC model as it currently operates, interviewees cited the time restriction on client meetings, the current system's inability to

deal with conflicted litigants and the fact that the SAC lawyer does not attend at court proceedings. Concerning the question of suggested changes to the current model, the single most offered suggestion was addressing the conflict issue. Other suggestions, as would be expected, included increasing the amount of time afforded per client interview, and allowing, in certain circumstances, advice to be given over the telephone. Concerning the telephone advice suggestion, one intake worker submitted: "...[the SAC lawyer] does not give advice over the phone. I sometimes think that he should because a lot of people can't physically get into the court to see him. Whether they live hours away or they are immobile etc. They should be able to call for advice."

B. Other Intake / Conciliation interviews

The three additional intake/conciliation staff persons, two from Sydney and one from Halifax, shared the above major themes, namely (1) that pre-SAC the resources for their responding to the unrepresented were limited and the interaction effected much frustration on both sides; (2) that the main beneficiaries of SAC may well have been the clients and then themselves; (3) that SAC has been a very positive initiative for all parties but here they especially mentioned for conciliators; (4) that the SAC features advanced in the interviews were accurate save the reference to a "one-shot" consultation since in their view SAC exercised discretion on that matter. Certainly, they, perhaps more any other grouping cited the FPP problem; (5) their recommendations apart from dealing with the FPP issue, were that perhaps some of the paperwork assistance provided by SAC could be left to themselves or others while SAC concentrate on providing more time to clients for consultation.

These additional interviewees reiterated and emphasized the above themes. All conciliators noted the FPP problem and considered that at least some manipulation was occurring to restrict the opportunities for the other party in a case from receiving any legal counsel (certainly any free legal counsel). They was much reference as well to the benefit of SAC for conciliation; not only have they been able to refer clients to SAC to focus the legal issues and get the client to drop issues that had no merit in the Family Court context but also they noted that they have been able to obtain SAC advice when working on a consent order or on a variance. The benefits for clients were also celebrated. As one conciliator put it, "clients who have seen [SAC] appreciate the consultation and are more confident. Even though it is a short consultation, it is something". Another veteran conciliator emphasized how much help the SAC provides conciliation by being "reality affirming" and separating the wheat from the chaff in terms of salience and merit. In sum these conciliators were also very positive about SAC and considered only the FPP problem to be a desired change.

(iv) OTHER COURT ROLE PLAYERS

The ‘other’ cohort of interviewees consisted of the Coordinator of the File Readiness project for the Supreme Court, Family Division, a Regional Coordinator of the Maintenance Enforcement Program and a senior Sheriffs’ Officer at the Devonshire location of the Supreme Court, Family division. Also interviewed was a Royal Canadian Mounted Police court liaison officer but because to his limited exposure with the SAC system and family court in general, his views have not been presented below. All interviewees in this cohort were interviewed via telephone using the ‘court staff’ instrument.

All three interviewees regarded the unrepresented litigant issue as being a significant problem faced in recent years by the Supreme Court, Family Division. One interviewee submitted the problem is largely created by the fact that there exist a significant number of people who cannot afford private counsel but whom, at the same time, do not qualify for Nova Scotia Legal Aid. The Sheriff’s Officer stated that, in his mind, the waiting periods for legal aid exacerbate the problem. Another interviewee held that court staff regularly struggle with how to deal with desperate litigants who need direction and advice -- “It was really difficult when a litigant came to the front counter [at the court house] or was making a court application and we weren’t able to provide him or her with legal advice. We can only provide legal information – we then had to refer them to legal aid or to another resource center.” All three interviewees further agreed that the SAC system was properly and appropriately implemented.

Concerning the suggestion that family court is unique because of its emphasis on collegiality and communication, two of three interviewees disagreed in part. One interviewee stated that despite the fact that there has been a movement in the family court, in the past twenty years, towards less adversarial modes of conflict resolution “the system certainly has an adversarial character to it.” He did contend, however, that “The SAC can do nothing but help the [conflict resolution] process.” Another interviewee suggested that “if we had cooperation between the parties we would not, in theory at least, require the SAC system (...) consequently, there will always be a need for the SAC system.” The third interviewee held that there does, in fact, exist a broader consensus in family law that problem-solving is the way to attempt to resolve disputes.

Each member of this interview group, like the members of the other groups, was presented with a list of ‘SAC defining characteristics’ and asked to agree, disagree or comment. In response to the statement that the SAC service offers advice on a ‘one shot’ basis, one interviewee suggested that that is not always the case – “Robert will see one of either party but he will see them several times in many cases.” No comments were issued concerning the statement that client sessions tend to be limited to thirty minutes in duration. In response to the statement that SAC lawyers do not attend court hearings, the single interviewee who provided commentary indicated that that was his understanding. On the issue of whether the advice provided is exclusively legal in nature it was suggested by one interviewee that it is not possible to separate the legal issues from the non legal issue when providing advice to clients. Concerning the first-past-the-post conflict, one interviewee recognized that the problem existed and suggested that the only remedy is to provide external advice to conflicted litigants.

When asked more specifically about the conflict problem, only one of the three interviewees regarded it as representing a significant flaw whereas the other two regarded it as being a minor issue. The interviewee who issued criticism about the conflict problem stated that "... this is an inequity. In NSLA cases they deal with conflict situations by giving the person a certificate for private representation or sending them off to Dalhousie Legal Aid. In the NSLA context there are not disadvantages created by conflict situations. There are problems in this regard, though, with the SAC." A second interviewee, while recognizing that some have identified conflicts as representing a flaw of the current model submitted that there is no simple remedy. The third interviewee held that there are always other alternatives available to conflicted parties: "In a perfect world all parties would have access to legal advice but you have to understand that we do not live in a perfect world. It is not that other avenues of legal advice are not available – there is a legal aid service and there are private lawyers out there."

All three interviewees concurred that the SAC role should include assistance with the completion of required court documents and assistance with court procedure. One interviewee stated that without SAC assistance many litigants simply are unable to complete the paperwork or understand the rules of civil procedure. The Regional Coordinator for the Maintenance Enforcement Program stated that, without assistance, completing paperwork is "wicked over-whelming." The Sheriff's Officer described the important of this role of the SAC lawyer succinctly:

...the majority of people are exposed to criminal law through American television programming. The SAC lawyer must, therefore, often explain the differences between TV and reality. That is the first hurdle to get over – there often has to be a realignment of their thought processes. For instance, people walk through the door and demand restraining orders – we don't do those in Canadian family law. We issue peace bonds. We have to say, look Perry Mason, this is Canada. An important role of the SAC system is to get rid of inaccurate ideas and information.

All three interviewees further agreed that the SAC system has positively impacted, at a macro level, court processes. One interviewee indicated that the system has "affected efficiency because people get referred there to get quick legal advice that they could not get prior to the implementation of this system." The second interviewee submitted that the system has positively affected court efficiency because "... we now have someone to whom we can direct litigants." The third interviewee stated that the system provides litigants with knowledge – "the more knowledge a litigant has the more power that they feel and the less likely they are to litigate a matter purely out of fear or ignorance." All three interviewees further agreed that the system has positively influenced their own work because it has provided litigants with much-needed information and advice.

Concerning advantages of the SAC system for judges, interviewees submitted that it has resulted in judges less frequently having to act as advocates for unrepresented parties, it has reduced the number of frivolous cases that appear before the court and it provides judges “with a resource at their fingertips . . . [and] prevents the litigants from prejudicing their case because the judge can now tell the litigant to go downstairs and talk to the duty counsel lawyer.” The only disadvantage for judges cited by one interviewee is that the SAC lawyer is not permitted to attend at court.

Interviewees all agreed that the SAC system provides a valuable service to unrepresented litigants. Benefits such as access to justice, knowledge, direction, knowing options and insight into court procedure were cited. The benefits of the system were summarized by one interviewee as follows:

The benefits are immeasurable if the choice is one between not having any advice and having some legal advice. [Litigants] are better aware of their rights, the court process, what is realistic and what is not. Sometimes people hold out ridiculous positions – lawyers can make them realize that their position is not worth pursuing; less court time wasted; litigants become more realistic and informed of options for resolution.

The only two suggestions submitted by interviewees concerning potential changes to the current model concerned addressing the conflict issue and better advertising the availability of the SAC service. One interviewee expressed serious concerns about the lack of publicity around the SAC service:

I think that this system could be given more publicity and could have a higher profile. The users of the SAC right now get to the SAC through *internal* processes – through us, through conciliators, etc. There is no doubt that most of the referrals are through the formal, as opposed to informal, channels. If you beat the drum, I think that you’d end up with more people coming forward and making use of this system. The issue then would become whether they could handle extra work and whether they want the extra work.

(v) THE SAC LAWYERS

Both SAC lawyers were interviewed in- person on two occasions. The interviews were largely directed at learning more about the specifics of the SAC activities and the suggestions that the SAC lawyers might advance concerning the role. They saw the impetus for the SAC initiative coming basically from Halifax area judges in response to the growing problem of the unrepresented

litigant. They reported beginning their SAC roles in September 2003 (Halifax) and April 2004 (Sydney) respectively. The SAC lawyers discussed the specific funding arrangements for their project, the Halifax project being the result of NSLA decision-making – using some of their open-ended federal funding to launch the initiative while, in the Sydney case, the funding came directly from a special federal fund for two fiscal years up to April 2006 and entailed the secondment of the NSLA staff person to Court Services which is responsible for court administration. In their view, SAC represents an efficient, effective and equitable allocation of “the legal aid dollar”, providing valuable service to a large number of people who would otherwise not have legal counsel in emotional and often far-reaching, serious matters. The Sydney SAC lawyer characterized his role as follows in a recent article for the Canadian Bar Society:

“My basic task is to ensure that my clientele know the boundaries of their rights and responsibilities and the merit of their applications before the courts. I give advice on the full spectrum of family law issues, including how to prepare for pre-trials and how to conduct oneself at the trial. I do not prepare briefs or factums on behalf of my clients and I make it clear to them that they should make every effort to obtain their own counsel in complicated matters”

Both SAC lawyers defined the features of their role quite similarly and indicated that they (a) do not follow the file into the courtroom, (b) provide free advice to all save those with representation, (c) cannot provide advice to both parties in a case (the FPP phenomenon which in practice may require that the SAC spend some time tracking client names and statuses to ensure there is no conflict of interest), and (d) do not give advice on Children’s Aid matters (such child protection cases are handled directly by legal aid where necessary). Both SAC indicated that they exercised some discretion in terms of the amount of time allotted to a consultation but that normally there were of roughly one-half hour duration. Both emphasized that they retained the character of defence counsel and in that sense saw themselves quite independent of the court authorities even while engaged with those role players in collaborative networks. Both SAC lawyers agreed that assisting clients with “the paperwork” was an important part of their, one adding that he does so only after the client has at least made some effort. The SAC lawyers were more ambivalent about the “general versus specific legal counsel” mandate, one noting that while the distinction may hold up theoretically it is slippery in practice.

There were some differences in reported work styles or service delivery. The Sydney SAC, for a variety of reasons, appears more likely to provide counsel via the telephone whereas, except in very rare circumstances, the Halifax SAC only provides information and scheduling by telephone. In the case of Halifax the SAC reported significant time spent on the phone responding to

inquiries from persons downloading information from the internet. Another difference between the two SAC roles appears to be the greater contact in Sydney, (a closer, smaller, more homogeneous community), between the SAC and community organizations such as Transition Homes. On the whole the similarities in the work role trump the differences. Both SAC are networked closely with intake/conciliation and both relate frequently to other court programming such as FLIC (e.g., giving presentations, making and / or showing videos for clients' use). In both cases there appears to be a very cooperative relationship with all the role players at court wherein each gives the others "a heads-up" (as one SAC described it) on salient concerns.

The SAC lawyers reported that the unrepresented litigant remains a serious challenge for Family Court with their estimates of parties unrepresented at hearings / trials different but hovering around the 50% mark. One SAC opined that increasingly he has found people, even in the \$50,000 a year bracket, simply deciding "I am not going to get a lawyer" and 'demanding' to be empowered to pursue the matter themselves. Accordingly, by providing early strategic legal counsel, he sees SAC as contributing to that empowerment. In fact, he allowed that SAC might well in that way encourage somewhat more self-representation. Both reported a fair number of repeaters, especially in Sydney where a higher percentage of cases involve custody / access and child support. Both SAC advanced that the major impacts have been assisting clients with legal counsel, reducing court time and increasing the comfort level of intake/conciliation staff and the judges. Both SAC lawyers suggested that the service has had two major benefits for NSLA, first dealing with stress induced by NSLA waiting lists (people can be sent over to SAC in the interim) and secondly by 'weeding out' cases where there is no legal merit (hence a person sent to SAC may never return to NSLA for service on the issue). The SAC lawyers were uncertain about the impact for subsequent client engagement of private counsel. One SAC reported some evidence of clients' subsequently, by his encouragement, obtaining private counsel, but both were uncertain about the net effect. Both SACs did indicate that occasionally they received a referral from private counsel and that the SAC service in that respect has given private counsel an option when dealing with someone who needs legal counsel but cannot afford their services. Another area of major impact according to both SAC lawyers is through SAC facilitating speedier and more successful (e.g., "consents" which require only a judicial imprimatur not a hearing or a trial) conciliation.

Both men expressed satisfaction with the work and the role requirements. At the same time they did advance some suggestions. In the case of Halifax, it was suggested that there should be more administrative support as presently there is no secretarial assistance and the SAC lawyer does all his own scheduling. Given the caseload (six courts plus a seventh at another site to handle overload) and given the increasing systemic involvement with conciliators and other court roles – for example, being called upon sometimes to give almost immediate legal counsel to a party in conciliation or responding to

emergency requests from the duty conciliator – it was suggested that there should be two SAC lawyers in Halifax, perhaps following the Ontario model where one would be “a floater”. In the case of Sydney, where the workload pressures appeared to be less and the SAC role more integrated into the court administration in the sense that intake assists in scheduling, there was some suggestion that the SAC lawyer could extend the role to assist clients in “chambers” matters (i.e., ‘Chamber’ applications). There was no expressed support for SAC becoming less universal and primarily targeting a needier sub-grouping.

(b) COURT-RELATED ROLE PLAYERS

(i) COUNSEL

In this category, interviews were completed with the directors of NSLA and with four practicing counsel, two from NSLA and two in private practice. First the formal interviews are considered:

A.

The counsel cohort of interviews was comprised of two lawyers who practice with the Nova Scotia Legal Aid Commission, one private lawyer with the Halifax firm of Joel Pink & Associates and one articled clerk at the firm Blois Nickerson and Bryson in Halifax. Members of the interview cohort were interviewed using either the ‘court staff’ or ‘other stakeholder’ instrument depending on their initial stated knowledge about the summary advice counsel system.

All counsel were in concurrence that unrepresented litigants currently represent a significant problem in Nova Scotia court processes. All counsel further suggested that while unrepresented litigants pose a problem in any practice of law, the problem is, perhaps, more serious in the realm of family law. The articled clerk interviewee indicated that the character of family law is such that litigants ought never to pursue family court matters without effective representation – “People should *not* go to family court without a lawyer – EVER – under any circumstances. The issues are far too important and far too complicated for people to figure out on their own.” Another interviewee, a legal aid lawyer, suggested that the “unique character” of family law further complicates unrepresented litigation, stating that:

What I always say is that family law is not a poker game. You need to show your cards. People generally, however, do not seem to embrace that mindset. Unrepresented litigants tend not to be communicative and it is often very difficult to negotiate with them. They are scared because of the power imbalance. It’s often uneasy for lawyers because

sometimes unrepresented litigants will file complaints to the Bar society. I think the solution is more emphasis on mediation and on a quasi-judicial masters system.

All interviewees agreed that by appearing unrepresented a client may prejudice their case. In the words of one interviewee:

The problem is that unrepresented litigants can't present their side as effectively as litigants who have a lawyer. Judges do not have crystal balls. They only get to see what is presented to them. If a litigant does not effectively present everything of relevance the judge won't have an opportunity to see the full picture. As a result, the outcome of a trial may be improper because all of the factors were not properly laid out.

On the issue of risks or inconvenience to the opposing party and his or her counsel, interviewees suggested that unrepresented litigants often do not understand the court process and do not understand what is to occur subsequent to the completion of the process. In consequence, it was suggested by one interviewee, many matters go unresolved after a prolonged court process and, in some cases, frustrated litigants become angry and confrontational.

When asked to describe the objectives of the SAC system as it operates in Halifax and Sydney and the role of the SAC lawyers, all interviewees suggested that the purpose of the system is to provide legal assistance, advice and information to litigants at the front end of the court process. All interviewees further suggested, some expressly and some tacitly, that the SAC system is not intended to be a substitute for full legal representation but, instead, is intended to "provide stop gap info" primarily at the intake stage of the litigation process. Interviewees suggested that the SAC system was designed to provide both legal advice and assistance with paperwork and procedural questions. One interviewee further suggested that a significant function of the SAC system is to assist litigants in determining whether, or, better, how much subsequent assistance and representation they will require:

The role of the SAC system is to help unrepresented parties understand the process and help them determine whether they should secure representation, either through legal aid or through a private lawyer. The reality is that the legal aid eligibility requirements are so low that the majority of people fall within the definition of middle and working class. These are people who do not have the money to secure a private lawyer. As a result, the SAC system may be their *only* recourse.

When asked whether the SAC system was implemented in such a way that these objectives may be realized, some interviewees indicated that it was while others reported having not enough experience to make such an assessment.

Only one of the four counsel, a legal aid lawyer, reported contact with the SAC lawyer. That lawyer indicated that she knows the SAC lawyer for her region personally and estimated that approximately fifty percent of her contact with him pertains to his capacity as an SAC lawyer. In most instances, she suggested, her contact with the SAC lawyer is subsequent to one of her legal aid clients having seen the SAC counsel – “... people say that they talked to the duty counsel lawyer then I call him to confirm what they are saying – or to go through procedures with him.” Neither member of the private bar interviewed reported any contact with the SAC lawyer. On the issue of referrals from the SAC lawyer, one legal aid lawyer indicated that clients who call her often frequently indicate that they were so referred by the SAC lawyer.

Like the representatives of the other stakeholder groups, each lawyer interviewed was presented with a list of ‘characteristics’ of the SAC system and was asked to agree, disagree or qualify each. All interviewees agreed with the statement that SAC lawyers provide assistance to clients on a ‘one shot basis.’ One interviewee, while agreeing with the statement suggested that this should not be the case because family law matters are too complex to deal with during a single session. All interviewees further agreed with the statement that advice is provided in person and limited to thirty minutes in duration. One interviewee submitted that the ‘in-person’ requirement is significant and should be perpetuated:

A lawyer should never, ever have a phone or email interview. Doing so would be a recipe for disaster. In person is good – you can have the client bring in all of his or her paperwork. What clients think and what reality is are two different things. Phone statements usually aren’t accurate.

All interviewees indicated that they were aware of the fact the SAC lawyers do not attend court hearings but one interviewee suggested that this is a flaw of the current model, suggesting that the common law and statutory law involved in family court matters are too complicated for the average litigant. Most counsel further agreed with the statement that the advice provided by SAC lawyers tends to be strictly legal in nature but one legal aid lawyer suggested that in practice that is not always the case – “while this is the intent, in family law it is hard to keep it that strict.” Another interviewee echoed that suggestion submitting that all lawyers do provide indirect advice on non-legal issues in the process of counseling clients. Finally, on the first-past-the-post conflict issues, all respondents indicated that they were either expressly aware of or assumed that the problem existed. One interviewee suggested that the problem is well known but there seems to be little consensus concerning how the problem may be remedied.

All of the lawyers interviewed suggested that the unique “collegial” character of the family law domain has had or at least could have some impact on the operation or future evolution of the SAC system. One interviewee stated that the collegial nature of the family court system is significant because conflict is driven by emotion and a reduction in emotion necessarily reduces conflict. Through the intervention of lawyers (and SAC lawyers), she suggested, an impartial point of view is introduced, emotions are

diminished, and the level of conflict is often reduced. A legal aid lawyer suggested that the collegial nature of family law will affect the future evolution of the SAC system because it recognizes that “the adversarial system does not work well for family matters.” One interviewee, although agreeing that the collegial character of family law does enter into the mix at some point, cautioned about the formation of causal links, stating:

I don't know that the SAC system makes it more collegial or that the collegial nature of family law has any impact on the operation of the SAC system. This is because the SAC lawyer does not remain involved with the file after the intake step of the process. If the two parties have advice and knowledge, though, I would say that it does promote collegiality. Without advice litigants have all kinds of crazy ideas. I do think that this system will improve the way that the family court system operates.

Interviewees were asked whether they believed that the duty counsel system, as it currently operates in Nova Scotia is capable of providing specific legal advice to users of the system or only ‘generic’ or ‘general’ legal advice. Of the three respondents who issued comments in response to the question, one interviewee, a legal aid lawyer, submitted that because of the structure of the model employed and the lawyers involved specific legal advice can be provided – “I think that the system we have and the person we have ensures that we have fact-specific advice. It allows for both generic and specific advice. [It] helps the person on the path about whether they need counsel. This is the priority.” The other legal aid lawyer interviewed suggested that the SAC system as it currently operates can provide specific legal advice but only in situations involving uncomplicated matters. She suggested that

...the system will work well with uncomplicated matters. Not if the client is only given half an hour with the duty counsel lawyer. The lawyer cannot even read over the documents in that amount of time, let alone offer specific (as opposed to general) advice. Remember, clients want and need *specific* and not general advice.

The articulated clerk interviewee indicated that she had not enough knowledge about the model to make an assessment but she did caution about the risks of generic legal advice:

Providing generic advice is always risky. You can say something to a client but the client will only hear what he or she wants to hear. For instance you could say ‘X plus these ten caveats.’ In many cases the client, however, would hear only the ‘x’ and not the caveats. Clients tend to be sneaky people, often not intentionally. They hear what they want to hear and nothing else.

All interviewees were in consensus that an important role of the SAC lawyer and the SAC system is to introduce to litigants civil court procedures and to assist litigants in

the completion of obligatory court documents. One interviewee submitted that the SAC represents an important step forward in the realm of document completion because pre-existing services were often intended only to provide litigants, en masse, with general assistance with form completion. The SAC system she submitted, however, moves paper work assistance from the general to the specific level – “I do think that helping them complete the forms is an important role for the SAC lawyer. We do have the parents’ information system that deals with this in general – the parents’ information system is good for general legal information and the SAC system is good for fact-specific stuff.” Another interviewee, however, while agreeing that it is important to provide paperwork completion assistance to litigants, questioned whether or not “you need lawyers to be helping with the completion of paperwork.”

Interviewees were asked to assess, first at a macro-level, the advantages and disadvantages of the SAC system and were subsequently asked to assess the advantages and disadvantages for a number of stakeholder groups. At the macro level of analysis, interviewees suggested that the SAC system improves the efficiency of the court process, it provides legal advice to litigants who otherwise might not have had access to advice and it assists counsel for the opposing party by equipping the unrepresented litigant with some knowledge. On that point, one legal aid lawyer stated that “It is difficult as a lawyer when the opposing party is unrepresented. This system will be helpful not only for the unrepresented litigant but also for the opposing counsel.” On the issue of macro-level disadvantages, the primary submission concerned the current first-past-the-post system’s inability to deal with conflicts. One interviewee also referenced the difficulty in providing summary advice in only thirty minutes.

Counsel were subsequently asked to assess the impact of the SAC system on their own work, on the work of judges, court staff, Nova Scotia Legal Aid and on litigants themselves. Two lawyers commented directly on point concerning the question about the effect on the private bar. At a macro-level, one legal aid lawyer submitted that it is unlikely that the SAC system will take business away from the private bar. She stated:

I say that because a lot of clients, after meeting with the duty counsel lawyer, will be persuaded in a way much stronger than by family members to seek private counsel. I also say this because I speak to private lawyers and they certainly haven’t been complaining about any decrease in business brought about by the implementation of this system.

Another legal aid interviewee stated that the SAC system has already impacted her work in that it “... has reduced frustration relating to unrepresented parties who say that they cannot afford legal advice and therefore won’t be able to get it. You just tell them that there is someone in the building and that the advice is free.” On the impact to legal aid, the single lawyer that provided detailed commentary reported that since the introduction of the SAC system Nova Scotia Legal Aid offices have been receiving calls from persons referred by the SAC lawyer but suggested that the system will not “either increase or decrease, significantly, the number of legal aid applicants.”

Interviewees described similar advantages and disadvantages of the SAC system for the justices and court staff stakeholder groups. Concerning advantages for justices, interviewees suggested that the SAC system will likely reduce the level of frustration often experienced by judges when dealing with unrepresented litigants due to the fact that they will have a “path for directing litigants.” It was further suggested that judges will benefit from the system because knowledgeable litigants tend to require less of the court’s time at actual proceedings. One interviewee stated that an important impact of the SAC system for judges is that it will “reduce the number of situations in which a judge must tread the line between being a judge and being an advocate.” The only potential disadvantage for judges cited by one respondent was that judges may be faced with situations whereby a litigant claims that the SAC lawyer has told him or her something that the litigant “will want to believe forever.” Concerning court staff and officers, interviewees suggested that the system will be advantageous in that it provides staff with a person to whom litigants can be referred for legal advice, it reduces the number of situations in which court staff must attempt to differentiate between legal information and legal advice and will result in court staff spending less of their available time attempting to explain rules and procedures to unrepresented litigants. The only potential disadvantage for court staff cited by one interviewee is that after seeing the SAC lawyer, litigants may present to court staff asking “so now what?”

When questioned about potential advantages and disadvantages of the SAC system for unrepresented litigants themselves, interviewees identified the advantages as being access to formal legal advice, procedural assistance and assistance with the completion of paperwork. One interviewee described the primary benefit of the system for litigants as that “they have someone who can help them weave through the family law system.” Another interviewee described it as “access to information and legal advice if they are going to go through the system unrepresented – this is absolutely invaluable as litigants need to know what is going on.” On the question of disadvantages for litigants, interviewees cited the limited (i.e. no in-court representation) nature of the assistance provided and the conflict problem created by the first-past-the-post model.

Interviewees, when asked about suggested changes to the current SAC system stated that the conflict problem should be assessed and an appropriate solution implemented, that more time ought to be afforded to litigants above and beyond the current thirty minute quota and that the centers should be expanded. On the final point, one interviewee stated:

I am a fan of people coming to me and paying money but, at the same time, I think that in the areas of criminal and family law there *must* be access to free legal assistance. This should be available not just to people who fall below the poverty line but to the working poor as well, especially in family law. Low income earners simply cannot afford to pay a lawyer to prevent them from losing their kids. I think that they should gut out the basement of Devonshire and provide a full clinic.

B.

There were two interviews with the directors of NSLA, both of which were wide-ranging, exploring issues of the origin of the SAC initiative, the objectives, key issues to be examined and possible data sources. It was confirmed that there was indeed a “summit” in Halifax among NSLA, Court Services, and court administrators where the impetus gained momentum to do something more innovative about the backlog of cases at the Family Court and the subsequent downtime for the judges; other issues were noted too such as the frustration among legal aid staff at not having an alternative to offer people ineligible for legal aid but not able or willing to afford private counsel. The upshot was that NSLA, from its general budget, agreed to have a staff person initiate the SAC role at the Family Court in HRM. The person selected brought valuable experience as, in addition to experience as an NSLA professional, he had earlier been a conciliator (a non-legal role) at the court. The NSLA leaders advanced a number of measures that might be examined including whether there are quicker court flows from application to hearing / trial, whether there is significant early closure of unwarranted cases, whether SAC has facilitated speedier conciliation times and more consents”, whether there has been a reduction in the number of adjournments and appearances at hearings / trials that could be attributed to the SAC’s contribution in assisting the clients’ focusing on the salient legal issues of their case, and, of course, whether detectable impacts could be measured with respect to SAC implications for use of either legal aid or private counsel. At the same time, there was a caution expressed about the research value of the Civil Index.

NSLA clearly has a major investment in the SAC initiative. Allocating scarce resources to that activity, in the face of considerable pressures to raise the threshold for eligibility for legal aid more generally, could be seen as a tough decision. The central issues for NSLA though seemed to be the concern with assuring that there is, at least to some degree, access to legal advice for virtually everyone, and secondly, to as early as possible in the court process, to weed-out the frivolous or unwarranted cases and perhaps especially encourage those requiring significant legal counsel to get it. Such objectives in Family Court could be seen as analogous to objectives in criminal court of legal assistance to all persons who might be jailed and early case resolution where possible. One NSLA leader commented that, perhaps even more than in the criminal court field, there may be value in “unbundled services” or “a home depot” approach to legal counsel and SAC might well be a major factor in facilitating that development.

(ii) INFORMED ACADEMICS

The academics stakeholder group was comprised of three Professors of Law at Dalhousie University Law School. Each of the three professors interviewed currently

teaches, or previously taught family law, or has a practical involvement with that sub-discipline of the legal domain. All three interviewees are known throughout Canada for their academic contributions to the realm of family law.

All three law professors agreed that unrepresented litigants pose a serious problem to family law courts. According to one interviewee, fifty percent of all family law cases in the Province of Nova Scotia have at least one unrepresented litigant. One of the professors interviewed, while sympathetic to the problem, submitted that most unrepresented litigants go unrepresented "... because they want to be unrepresented," suggesting that all litigants have access to "legal aid or private bar options." Another interviewee stated that unrepresented litigants, while they pose a problem in all areas of legal practice, are especially problematic in family law because of the complexity of the legal issues and the complexity of the civil procedure rules with which most litigants are unfamiliar. In describing the complexity of family law, she drew upon an example from three years ago:

A few years ago the Legal Information Society created and made available an 'uncontested divorce kit.' The idea was that a litigant could get the kit, fill in the blanks and that would be it. In practice, however, it turned out not to be so simple. There were *lawyers* who practiced in areas other than family law who were unable to fill in the blanks. That's how complex family law is and that is precisely why you need someone to explain this. Most lay people cannot do it.

On the issue of risks to clients created by proceeding through a court case without representation, all three interviewees agreed that risks do exist. One interviewee described the primary risk as relating to the fact that without representation, many litigants are unable to "have their rights and interests fairly articulated" at court. Another interviewee submitted that there are always risks that accompany attending court without representation and that the level of risk varies depending on the type of matter involved. She suggested a direct correlation between the level of risk and the severity of the stakes involved in a particular matter – "The most extreme risks, I would think, would be observed in situations involving child custody matters. The stakes in those proceedings are high – the parent(s) could lose their kids forever. It's a big deal. For some less serious matters the risks would likely be less significant." Concerning risks to opposing parties and clients, interviewees referenced delays caused which impact court efficiency and feelings of animosity by the unrepresented litigant towards counsel for the opposing party. One interviewee reported having once been threatened and spit at, in the face, by an unrepresented litigant in Halifax.

On the issue of the SAC's compatibility with the court system, all three interviewees were highly critical of the Canadian justice system's application of the adversarial model to family law matters and each interviewee suggested that the future success of the SAC system will be largely dependent on the evolution of the dispute resolution system in which family law is practiced. According to one interviewee the

types of issues dealt with in family law make it inherently incompatible with the adversarial system:

The adversarial approach does not fit well – *at all* – with family court matters. Family matters, unlike criminal matters, are not black and white in nature. In family law you are dealing with people who – whether they like it or not – are going to have to maintain relationships with one another. An adversarial system pits them against one another – it brings out dirt about the parties even if those underlying issues have already been resolved. It makes the parties into enemies with one another. In this system you really do need lawyers because litigants can't solve many of the problems on their own – there is simply too much emotional baggage, etc. because of the break-up of the family, how things went, etc. They need assistance. In my opinion, family law *requires* a problem solving approach.

Another interviewee similarly stated:

What we really need is a *new court system* – it needs to be more inquisitional and less adversarial in nature. More specifically, we need to build legal advice into the system. One of the major weaknesses of the adversarial model is that it seems to discourage the trier of fact and other system officials from providing advice to litigants. This is problematic. Before we can integrate advice into the family law system we need to modify the existing rules and create new ones. Also, we have to better tailor the legal language for litigants (...) the forms, etcetera, should all be examined and reworded to make things more clear for the self-represented litigant. We have to stop using all of the legal language – instead of telling the litigant, for instance, that he is required to submit all and any documents that may have a bearing on or relevance to the matter, we should spell out exactly what they should submit.

When asked to describe the role of the SAC lawyer, the responses provided by the three interviewees varied significantly. One interviewee described the role of the SAC lawyer as consisting of three functions: to act as a gatekeeper by “weeding out the cases that need representation and the cases that do not need representation,” to present litigants with their legal options and to acquaint litigants with the ins and outs of civil procedure. Concerning the third function, the interviewee stated:

The court system and the associated processes are *very* foreign to most people. Most people learn everything they know about the system by watching Law and Order on television. Clearly, in reality, the system does not function in that way. It has been my experience that most clients do not understand what goes on in the courtroom.

The second interviewee, on the issue of the role of the SAC lawyer, submitted that the SAC ought to play no role in the family court system. That interviewee suggested that litigants ought to be provided with “full representation” by “real legal aid lawyers.” He proceeded to state that the SAC system is incompatible with our current family court system because:

The role of a legal aid lawyer is not to grease the wheels of the court. SAC lawyers merely make the job of the judge easier and grease the wheels of the court. This is understood in the criminal system but not so much in the civil court system. This is not understood in family law – the role seems to be to grease the wheels. This, I think, is fundamentally wrong.

The third interviewee indicated that he was uncertain as to what the role of the SAC lawyer is or should be. He critically questioned how the SAC system fits into the family court division and, more specifically, whether it accords with Rule 70 of the Nova Scotia *Civil Procedure Rules*, stating that there is no mention in Rule 70 of SAC systems. This interviewee proceeded to indicate concerns about the impact of the SAC role on the role currently performed by conciliators, suggesting that SAC lawyers may be treading into territory currently served by trained, professional conciliators.

None of the interviewees believed that the SAC system would have a quantifiable impact on the private bar in Nova Scotia. One interviewee submitted that any impact would be contingent on the type of clients that use the system, the types of problems with which they present, the recommendations made and the dispositions delivered. A second interviewee held that the SAC system would have absolutely no impact on the business of the private bar. He stated:

This system will have *no* impact on private lawyers. I am a firm believer that people who go to SAC lawyers never had *any* intention of going to anyone else. This principle, in fact, is now well established. These are people who will not retain a private lawyer. If they wanted counsel, they would have gotten counsel.

The third interviewee agree that the system is likely to have no impact or a very insignificant impact on the business of the private bar, suggesting that the level of the impact will vary depending on the service-delivery model. She held that “if staff lawyers are referring to other staff lawyers the impact may be more profound than if a roster model is employed.”

The three interviewees offered varying responses when asked whether they believed the introduction and operation of the SAC system would affect the business of Nova Scotia Legal Aid. One interviewee held that the SAC system would have a positive effect and would enhance Nova Scotia Legal Aid’s efficiency. She stated:

I think that the SAC system could certainly cut down the case load and that inevitably would be a good thing. I think that the system could make legal aid more efficient, would allow you to determine conflicts from the outside and would allow you to determine at a very early stage who cannot get representation from legal aid. The earlier, I think, that you identify the conflict and the earlier the parties get legal aid, the more quickly things will move through the system.

She cautioned, however, that it is a mistake to suggest that the SAC system could replace the current legal aid system as the two systems offer different services using different approaches.

The second interviewee stated that the SAC system will likely have no effect on the current legal aid system. Highly critical of the SAC system at several different levels he stated that the SAC system "... is not effective, does not streamline services and serves no useful purpose." The third interviewee stated that he did not know enough about the operation and logistical arrangements of the SAC system to assess any potential impact it might have on the existing legal aid system.

Finally, interviewees were asked whether the SAC system is equipped to deal with complex, as opposed to only simple, family law matters. All three interviewees were in concurrence that the SAC system is ill-equipped to deal with complex legal matters. Two of the three interviewees held that the system may be appropriate for simple matters but that in complex matters full representation is required. One interviewee stated: "For complex matters I definitely think that a person should get a 'real' lawyer. For less complex and routine matters, however, I do think the SAC is good." The third interviewee, however, stated that in family law, unlike in some other areas of law, all matters are inherently complex and, as such, the SAC system is ill-equipped to deal with *any* family law issues. He stated:

Taking instructions from criminal clients is much easier – the questions and answers tend to be very simple – so, do you wanna go to jail? The hard edge of criminal law makes it much more compatible with the duty counsel system. Clear instructions for complicated matters just aren't an issue in the criminal system. In the family law context, however, there is a long-term, complex relationship between the client and lawyer. "In criminal law, in many instances, you do not even have to talk to your client to effectively represent him. Family law is not like this. In criminal law you need only poke holes in the Crown's case – criminal law is *very* straight forward. Family law, on the other hand, is *very* complex. You have to know a lot about the litigants – many of whom are unrepresented. The role of the SAC in family court situations is *not clear*. As such, family law is not well suited to a duty counsel system because of the complexity of the matters that come before the court.

(c) GOVERNMENTAL AND QUASI-GOVERNMENTAL AGENCIES

The governmental and quasi-governmental agencies stakeholder group was comprised of a representative interviewee from the Nova Scotia Department of Community Services and two senior representative interviewees from the Children's Aid Society of Cape-Breton and Victoria. In the first section of these interviews, interviewees were asked to comment on what they regarded as being the strengths and weaknesses of the family court system as it currently exists. The research subjects were prompted, in some instances, to identify "what the family court does well" and "what the family court does poorly." On the issue of things that the family court system does well, the representative of the Department of Community Services commented extensively on the post-family court unification intake process as well as on the newly introduced summary advice counsel system, suggesting that both services have significantly improved court services to litigants. One of the two representatives of the Children's Aid Society of Cape Breton-Victoria suggested that, with a couple of exceptions, the court system has functioned effectively since unification – "There have been less problems, in general, since the unification of the courts. Everything else works really well." On the issue of weaknesses, one interviewee referenced docket delays as a significant problem and another reported that in some regards the system is characterized by a lack of consistency, suggesting that a single matter often unnecessarily involves several individuals from the same office: "In many instances the players vary which results in significant – and unnecessary delays. It would be much more efficient if we had consistency."

The three interviewees unanimously agreed that the family court system provides to litigants adequate information and legal advice. It was suggested by the interviewees that litigants have access to legal information and advice through the family law information centre, victims' services, transition homes, judges and indirectly through other government offices and agencies.

On the issue of awareness of the existence of the SAC service, two of the three persons interviewed in this group were well aware of the service whereas one interviewee indicated that although he knew the service had been implemented he was not made privy to the particulars. The two interviewees who reported being well-aware of the system made only positive remarks about it. One stated: "I think that this is a wonderful addition to the system. Many clients only have a few questions that they need answered – the SAC lawyer is an excellent source of advice concerning what the litigant should expect during the court process." The other well-informed interviewee reported that the Department of Justice held information sessions about the SAC service for all people and groups involved in or with the family court system. The interviewee who was not well-aware of the system stated that while he knew the system existed he was provided with no particulars concerning what services were offered, to whom or by whom. He queried: "My question is how was the information distributed? I've never heard of this guy [the SAC lawyer]."

The subsequent section of the interviews presented interviewees with various characteristics of the SAC system and the interviewees were asked to indicate whether they agreed with, disagreed with or wished to qualify the characteristics as stated. These presumed features were acknowledged by each interviewee. Of the six characteristics presented, only one characteristic elicited a comment by one interviewee. A representative of the Children's Aid society submitted that it is erroneous to suggest that the advice provided by SAC lawyers tends to be exclusively legal in nature. She submitted: "It also provides information about resources that are available in the community. They actually do provide advice about other things – I think you're incorrect to suggest that SAC lawyers touch on *legal* advice *exclusively*. They refer people for further information about emotional issues, economic issues, etc."

The two interviewees who reported being knowledgeable about the SAC system were asked to identify what they perceived as being the strengths and weaknesses of the SAC system as it currently operates. One interviewee submitted that the primary strength of the system is accessibility, stating that the SAC lawyer "... is available to everyone, including our clients." The second interviewee reported the information-provision function of the SAC as the primary strength, stating that the SAC system "... Assists a lot of first-time litigants. This is a very important system. It gives people, who otherwise would not have access to advice, an opportunity to get some." On the issue of weaknesses, one interviewee stated that there exist none – "From what I have seen, and from what I know, the whole thing is wonderful. I don't know of any disadvantages." The other respondent criticized the location of the Sydney SAC office and the lack of promotion of the service. He stated:

The service is offered in the basement of the justice centre – it should be in a central community location. There should be more advertising and awareness. There was advertising in the beginning but none now. There used to be public presentations. There should be additional educational sessions.

Both of the interviewees who were knowledgeable about the SAC system reported that they regularly refer individuals to the service. The representative of the Department of Community Services estimated that she refers individuals to the SAC office on a by-weekly basis and suggested that since the introduction of the service she has referred approximately twenty persons. A representative of the Children's Aid Society stated that that organization refers clients to the SAC service primarily so that they can gain information about the court process, stating: "... We [refer litigants] because when people are involved in family court matters a lot of people think it is like 'Law and Order.' If they plan to represent themselves we always refer them to the SAC." The representative of the Department of Community Services stated that, to her knowledge, her Department does not receive referrals from the SAC lawyer. One representative of the Children's Aid Society reported that that organization does receive referrals from the SAC lawyer concerning child welfare matters.

All three interviewees were asked to describe the impact the introduction and operation of the SAC service had on the work performed by each of their respective organizations. The representative of the Department of Community Services stated:

This system has had only a positive impact. It has provided much needed information to our clients. The SAC lawyer, Robert, is *very* accessible. He is *always* available. He can dispel many of the concerns in only five minutes and then tell the litigant to proceed on his or her way. This service will continue to have future positive impacts. Funding for this service should absolutely be renewed. This system is working – it is working well. A lot of our clients do not have much self-confidence or self-esteem. Robert is *very* approachable and easy to talk to. He encourages clients to seek his assistance. I think that the success of this project is at least partly attributable to Robert at this court house. He is positive, outgoing and personable.

On the impact of the SAC system on the Children’s Aid society, one representative of that organization suggested that the system has significantly reduced the number of calls that they receive for legal information and advice. The other representative submitted that SAC serves another important societal role, stating: “It shows people that they are still important even if they do not have a lot of money. This service will help us a lot.”

All three interviewees indicated that they would recommend “no changes” to the SAC system as it currently operates. Two of the interviewees indicated that based on what they have observed to date the system is operating well which suggests to them that modification is unnecessary. One of the two stated: “I can’t think of anything. Excellent stuff and easy access.” The third interviewee indicated that she is not familiar enough with the logistical arrangements to recommend modification.

(d) COMMUNITY AGENCIES

The ‘community agencies’ interviewee group was comprised of representatives of transition homes, support centers, family services organizations, shelters and legal information services in the Halifax Regional Municipality and the Cape Breton Regional Municipality. Specifically, representatives from the following organizations were interviewed via telephone in relation to this evaluation: Family Rights Association of Nova Scotia, SOS, Family Services of Eastern Nova Scotia, Family Resource and Youth Centre, Bryony House, Alice Housing, Halifax Military Family Resource Centre, Leaside Transition Home, Breakthrough Co-Op and the FLIC program at the courthouse.

The instrument administered for community agency interviews was identical to that employed for the governmental and quasi-governmental agency interviews. Varying views were addressed when interviewees were asked to identify the strengths and weaknesses of the family court system as it currently operates. Some interviewees identified the following as representing strengths of the current system: the SAC system,

the intake process, the conciliation process, the unification of courts which has allowed “one stop shopping” for family court litigants, and the abundance of information available to litigants. Commenting on the SAC system, one interviewee stated:

The intake process has been improved and the summary advice counsel system has been introduced. I think these are important and wonderful additions. It gives our clients an opportunity to speak with a lawyer regarding their situation and acquaints them with the court process. Robert MacNeil is great. He is extremely approachable and always available. I refer my clients to him and I often call him myself for information.

Another interviewee stated “I was happy to see the implementation of the duty counsel system. It solves a lot of issues initially. In my opinion, it is one of the best things that they have put into place since the unification of the Court.”

Interviewees identified a number of issues that they classified as weaknesses of the current system. The primary criticism expressed by most interviewees concerned court docket delays and the difficulties involved in getting trial dates. One interviewee stated that “timeliness is always a major issue. I don’t know if that’s the fault of the court itself, of the parties or of counsel. The process itself tends to be quite slow”. Another held that “on the issue of weaknesses, I would have to say the court back-logs which result in having to wait a long period of time before one can get a matter into the court system.” Other concerns expressed by interviewees included a lack of preventative programs, the legal aid application process, and the court’s inability to deal with sensitive issues. A significant concern in the eyes of one interviewee was related to the fact that most litigants know little about court procedures and what to do once the court process has been completed. She stated:

The areas that we see people struggling with have to do with leaving the court system and not understanding that there is someone there to explain to them what has happened and the subsequent steps to be taken. A common example is custody/access issues. After the court proceedings are finished, many people do not know what the next step of the process is. They understand that they have been ordered to do certain things but there is rarely any clarification concerning what that means. For instance, if a litigant is told to go to addiction services they likely do not even know which government department they should contact. Our organization tends to do a lot of bridging in regards to that gap.

On the question of whether the family court system provides litigants with adequate legal information and advice the interviewees were split in their responses with four stating that the system does provide adequate information and advice, five stating that the system does not provide adequate information and advice and two interviewees offering qualified responses. Of those who indicated that information and advice was not

adequate, some suggested that the information that is available is too complex for the average litigant to understand. One interviewee, for instance, stated:

I don't think that there is anything out there that is *readable* for the average person. The little information that is available is often not appropriate in the context of abusive relationships. For example, there is no information on the interplay between provincial court activities and family court activities.

Another held that "... the system tends to be overwhelming. When women leave abusive situations they are, in many situations, dealing with numerous community professionals. In many instances, lawyers do not know how to 'dumb it down' for people. They need to take the time to explain things properly." One interviewee suggested that the problem is not that there is a lack of information available to litigants but, rather, a lack of information about how literature may be accessed. She stated:

My own opinion is that there probably is information out there but it is poorly advertised and promoted. There is a lack of communication concerning how available information may be *accessed*. There are further issues concerning literacy. Written material is of little utility to people with poor reading skills, for instance. The system ought to re-examine how information is provided, how it is advertised and how it is presented.

Concerning awareness of the existence of the SAC system, six interviewees reported that they were aware of the service and five indicated that they were unaware of the existence of the service. Those who were aware of the service reported having been informed either personally by the duty counsel lawyer or by their clients who have used the service. Some of those interviewees who answered 'yes,' however, qualified their response by stating that they knew only that the service was available but nothing specific about it. One respondent stated:

I knew that there was the potential and that on occasion a woman has managed to find representation wondering the hall who can help. They have gotten really good advice that way. But, in terms of accessing, we have no information about what the SAC system is or how one may access or use it.

Some surprise was expressed by those interviewees who reported that they were unaware of the service that such a beneficial program is in place but that community agencies have not received formal literature about its existence. One Executive Director of a Halifax transition home, for instance, stated: "I've never heard of it. In fact, I'm kind of surprised that we, as front line community workers, were not informed of this service. This tends to be a fundamental problem – the women come to me and if I do not have anyone to whom I can refer them they fall off the cliff."

When presented with defining characteristics of the SAC system about which the interviewee could agree, disagree or comment, concerns were raised regarding three issues: general versus specific advice, the amount of time allotted per client and conflict cases. Concerning the first, one interviewee questioned the utility associated with the provision of ‘general’ legal advice. He stated:

This service is very useful because it encourages litigants to seek further legal advice and it gives them a dose of reality. But, if that is all that the service does, one might question whether we actually need a lawyer in the position. If he is giving general information concerning a person’s legal rights – and not offering specific legal advice – then why are we dishing out a lawyer’s salary for that information?”

Concerning time allocations, two interviewees questioned whether half an hour of advice would be sufficient for the average litigant. One respondent, for instance, stated:

I guess the first thing that jumps out to me is the twenty to thirty minute time limitation. It seems to be quite limited. I would think that you could barely meet someone about an issue let alone get into the details – especially when these issues are emotional ones – in that amount of time. It seems to be very tight. I think that an hour might be more appropriate.

Finally, one interviewee stated that significant emphasis must be afforded to dealing with situations whereby one unrepresented party is precluded from using the SAC service simply because the other party to the dispute has already sought advice from the SAC lawyer.

On the issue of strengths of the SAC system, interviewees who responded indicated that the SAC is important in two respects – it provides litigants with information about the law and about court procedure and it enhances social justice by providing unrepresented litigants with legal advice. Concerning the former, one interviewee stated: “You have someone there with legal knowledge of the working of the family court system that can pass along that advice to any person who walks through the courtroom door. The DC has all of the info in his/her head. The system, in theory, should speed up the process and alleviate stress. I do believe that it is doing that successfully”. Another held that the SAC system:

... provides information to allow the person to get through the system. Unrepresented litigants are like ants going off in all directions – they do not understand what relief they are seeking, what is appropriate to bring to court, etc. Any kind of preparation – whether twenty minutes or longer – is very advantageous to a person who can get it. [The court system] is not set up to be user-friendly. The goals and objectives of the system extend beyond personal needs. There are broader objectives

and goals. The SAC system gives people an understanding as to what they are doing and the potential ramifications of going forward.

Two interviewees suggested that at a more fundamental level, the SAC system is significant in that it operates to reduce the effect of financial barriers in the judicial system by providing assistance to individuals who otherwise would have no access to advice or information due to financial restraints. A coordinator of one legal information service in Halifax stated that the SACs ability to facilitate access to justice is its most important virtue and an Executive Director of one family resource centre suggested that:

... the SAC system takes down the barrier of income and puts people on a much more even playing field. Law becomes more just to people as a result of this system. It enhances social justice in our community by giving people access to legal advice so as to recalibrate the scales such that those people who have money don't have a full advantage over those people who don't have money.

The majority of interviewees were able to identify no 'weaknesses' of the SAC system as it currently operates. Weaknesses that were expressed by interviewees concerned the fact that under the current model SAC lawyers do not provide in-court representation, the thirty minute time limit placed on client meetings, the lack of promotion of the service and the fact that there is only one lawyer at each of the two SAC offices.

Of those interviewees who provided feedback on the question, a few indicated that they have, in the past, referred persons to the SAC lawyer. One representative of the Family Rights Association of Nova Scotia stated that he refers to the SAC lawyer on a regular basis – "I would say that I refer people at least on a weekly basis. Every person whom I've referred has attended. They call me back afterwards and tell me how things went. All of them, to date, have called back and said 'that was great.'" Two interviewees stated that they have not referred to the SAC system because they were unaware of the fact that they could do so. Only one interviewee reported having received a referral from the SAC lawyer.

When asked about the potential future impact of the SAC system on the work provided by each interviewee's organization and its clients, all interviewees who offered responses indicated that the SAC system would likely have a positive impact on their organization and the clients that they serve. All interviewees indicated that an increase in the amount of legal information made available to their clients represents an important step forward. One interviewee, for instance stated: "I would definitely think that it would have a positive impact on people that use our service. A lot of people have a lack of information and no guidance. I think that proper direction and guidance will go along way in improving the efficiency of the family court system". A representative of a women's shelter held that:

This system, I think, will only have an impact if the potential users are made aware of it. It needs to be better promoted within the community agencies that provide services to potential users. Often times when women go to family court they put so much trust in a single lawyer that they do not get all of the relevant information. Even in instances where a litigant has a lawyer I think this service would be useful in that it could provide the litigant with supplemental information/advice. The more info that these women are armed with before they actually go to court, the better off they are.

A number of interviewees further suggested that the SAC system's ability to provide legal *advice* – and not only legal information – will likely result in significant positive impacts for their clients. According to one interviewee, many community organizations feel limited by the fact that they can offer only information but not legal advice. In the words of one outreach worker, “We are able to convey information and provide support services but we, ourselves, cannot provide legal advice. It will certainly help us to service individuals who fall within the gap area.” The significance of this feature of the SAC system was echoed by a former coordinator of Dalhousie Law School's FLIC program who suggested that the SAC system provides a service – actual legal advice – that student volunteers cannot provide. She stated that the Dalhousie program and the SAC program could work well together: “Our students provide only legal information – not legal advice. The clients take the information that we give them to the SAC lawyer for specific legal advice.”

Concerning suggested changes to the current SAC model, interviewees suggested that the system ought to be better promoted to potential users, that more time ought to be allotted to client sessions and that the SAC lawyer ought to be permitted to attend at the first day of a court proceeding. Concerning the final suggestion, a representative of the Family Rights Association of Nova Scotia submitted that:

Having the SAC lawyer attend court on the first day of the proceeding would lend a great deal of benefits to the system as well as to the client. It would allow the client to understand what is going on in court and what needs to be done after the initial proceeding. That would be an important improvement.

It may be assumed from other recent research that respondents from community agencies typically have heard about the lawyer referral service. Officials and telephone staff at that service indicated that they were familiar with the SAC program and could identify the SAC lawyers at the two sites. They reported receiving several calls a month from persons who said they were advised by the SAC lawyer (usually the Halifax SAC lawyer) to call and that such a frequency probably understated the actual SAC referrals since occasionally the caller merely said that they were advised to call “by the court”.

(e) DIVERSITY STAKEHOLDERS

The main focus in assessments of the SAC initiative from a diversity perspective would center on the Mi'kmaq population in Cape Breton and, in HRM, the Afro-Canadian and immigrant population. Roughly 5% of the CBRM population is Mi'kmaq, chiefly on-reserve in Membertou and Eskasoni. The Mi'kmaq population there is young and growing. In HRM, according to recent Census Canada's Aboriginal Peoples Survey, and INAC data, there are roughly 1000 North American Indians who are either band members and/or view their native identity as their paramount identity, a number representing less than one half of one percent of the HRM total population. Diversity is however well represented in HRM since it is home to about 70% of the province's 20,000 Afro-Canadian population and to the bulk of its immigrant population. While the level cultural diversity and immigration is quite modest in Nova Scotia in comparison to Ontario and the rest of Canada, what there is, is increasingly concentrated in metropolitan Halifax. Over 70% of all the modest number of recent immigrants in Nova Scotia resides in the Halifax area and that proportion is expected to increase (Clairmont, 2006). The Nova Scotia government is also engaged in trying to attract immigrants and encourage their staying in the province, an effort obviously driven especially by the socio-demographics of declining population.

There do appear to be some issues concerning the Family Court and the services provided Mi'kmaq people in Cape Breton that could have implications for the SAC initiative. Several judges have indicated that Mi'kmaq people constitute a high and quite disproportionate percentage of the Court's clients, especially, but not only, in child protection cases (in these cases legal aid is always provided and SAC is typically not utilized). Several court officials such as conciliators and also the SAC lawyer have indicated that there is also a significant problem of "no shows" among the Mi'kmaq clients or putative clients. Interviewees suggested hesitancy among Mi'kmaq to use the Family Court, an ambivalence, and some officials (judges and others) have noted that enforcement orders in custody / access and support are frequently of limited value on reserve for a variety of reasons. There were some suggestions that "gender imbalance" could be a problem for Mi'kmaq females with respect to matrimonial property and maintenance support (one judge commented on the difficulty of garnisheeing wages on reserve).

These observations tally well with the views of local Mi'kmaq knowledgeable (officials in Mi'kmaq Children and Family Services and others) who were interviewed. There is a widespread view among them that family court issues are many and growing among the Mi'kmaq but that networks with the Family Court are problematic. There was much consensus that information and support services were insufficient. Staff members with the Mi'kmaq Legal Support Network, especially court workers, have reported receiving frequent requests for assistance (largely requests for information and procedure) in dealing with Family Court issues but, while they may help if they can, their mandate is the criminal justice system and they are not well-informed about SAC or other

programs at Family Court. Of course there is also virtually zero presence of Mi'kmaq among court staff, lawyers of any sort and the judiciary, a factor which enhances the hesitancy and ambivalence frequently reported. There does seem to be much goodwill and interest in building up networks and a better "comfort level" among conciliators, judges as well as NSLA and the SAC lawyer. In interviews there have been references to the need for more cultural awareness exposure, for the desirability of a sub-office for legal aid on reserve (in particular at Eskasoni which has a population of about 3500 and where transportation issues may be significant) and for a similar arrangement for the Family Legal Information Centre (FLIC) located at the courthouse in Sydney. At present none of these exist though such proposals would apparently be well-received by Mi'kmaq leaders. It was also suggested that more collaboration with Mi'kmaq communities could lead to inventive solutions with regards to some SAC delivery problems; for example, one official noted that the FPP problem could be less since "surely if any people could support SAC providing legal advice to both parties it would be the Mi'kmaq with their 'healing circles'. Certainly it would appear important for SAC if it is to enhance the equity dimension of court services to out-reach more to the Mi'kmaq communities.

In HRM the researchers did not encounter the same sense of high usage and problematic relationships between Family Court and its programs and Afro-Nova Scotians or the immigrant groupings. There was not the perception among interviewees of a significant problem with possible implications for the SAC initiative. Local Black leaders did emphasize some difficulties in relationships and mutual understandings with respect to the criminal justice system but the research did not explore their views with regards to the Family Court scene in any depth. In the case of immigrant leaders there was more concern expressed about immigrants, especially women, accessing information and legal advice on family court matters. Interviewees also indicated significant reasons for immigrants exhibiting some hesitancy and ambivalence in initiating contact with 'court people', presumably including the SAC in that category. There was frequent reference to immigrants being 'afraid of the justice system'. At the same time the immigrant leaders contacted emphasized the centrality of cultural differences – "it impacts every aspect of our lives" and indicated there would be a variety of views on matters such as custody / access and matrimonial property. To the extent that the Family Court, and SAC as a contributor, are moving away from an adversarial approach to a more problem-solving one, the interviewees were enthusiastic. Overall, they suggested a more active promotion of SAC and an engagement with immigrant groupings at the "community level". It would appear important to examine the equity issue (with respect to both ethnic / cultural diversity as well as socio-economic status) in greater depth than was done in this modest assessment of the SAC initiative.

SUMMARY

Respondents associated with the Family Court system as well as those involved in the stakeholder governmental agencies were generally well aware of SAC, understood its objectives and defining features, and were very positive concerning its value. Practicing

counsel appeared to understand the SAC role while, in HRM at least, themselves having quite limited contact with the SAC lawyer. Non-governmental community agencies and organizations were much less informed, indeed most of these respondents were not informed and with one or two exceptions had little direct dealings with SAC whether in CBRM or in HRM. Several exhibited confusion about the SAC role seeing it as conventional with legal aid practice (e.g., following the file into court). For them the evaluation was an occasion to learn about the SAC initiative and once it was discussed they were very positive too. Those who knew about SAC – court officials and government people – agreed with the posited dimensions or features though some challenged the position that SAC engaged in little non-legal referral; the community agency people on the other hand indicated clearly that they typically did not refer nor did they get referrals from SAC. When the features of the SAC role were discussed, there was widespread concern among the stakeholders with respect to the limited time allotment and to the FPP issues. Virtually all respondents could see the value of SAC for their court role (even for the defence counsel of the other party in the case), their organizations and their clients. Greater promotion of the SAC program was needed according to the respondents; some indicated that while there may have been hand-outs and other information at the initiation, there was a need for updating on the program and reminding people of its work. Not surprisingly, promotion was especially highlighted by those respondents associated with disadvantaged and other special groupings in society such as the Transition Home staff, the Mi'kmaq agency representatives and the local immigrant contacts. While quite positive of the SAC initiative and readily willing to identify its benefits for all the players from judges and court staff to clients, there was also a realism in the assessments. The justices and the defence counsel as well as the academics still considered that the unrepresented litigant remained a serious problem and most saw the SAC consultation as primarily beneficial in minor cases; community-based interests saw SAC as a useful but limited tool for their clients. With one exception the respondents quite strongly believed that the SAC program should be continued, if not extended in depth of client contact and possibly reach into the court process.

Table: Stakeholder Interviews by Role and Region

Role	Total Interviews	Metro Interviews	Cape Breton Interviews
Justices	8	5	3
Court Administrators	5	3	2
Legal Aid	7	6	1
Private Bar	3	3	0
Mi'kmaq	3	0	3
Academics	3	3	0
Court Staff*	5	2	3
Conciliators	4	1	3
Governmental Agencies	4	0	4
Community Agencies	11	6	5
Police	1	1	0
Totals	54	30	24

* The "court staff" category does not include conciliators.

CLIENT SURVEY ANALYSES

CLIENT PERSPECTIVES

The survey instrument used to obtain assessments and other responses from SAC clients is appended along with the responses associated with each question. The instrument, as developed, drew upon discussions with the project advisory committee and especially upon the preparatory survey guide advanced by Policy, Planning and Research, Nova Scotia Department of Justice. The survey of SAC clients sought information on (1) the type of family court matter entailed, (2) how the client accessed the SAC lawyer, (3) the main reasons he/she sought SAC advice, (4) pre-SAC contact with conciliation, NSLA, or private counsel, (5) the format of SAC consultation, (6) client assessment of the SAC services received, (7) post-SAC contact with conciliation, mediation, NSLA or private counsel, (8) court proceedings (hearing or trial of any type), (9) overall assessment of the SAC services provided, (10) suggested changes to the SAC service, and (11) information on age, gender, formal educational attainment, and perceived eligibility for legal aid. In addition, interesting and valuable comments were frequently noted. All interviews were conducted by telephone where the interview times ranged from 15 minutes to an hour.

The access format for the research team to the lists of SAC clients varied by site. In the case of Sydney, SAC clients who received face-to-face SAC consultation were requested by the SAC lawyer to complete an exit survey and also to sign a consent form for a follow-up interview. These Sydney consent forms, forwarded to Policy, Planning and Research and then to the research team, represented about 10% of the SAC client contacts over the previous fiscal year; of course the client contacts themselves represented but a sample of the persons involved in Family Court cases. Comparison of the SAC contacts data and the survey interview data indicates that the two groupings were reasonably congruent on the four dimensions where comparisons could be made. The groupings were very similar in terms of age (38 to 40 years of age), percent female (58% to 60%) and having a ‘child focus’ case (65% to 67%); they differed significantly though in terms of perceived legal aid eligibility, with the SAC lawyer indicating that 50% of the contacts were legal aid –eligible whereas only 29% of the clients interviewed considered that they were legal aid – eligible. In the case of Halifax, no signed consent forms were available but the SAC lawyer forwarded to the researchers a sample of the SAC clients (names and phone numbers) who were then contacted by the research team and asked to respond to the survey. The introduction used in this initial telephone contact with Halifax SAC clients was developed in concert with NSLA and the SAC lawyer and is reproduced in the survey instrument appended. It is difficult to be definitive about the representativeness of the Halifax survey sample. It did constitute about 10% of the client contacts over the past fiscal year. Comparison of the Halifax client contacts data and the survey interview data shows that the survey sample had a higher proportion of females

(74% to 60%), a lower percentage of legal aid –eligible clients (20% to 29%) and a slightly older population (44 years to 42 years).

Table 8 depicts the results of the survey contacts carried out by the researchers. The goal of the researchers was to obtain approximately 100 interviews, far more than initially targeted but deemed a more appropriate number for extrapolating from the sample to the population serviced by SAC, and a sampling roughly in proportion to different caseload numbers at the Halifax and Sydney sites. These goals were largely accomplished as shown in the table - 100 completed interviews distributed 35 to 65 for Sydney and Halifax respectively. Among those SAC clients listed but not interviewed, the majority were ‘surplus’, that is, persons not contacted because the objective of 100 interviews had been reached. In both the Sydney and Halifax samples, 8 or 9 SAC clients could not be reached because of disconnected phone services or being no longer in the area while another two disclaimed any SAC contact whatsoever. In the Halifax sample there were also about 10% wrong numbers, two refusals and two idiosyncratic reasons for not participating (e.g., on maternity leave, personally known by the interviewer). How the non-completes impact on the representiveness of the client survey sample is unknown since, apart from gender, no other information is available on them to the researchers.

In presenting the survey results the eleven themes noted above will be discussed in terms of (a) the overall sample and then (b) considering the impact of specific possible causal variables such as gender, empowerment orientation, and the legal focus of the case being considered. Table 9 indicates that the majority of respondents was female, especially in Halifax (i.e., 74%) and were in their early forties age-wise (i.e., 40 years of age in Sydney and 44 in Halifax). The Halifax clients had more formal educational attainment on the average, (more college / university graduates), but in both samples the median educational level reached was post-secondary. In both sub-groupings less than a third of the interviewees reported that their income level would have made them eligible for legal aid assistance, the Sydney grouping having a higher percentage eligibility (i.e., 29% to 20%). Consistent with these socio-demographic patterns there was a sharp difference between the samples in terms of case focus. In Halifax 72% of clients interviewed were involved in a matter relating to child custody, access or child support whereas in Sydney that percentage dropped to 57% as divorce/separation, matrimonial property or spousal support matters were primary for 43% of the respondents.

In keeping with the findings above concerning the main model of case processing in family court, table 9 shows that intake staff at both sites were the chief conduits for referrals to SAC, and especially so in Halifax where 60% of the respondents indicated that intake staff directed them to the SAC service. Somewhat surprising for the researchers, only a small number of clients reported that their referral source was either a conciliator or legal aid staff - only some 5% in each, about the same percentage as indicating that they arranged to see the SAC lawyer on their own. The samples in the two sites were quite similar in their reporting on how they heard about the SAC service – roughly 70% heard about it via court staff (whether in person or over the phone) while roughly 10% were so informed by friends and / or relatives. Community agencies, lawyers and pamphlets / court materials were each cited in a handful of instances. In both

sub-groupings approximately 12% of the clients had used the SAC service on a previous occasion.

The assessment was especially focused on why clients used the SAC service and, in our seeking answers, all respondents were first asked for their chief reason in doing so and then asked if each of six other factors were salient considerations. The open-ended question presumably tapped the reason most in the consciousness of the respondents while the check-off list tapped the prevalence of a factor. It can be seen in table 9 that in the spontaneous responses to the open-ended query, the two primary reasons were costs and empowerment, followed well behind by a large variety of other reasons. Cost factors were essentially a person stating that she/he could not afford private counsel and/or that they were not eligible for legal aid. This of course is the classic ‘caught in the middle’ quandary cited by many stakeholders as the fate of many family court clients. One client for example commented, according to the interviewer, that “she is a single mom with three children, making \$27,000 net per year as a teacher and when she called legal aid she was told not to bother applying as she would be ineligible on income grounds”. Costs were cited by 42% of the HRM clients but only 23% of those in Sydney, a difference partly but not entirely explained by the greater eligibility for legal aid among the Sydney respondents.

The majority in both groupings, and especially in Sydney, gave a more ‘empowerment-seeking’ response, namely that they were seeking quick legal advice or that they wanted some modest legal advice so that they could pursue the matter on their own. A good example of this viewpoint was given by two different women. One, a thirty year old college graduate noted; “I read a lot before the hearing and I was not eligible for legal aid but that was not a factor [in my seeking SAC] ... I would have gone with SAC rather than legal aid anyway since I didn’t need a full-time lawyer, just legal advice”. The other woman claimed that SAC was just perfect for her needs and saved her money on legal advice from a lawyer. Generally, respondents giving an empowerment type response did make a reference to financial reasons as well. One SAC client noted that there were financial reasons but also that she felt comfortable and just needed a couple of questions answered. Others reported a combination of financial reasons plus “my case was so simple I didn’t anticipate any problems” or “I needed encouragement to go on”. A more complex rationale was given by one client who reported that she wanted to get advice on how to proceed since she could not afford a lawyer and had to represent herself so she wanted to make sure about her rights and the facts; she added that she refused to pay for a lawyer out of principle in that she did not want to spend money defending herself against a man who owes her thousands of dollars! Somewhat relatedly, another respondent claimed that she had already paid a lawyer for her case which was two years old and unfinished and he had left the practice so she decided to do it herself and sought advice on how to finish it through the SAC service.

When clients were asked specifically about the salience of certain factors, the two most frequently acknowledged reasons for using SAC were the high costs of private counsel (89%) and the positive recommendations received about the SAC service (87%). Other frequently acknowledged reasons were ‘advised to do so by a court official’ (76%),

and “needed legal advice quickly” (68%). There was no significant variation between the Sydney and the Halifax samples in acknowledging the above reasons. Roughly 50% of the overall sample indicated that the availability of legal aid was a factor influencing their use of SAC; here there was a difference between Sydney and Halifax with clients from the latter being more likely (54% to 40%) to cite “legal aid was not available to me” as a factor – as noted earlier the differential eligibility for legal aid probably accounts for much of this difference. More interestingly, a modest majority of the sample reported that an influential factor in their using SAC was that “I felt I could handle my own case with some assistance”; here there was also a significant variation by site with 63% of the Halifax sample advancing that position while 40% of the Sydney group did so. This pattern is congruent with the Halifax sample having higher education and higher incomes but of course these latter factors may not explain the difference. In any event, in subsequent analyses (see table 10) those acknowledging the salience of such a reason will be categorized as ‘empowerment-seekers’ and compared with those who denied such a reason influenced their actions with respect to seeking the SAC service.

Respondents were asked about the legal or court actions they might have taken prior to seeing the SAC lawyer. There was virtually no difference by site as in each case roughly 30% of the clients indicated that they had received other legal advice and about the same percentage reported that they had made an application to Nova Scotia Legal Aid. More Sydney respondents had already met with conciliation staff (34% to 24%). This latter finding is interesting because it does confirm that a referral pattern from conciliation to SAC was at least not uncommon.

Table 9 presents responses on the type and duration of clients’ meetings with SAC lawyers by site. It can be seen, predictably given the way SAC was operationalized in the two sites, that telephone discussion of cases was much more common in Sydney than in Halifax (49% to 26%); indeed in 40% of the cases where there was telephone discussion of the case with SAC, there were two or more such interactions (almost all Sydney). At the same time virtually all respondents whether in Sydney or in Halifax also reported that they had met in person with the SAC lawyer. Here though, perhaps understandably given the greater telephone usage in Sydney, repeat in-person contacts turned out to be more common in Halifax where just 48% of the respondents reported only meeting once with SAC compared to 63% of the Sydney respondents. The median time for the SAC meetings was reported to be between 30 and 39 minutes at both sites. The data indicate then that while SAC may be depicted as a one-time, thirty minute or so encounter, in the majority of instances – a modest majority to be sure – there were two meetings of that duration (counting the telephone discussions in Sydney’s case).

Respondents were asked their views on the most important service provided them by SAC in an open-ended query seeking their spontaneous, “high in their consciousness” response. The two responses, about evenly given by both Sydney and Halifax clients were “provided legal advice” (42%) and “help with the paperwork” (22%). The third most frequent response (12%) was “procedural help”. In elaborating on their responses, a large number of clients linked these services to their realizing a sense of prioritization and direction. For example, one 30 year old college graduate involved in a custody / access

case described SAC as playing an instrumental role in getting her in touch with legal aid and more generally providing guidance through an otherwise “overwhelming legal process”. Others reiterated that benefit noting that the SAC lawyer emphasized prioritizing, “keeping me on track”, and “giving me a sense of direction” while still others reported that SAC gave them confidence (“the courage to go on” one said) or that through SAC they learned about their rights. About 12% of the respondents denied that any important service was received, giving some variant of the response “not much, just told to get legal advice”. Several respondents, whether citing an important service or not, reported that they did not have enough time with the SAC lawyer. It did appear that, in some of these cases at least, the clients wanted detailed specific advice, not the fairly general legal advice mandated in the SAC role. For example, one client, a man involved in a custody case, discounted the SAC service, contending that the SAC lawyer could not answer his questions with the limited knowledge he had of the interviewee’s case; he wished that he had more time to discuss his case in order “to foster SAC’s greater insights into the particulars of it”.

Respondents were also specifically asked whether the SAC service provided them not at all, some or much, with six possible services, ranging from helping them fill out required paperwork to advising them about community agencies or programs for their non-legal needs or problems. The results, shown in Table 9, indicate that the two service areas most frequently cited as yielding some or much service from SAC were “help on required paperwork” (48% in Sydney and 37% in Halifax) and “information of other court programs such as FLIC” (14% in Sydney and 26% in Halifax). Somewhat surprisingly, only a small minority (14% in Sydney and 6% in Halifax) claimed to have been helped by SAC in securing legal aid assistance. Only a handful of respondents whether in Sydney or in Halifax reported receiving any service from SAC with respect to how to use self-help materials, securing private counsel or information about community services and programs. It may well be that the respondents discounted information that they did not find substantial or did not act upon, and some may simply have forgotten. For example, a few respondents did report that they had wanted referral to specific private counsel but only received very general advice such as “consult the yellow pages”; they may not have appreciated that SAC lawyers may consider themselves forbidden to refer people to specific private counsel.

Several questions probed respondents’ court-based activities subsequent to their SAC encounter. As table 9 indicates, about a third of the interviewees either met with, or had meetings pending with, conciliation, and about half that number (18%) with mediation. Smaller percentages secured (a small number of these were in the scheduling stage) either legal aid or private counsel. There were modest differences by site with Halifax clients more apt, post-SAC, to meet with conciliators, go to mediation and secure private counsel whereas Sydney clients were more apt to have secured legal aid. Researchers had expected more subsequent contact with conciliators but it was found that a number of cases did not get pursued after the SAC consultation and in some other instances a referral to SAC was apparently a prelude to the matter going on to either mediation or the hearing/trial level. Given the low number of mediation cases recorded in the Civil Index in both Sydney and Halifax, it is rather surprisingly that 18% of the

clients reported that post-SAC activity; the researchers would regard that finding with suspicion. An equally surprising survey result was that over 40% of the clients claimed that the other party in the case had a lawyer at some point in the court process; that percentage appears greater than other data available on representation.

Table 9 indicates that a majority of clients in both sites (60% in Halifax and 51% in Sydney) reported that their case had either resulted in a court hearing or trial of some sort or that one was pending. Indeed, in the case of Halifax SAC clients, some 56% reported that their case had already resulted in more than one court session. None of the Sydney respondents reported that they had been represented by legal counsel at their court appearance and only 16% of the Halifax respondents apparently had representation. These low levels of legal representation were not by choice – roughly 60% of those not having counsel indicated that this was not by choice. A significant number of respondents who had court appearances on their case did believe that the SAC advice had helped them at the hearing / trial (63% in Sydney and 44% in Halifax). Clearly, too, a large number of respondents wanted more SAC assistance directed at that level; for example, one woman noted that while SAC was helpful especially in putting her paperwork in order, “the SAC advice did not translate to the courtroom for me”.

The final set of survey questions sought an overall assessment of the SAC service from the clients and their suggestions, if any, for changes that might be made in the service. It is clear from table 9 that the clients were very positive about SAC. Among the Sydney sub-sample, virtually 100% agreed that the SAC explained legal issues clearly, was polite and courteous in their encounters, gave helpful, relevant advice, and that they would recommend the service to others in similar situations, and were themselves satisfied with the SAC service they received. The comparable Halifax percentages, while less, were nevertheless very positive as well; about 80% expressed themselves satisfied with the SAC service and would recommend it to others and 75% held that SAC provided helpful relevant legal advice. Sydney clients indicated greater dependency on SAC for obtaining legal advice (46% compared to 38% among Halifax clients) and were also more likely to believe (49% to 29%) that “the SAC speeded up the handling of my case”. Of course, the latter results also mean that a majority of SAC clients – a large majority in the Halifax group - did not agree that SAC speeded up the court process in their case.

Table 9 indicates quite different response patterns by site with respect to whether changes in SAC should be called for. In keeping with the very high satisfaction level there, fully 80% of the Sydney clients did not recommend any change at all and only a handful called for more contact time. Not surprisingly, in Halifax the plurality response was a recommendation for more contact time (40% of the respondents). In Halifax, as noted earlier, the number of clients to be served by the one SAC lawyer was far greater than in Sydney and in Halifax, too, a significantly greater percentage of respondents were, as noted above, active empowerment-seekers undoubtedly more demanding of the SAC service; under these circumstances, it would be expected that there would be recommendations for change, especially for “More SAC”, basically more and lengthier (more substantive) client-SAC sessions. A few respondents, again basically in Halifax, were disgruntled that the SAC lawyer did not help them select private counsel or that

they were referred to other venues such as small claims court. Such criticisms or recommendations reflected more a critique of SAC guidelines. More direct though were several criticisms suggesting that SAC as constituted favored the more capable client; for example, a thirty-nine year old male with limited education (i.e., some high school) and rather “hyper” during the phone interview, commented, “The summary advice counsel only helps those who are on top of things and well prepared with a list of questions”. A few respondents having similar views held that SAC might better concentrate its attention on those with limited resources, financial and otherwise.

Tables 10 and 11 examine further the differential use of SAC, taking into account the potentially salient variables of legal focus’ and client orientation. Table 11 indicates that whether the legal focus was “child-centered” or “spousal-centered” (a distinction offered here only for heuristic purposes) may be important in appreciating the impact of SAC. The latter cases (i.e., spousal focused) were associated with more pre-SAC legal advice being sought, more multiple and longer meetings with SAC, less legal aid eligibility and better educated respondents. These cases, while accounting for only 33% of overall SAC caseload, were apparently quite demanding of the SAC resources. While the spousal-focused clients did not believe that SAC speeded up the processing of their case, they were very much of the view (94%) that the SAC service provided them helpful advice. These correlates of legal focus appear to be independent of site characteristics but the small samples do not allow for statistical controls.

As noted above, the sample was split on the basis of whether their orientation to the use of SAC could be identified as ‘empowerment seeking’ or not. Table 10 compares the responses of these two groupings of clients. These data show that the ‘empowerment seekers’ tended to be female, younger, more active in seeking pre-SAC legal advice, less perceiving of SAC as their only option for legal advice, more likely to have multiple meetings with SAC, and much more likely (44% to 15%) to believe that the SAC speeded up the processing of their case. They were not different in terms of legal aid eligibility and surprisingly had less formal education (this latter finding may be partially accounted for by their younger age). The percentage differences across these factors were not large (with the one exception noted) but clearly they are suggestive of a factor that should be taken into account in future assessments of the SAC impact. A number of respondents did explicitly refer to both user orientation and user capability as significant factors in SAC use. A 40 year old college graduate with journalistic experience, echoing the comments cited above, reported that she found SAC quite beneficial but held that SAC time / resource constraints are very real. She commented that “It would be too fast for many people. SAC is good but much too fast. It would be a problem. I brought in a list of questions to the SAC meeting but what about those who attend less prepared”?

Whatever the orientation and other capability that clients might bring to the court process, there is little doubt that the experience in family court was daunting for many persons. One respondent, for example, reported that she liked the SAC service and found it helpful but still ended up getting private counsel (she was ineligible for legal aid) that she could ill-afford because she found that representing herself in an access / custody matter “became too much of a burden”. Similarly, a thirty-eight year old university-

educated woman ineligible for legal aid said that she was happy with SAC, came well prepared to meetings but felt overwhelmed and referred to how the emotional toil of family court cases affects one's ability to focus during meetings. Certainly, appearing before the court, where the SAC cannot go, was frequently (though not always thanks in part to the SAC consultation) seen as quite intimidating. A 50 year old, college graduate, ineligible for legal aid reported that she found the SAC service helpful but she dropped the case because of "serious intimidation produced by the thought of facing her ex-husband and his 'young girl friend'" (comment reported by the interviewer). It should be noted too that unfavorable court outcomes from the respondent's perspective as well as the tense and stressful "being there" (in the courtroom) occasionally appeared to affect the respondent's critique of SAC and their overall court involvement.

OVERVIEW

Clients were highly satisfied with the SAC lawyer and the limited services provided. And many, especially in Cape Breton, believed that no changes were required of the service. Still, many clients did recommend changes, essentially calling for more resources for SAC such that clients could at least get more consultation time, if not SAC's courtroom representation. Roughly 10% were quite critical of the SAC service contending that it was not helpful; their views, for some, appeared to reflect their unhappiness with the outcome of their court case. The clients' experiences and views clearly mirrored the formal objectives of SAC role, namely to provide brief, general legal advice to all clients regardless of their eligibility for legal aid. The only unexpected finding in that regard was that roughly 50% of the clients reported more than one short meeting with the SAC lawyer. Certainly the objective of providing access to at least limited legal advice in order to reduce the problem of persons being unrepresented seems to have been accomplished. Most respondents did indicate that the SAC legal advice was all the legal advice they would have had in the matter at hand and indeed very few were represented by legal counsel in their hearings / trials. The clients' greatest reported use of SAC was to learn about court procedures and to cope with the requirements of court processing (e.g. paperwork). A large number also indicated that consultation with the SAC lawyer helped them to get a sense of direction and prioritization of their concerns; a number of clients also indicated that the SAC consultation gave them confidence to continue on with the court process. It was also clear to the researchers, in both the interviewer and data analyst roles, that the SAC service was especially appropriate for those clients who had a more active, empowerment mindset. These clients appeared to be better prepared, to be more demanding of SAC and, in fact, to have received proportionately more of the SAC's attention. The type of legal matter entailed in the case also impacted on the use and assessment of SAC services

Table 8

SAC Completed Interviews and Non-Completed by Site

	Sydney	Halifax
Completed Interviews	35	65
Non-Completed Surplus Interviews	24	27
Phone Disconnected/Out-of-Service	7	6
Wrong Phone Number	-	11
Client Moved	2	2
Client Denied SAC Contact	2	2
Client Refused	-	2
Other	-	2
Total	70	117

Table 9

SAC Client Survey, Overview By Site

Feature	Sydney N=35	Halifax N=65	Total N=100
% Female	60%	74%	69%
Case Type:			
Child Focus	57%	72%	67%
Spousal Focus	43%	28%	33%
Previous SAC Case	11%	12%	12%
2 Chief Ways Found Out Re: SAC	Court Staff: 71% Friend: 8%	Court Staff: 68% Friend: 10%	Court Staff: 69% Friend: 10%
Chief Specific Referral Source	Intake Staff: 49%	Intake Staff: 60%	Intake Staff: 57%
Chief Reason for Using SAC:			
Costs	23%	42%	35%
Empowerment	71%	52%	59%
Other	6%	6%	6%
Factors Influencing Use of SAC:			
% Cost of Private Counsel	86%	91%	89%
% Legal Aid Unavailable	40%	54%	49%
% Help So Could Handle Case Myself	40 %	63%	55%
% Need Legal Advice Quickly	66%	69%	68%
% Positive Recommendation	89%	86%	87%
% Advised So By Court Official	80%	74%	76%
Pre-SAC Use			
Other Legal Advice	29%	31%	30%
Made Application to Legal Aid	31%	29%	30%

Met w/ Conciliator	34%	24 %	28%
% Discussed Case w/ SAC on Phone	49%	26%	34%
% Met Only Once w/ SAC in Person	63%	48%	53%
Median Length of Meetings	30-39 Minutes	30-39 Minutes	30-39 Minutes
Most Impact SAC Services Cited	Provided Legal Advice: 43% Paperwork Help: 30%	Provided Legal Advice: 42% Paperwork Held: 22%	Provided Legal Advice: 42% Paperwork Help: 22%
Some or Much of the Following Services Provided by SAC			
Paperwork Help	48%	37%	41% Yes
Helped secure NSLA	14%	6%	9% Yes
Informed re: Other Court Programs	14%	26%	22% Yes
Advised Re: Self-Help Materials	6%	6%	6% Yes
Advised Re: Getting Private Counsel	3%	5%	5% Yes
Advised re: Community/Gov't Programs/Agencies	6%	6%	6% Yes
Post-SAC Actions*			
Met Conciliator	31%	37%	35%
Went to Mediation	12%	20%	18%
Secured Legal Aid	17%	9%	12%
Secured Private Counsel	6%	9%	8%
Other Party Had Representation at Any Point	40% Yes	45% Yes	43% Yes
Did This Case Result in a Court Hearing?	51% Yes	60% Yes	57% Yes [†]
Where Court Case Has Happened:			
> 1 Appearance	25% Yes	56% Yes	48% Yes

* Post-SAC activities included those that actually have occurred and those that were pending.

† Post-SAC activities included those that actually have occurred and those that were pending.

You Had Counsel If Not, By Choice?	0% Yes 63% No	16% Yes 60% No	12% Yes 60% No
SAC Help You at Hearing?	63% Yes	44% Yes	50% Yes
Satisfaction w/ SAC Outcomes (% Agree):			
SAC Explained Legal Issues Clearly	100%	88%	92%
SAC Polite/Courteous	100%	97%	98%
SAC Speeded Up Case Process	49%	29%	36%
SAC Gave Helpful/Relevant Advice	97%	75%	83%
If Not For SAC, I'd Have Had No Legal Advice	46%	38%	41%
I Would Rec' SAC For Similar Cases	97%	84%	89%
I Was Satisfied w/ SAC Services Provided	97%	80%	86%
Top 2 Chief Suggestions Re: Change			
No Change	80%	29%	47%
More Contact Time	8%	40%	28%
Median Age	40 Years Old	44 Years Old	42 Years Old
Median Education Level	Some College	College Graduate	Some College
Income Eligible for Legal Aid	29% Yes	20% Yes	23% Yes

Table 10

Client Empowerment Pursuit By Selected Variables

Empowerment Orientation

Feature	Yes N=55	No N=45
Gender (% Female)	73%	64%
Pre-SAC Legal Activity	33%	27%
# Multiple SAC Meetings	49%	43%
SAC Sped Things Up?	44%	15%
SAC Only Legal Advice Option	38%	47%
“Some College” or Less	43%	36%
Legal Aid Eligibility	24%	22%
Younger Than Average Age of Sample	56%	44%

Table 11**Clients' Legal Focus By Selected Variables**

Feature	Child Focus N=67	Spousal Focus N=33
% Female	73%	60%
Pre-SAC Legal Advice Sought	22%	46%
Multiple SAC Meetings	39%	61%
More Than Average Meeting Time	21%	38%
SAC Sped Things Up?	37%	20%
SAC Only Legal Advice Option	42%	42%
“Some College” or Less	42%	34%
Legal Aid Eligibility	30%	9%
Younger Than Average	51%	51%
Helpful SAC Advice	78%	94%

CONCLUSIONS AND FUTURE DIRECTIONS

There is little question but that the SAC service has met with much favour by stakeholders of all stripes as well as by virtually all its client users. All the stakeholders in the court system, and outside it, who knew much about SAC considered it a valuable addition to the Family Court. Those who knew little became quite enthusiastic when informed about how the SAC service works. The SAC role has been implemented as intended as free, summary-level, legal advice accessible to all persons otherwise unrepresented. Its defining features (short sessions, FPP, no courtroom presence, focus on legal concerns) have indeed characterized its implementation. It has realized its central objective of assisting the unrepresented as witness its penetration rate and the views of clients as well as conciliators and judges and, for many, if not most, clients it has provided the only legal counsel that they would have received. While not especially impacting on the engagement of other legal representation or on the quantity of court activities (i.e., the court workload), in the eyes of the SAC lawyers and the testimony of the other court role players, it has improved the efficiency and effectiveness of court processing. Its availability has provided relief to clients and court officials who otherwise would have quite stressed in responding to the unrepresented persons and their needs and demands. The thought of discontinuing the SAC initiative, especially without any profound reconfiguration of legal aid, is something that filled virtually all interviewees with dread.

There were some differences in the SAC service by site but overall the commonalities were much more pronounced. There is little question that SAC has effected a court system that is more effective, efficient and equitable (the so-called 3Es in social policy). At the same time it is important to appreciate that the SAC is a limited resource. There is still a very significant problem concerning the unrepresented litigant in Family Court. There is still more that can and should be done in achieving the 3Es, especially reaching out to community agencies and to diverse minority groups whether aboriginal or immigrants.) but, as noted above, a case can readily be made that SAC has certainly facilitated the more active client's pursuit of the available opportunities for justice and problem-solving in Family Court. It is unfortunate that objective data are not readily available that could complement the personal assessments of the interviewees and perhaps highlight unanticipated issues (as for example the possible SAC enhancement of imbalance in representation among parties in a case). Overall, then, while clearly the evidence underlines the crucial contributions of SAC for both clients and the court system, it is important to be realistic – as many judges have indicated, the problem of adequate legal counsel may have gone from a ten to an eight, and as community agencies and others have noted, the contribution to a more holistic, problem-solving court has been quite modest.

In considering the future directions for the SAC initiative in Nova Scotia, the following issues have emerged from this assessment:

PROMOTION AND AWARENESS

While not perhaps a profound problem, the appreciation of the SAC role among the court role players could be improved. There appears to be good networking and communication among intake, conciliation and SAC but some judges expressed a need to know more about the SAC service. Certainly among private counsel there seems to be a serious need for more communication. The lawyer referral service which is often queried about court procedures and services was well-informed about SAC and readily identified the SAC lawyers but even here more promotion would be useful.

There is little question that there should be promotion of public awareness. While it was reported by some court officials that identifying signs and posters may not have been put in place at the courthouse for considered reasons (i.e., in order to have smooth flow of client traffic beginning with application and intake) the SAC profile may be too low for potential clients. Moreover, the community agencies and non-profit helping organizations properly noted that they are on the front line and need to know more about the SAC services if they are to adequately serve the needs of their usually disadvantaged clients. Reaching out, promotion-wise, to special groups such as the Mi'kmaq in Cape Breton and Afro-Canadians and Immigrant groupings in metropolitan Halifax would seem to be important based on the research done in this project. As noted above, there are problems at present in how court services, including SAC, are responding to the challenge of diversity, problems such as a lack of any visible courthouse presence and a hesitancy among diverse minority that the court officials themselves are concerned about and would like to respond to more effectively. In sum, equity concerns would appear to require more promotion of the SAC service.

FIRST PASS THE POST

As noted above, this phenomenon was raised by a number of respondents and most court players – not all – considered it a significant problem, several persons noted how, given the FPP pattern, one party in a dispute can manipulate the situation to effectively shut the other party out from any free legal advice. Several respondents, including several judges in both areas, challenged the position that the SAC lawyer could not give legal advice to both parties; the argument here was that SAC just provides general not specific legal advice and therefore there should be no conflict of interest. Most court respondent however suggested that the general / specific legal advice differentiation was a very slippery slope and non-tenable in practice, and added that perceptions of conflict of interest have also to be factored into any assessment. There were a number of suggestions for dealing with the problem, ranging from encouraging the other party's receiving telephone advice from the other area's SAC to engaging

another SAC (several informants talked of “a floater SAC” who might have several functions such as dealing with overload, with the FPP’s other party and so forth) to some form of certificate for accessing private counsel being made available to the other party. The latter appears to be the best practice since telephone advice is frowned upon by some and a second SAC, or a “floater” SAC, not only would be costly but might still be tainted with conflict of interest suspicion/accusation since he / she would be partnering with the SAC. It is unclear how much use would be made of such a certificate system. One SAC lawyer suggested that in his jurisdiction, there are only 5 or 6 cases a month where the FPP problem arises. In any event, the concerns about the FPP policy were widespread and the limited analyses that could be done on secondary data reinforced that concern. There was some evidence from the Civil Index that since the SAC implementation the percentage of cases where only one party has legal counsel has increased but it is not clear whether or not the party with legal counsel was also the party to have received SAC consultation as well. The imbalance entailed by only one party having legal representation has long been considered problematic by court role players; it would be ironic indeed if the SAC initiative has enhanced that imbalance.

MORE SAC

A very common criticism of the SAC service advanced by its direct users was that there was too little time to talk with the SAC lawyer and too much rush in presenting what they deemed to be relevant information to him and securing his considered advice in turn. Since the clients were overwhelmingly and enthusiastically satisfied with SAC, clearly the criticism was a request for more SAC rather than a critique of the service provided. It was noted that about half the clients did claim to have had more than one meeting with the SAC and a number of these clients (and other clients as well) suggested that an hour long meeting rather than the “mandated” / usual thirty or so minutes would be preferable. The demands for “More SAC” appear to come from two different types of clients. On the one hand, there are the active, “empowerment-seeking” clients who seek much information and advice as they navigate the court process. On the other hand, there are the clients who are very stressed, ill-prepared and apparently not able to glean much from a single encounter. Undoubtedly, the SAC lawyers do respond to the challenge in both types of cases but clearly the clients think they need more and not be at odds with a formal policy.

Another dimension of “More SAC” was the wish of some that the SAC service would be available in the courtroom, whether in the guise of the SAC lawyer following a file into the courtroom (specifically it has been suggested for the ‘first day’) or having a SAC lawyer specifically assigned to the courtroom as a kind of duty SAC for this function. Obviously such an extended service could be costly and have implications for the FPP pattern and how legal aid services are provided; perhaps that is why it was not advanced by court officials. There was however one possible version of this suggestion for SAC extension that was noted by the latter group (and explicitly by one SAC lawyer) namely that SAC might become involved for clients in certain “Chambers” matters (i.e.,

less controversial and less complex matters such as a client seeking a reversion to the maiden name subsequent to a divorce).

Another dimension of a possible extension of the SAC service concerned whether SAC should be available post-hearing / trial to assist clients in “where do we go from here”. A number of stakeholders – no clients – raised this issue. It was held by some counsel and some community help organizations that subsequent to the hearing / trial there remains much confusion among unrepresented or self-represented clients as to their legal obligations or next steps. While such advice could conceivably come from other court officials, the legal connectedness factor may well require that such clients meet with the SAC lawyer.

TARGETING A NARROWER, NEEDIER CLIENT BASE

There is evidence that SAC is much used by people who could tap other sources for legal advice. This was quite evident in the client survey results. As the data and interviewers’ comments indicate, the well-prepared, better educated, sometimes well-off clients may reap most advantage at present (an example of what policy analysts call “Director’s Law”). But that does not mean that SAC should be less universally free – keeping its access open to all keeps the quality and commitment high (an argument often made with respect to government-supported health services) but at the same time the challenge is to make the SAC service accommodate well the ill-prepared, the less advantaged and the less capable. How to improve SA to this end may be challenging in practice but ensuring that such persons understand, perhaps giving them assignments to prepare for the consultation and allowing them more time and meetings may help; undoubtedly the committed SAC lawyers may have other strategies, perhaps better ones, they could suggest. The occasional client called for a more exclusive clientele, the more needy, and some experts have called for the SAC initiative to be replaced by a more extensive legal aid with income eligibility cut-off though maybe more generous than at present. The most feasible direction may be to stress improvements in the service not to disband what virtually everyone interviewed considered a major benefit to clients and to the court system.

RANGE OF SERVICES ACCESSED

Some commentators see persons going to the family court as having multiple social problems and would envisage an opportunity there to facilitate a more holistic response to these often inter-related social and personal issues. This family court function, most court officials, and SAC providers, agree, is best provided by intake and other court administration through referrals and other information. It may be recalled too that only a few clients reported any such referral to social agencies by SAC lawyers and only a few expressly raised the need for a more holistic one-stop court-based service;

indeed, almost as many specifically indicated that they did not want such attention from court officials.

THE CIVIL INDEX AND RESEARCH/EVALUATION

The need to make the Civil Index more user-friendly for evaluation and research purposes should be a priority of Court Services. At present there is no record at all of SAC consultations in the Civil Index. There is widespread conviction even among court administrators that there are major shortfalls in routinely updating information such as changes in 'legal representation' status. There is no measure of the seriousness of the case matter, no measure of the time spent in conciliation and so on. Such issues make quite problematic any effort to assess the impact of the SAC service on legal representation, conciliation activity and courtroom decisions.

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APPENDICES



SUMMARY ADVICE COUNSEL PROJECT: CLIENT SURVEY RESULTS

ID Number	
Region (1=Halifax, 2=Sydney)	Halifax = 65% Sydney= 35%
Interviewee's Name (Last, First)	
Interviewer	<input type="checkbox"/> Alex (98%) <input type="checkbox"/> Ian (2%) <input type="checkbox"/> Shi-Eun (0%) <input type="checkbox"/> Don (0%)
Interview Date (Month/Day/Year)	
Interview Format	<input type="checkbox"/> Telephone (100%) <input type="checkbox"/> In-Person (0%)
Time Interview Started	
Time Interview Concluded	

INTRODUCTION

“Hi, I am a researcher working with Professor Clairmont at Dalhousie University. We have been asked by the Department of Justice to take a look at the Summary Advice Counsel / Duty Counsel Service at the Devonshire Court (*or, alternatively, at the Sydney Court*) and see how the service is being received. I understand that you may have had occasion to use this service and I am calling to see if you would be willing to provide some feedback or comments about this service. The questions will take approximately 15 minutes. All information will be treated as confidential and with anonymity.”

QUESTIONS

1. What type of family court matter did you consult the SAC on? Was it:

- Access **(12%)**
- Custody **(22%)**
- Child Protection **(0%)**
- Child Support **(33%)**
- Divorce **(26%)**
- Property **(1%)**
- Other [**Please Specify:** _____]
Separation (5%)
Spousal Support Payments (1%)

2. (a) Had you ever used the SAC service before?

- Yes **(12%)** No **(88%)**

(b) For a similar or different family court matter?

- Similar **(9%)** Different **(3%)** N/A Based on Q. 2: **(88%)**

3. How did you find out about the SAC service? Was it:

- Pamphlet **(2%)**
- Court Staff **(69%)**
- Judge **(0%)**
- Lawyer **3%**
- Friend **(7%)**
- Community Agency **(6%)**
- Other **(12%)**
- Don' Know **(1%)**

4. Who specifically referred you to the SAC service? Was it:

- Intake Staff **(56%)**
- The Conciliator **(6%)**
- Legal Aid **(5%)**

- Judge (0%)
- Other (29%)
- Don't Know (1%)

5. What was the chief reason that influenced you to use the SAC service?

- Cost of Private Lawyer: (33%)
- Legal Aid Not Available: (2%)
- Could Handle it Myself: (3%)
- Quick Advice: (2%)
- To Gain Knowledge/Information About Procedure: (54%)
- Other: (2%)
- Assistance w/ Paperwork: (4%)

6. Did any of the following factors influence you to use the SAC service?

a. The Cost of Hiring a Private Lawyer

- Yes (89%)
- No (11%)

b. Legal Aid Service was Not Available to Me

- Yes (49%)
- No (51%)

c. Felt I Could Handle My own Case w/ Some Assistance

- Yes (55%)
- No (45%)

d. Needed Legal Advice Quickly

- Yes (68%)
- No (32%)

e. Positive Recommendations About the SAC Service

- Yes (87%)
- No (13%)

f. Was Advised to do so by a Court Official

Yes (76%) No (24%)

7. Prior to seeing the SAC had you done any of the following:

a. Receive Any Other Legal Advice on Your Case?

Yes (30%) No (70%)

b. Made an Application to Nova Scotia Legal Aid?

Yes (30%) No (70%)

c. Met with the Conciliator?

Yes (28%) No (72%)

8. (a) Did You Discuss Your Case With The SAC On The Telephone?

Yes (34%) No (66%)

(b) How many times?

1 (18%)

2 (7%)

3 (1%)

4 (4%)

9 (1%)

10 (1%)

Unknown (1%)

N/A By Virtue of Q. 8(a): (67%)

9. (a) How Many Times Did You Meet With The SAC In Person?

1 (53%)

2 (29%)

- 3 **(11%)**
- 4 **(6%)**
- Missing **(1%)**

(b) How long (minutes) were these meetings? _____

- 0-9 Minutes: **(0%)**
- 10 – 19 Minutes: **(13%)**
- 20 – 29 Minutes **(10%)**
- 30 – 39 Minutes **(49%)**
- 40 – 49 Minutes **(12%)**
- 50 – 59 Minutes **(14%)**
- > 60 Minutes **(2%)**
- Don't Know **(2%)**

10. What Was The Most Important Service Provided To You By The SAC?

- Paperwork Help: **(22%)**
- How to Use Self-Help Materials **(2%)**
- Advice on Getting Private Counsel **(1%)**
- Procedural Advice: **(12%)**
- Legal Advice/Information **(42%)**
- Other **(14%)**
- Needed Confidence/Encouragement/Moral Support **(7%)**

11. Did The SAC Provide You The Following Services Not At All, Some Or Much?

		Not at All	Some	Much
a.	Help You Fill Out Required Paperwork?	59%	29%	12%
b.	Help You Secure Legal Aid Assistance?	91%	7%	2%
c.	Inform You Of Other Court Programs Such As FLIC?	78%	19%	3%
d.	Advised You How To Use Self-Help Materials	94%	5%	1%
e.	Give you advice on seeking private legal counsel?	95%	3%	2%
f.	Advise You About	94%	5%	0%

	Community Services And Programs For Non-Legal Needs (Health, Housing, Financial)?			
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12. After You Met With The SAC, Did You Do Any Of The Following

a. Meet With The Conciliator?

- Yes (**31%**)
- No (**65%**)
- Pending (**2%**)
- Unsure (**2%**)

b. Go Into Mediation?

- Yes (**13%**)
- No (**82%**)
- Pending (**3%**)
- Unsure (**2%**)

c. Secure Legal Aid?

- Yes (**9%**)
- No (**88%**)
- Pending (**3%**)
- Unsure (**0%**)

d. Secure Private Legal Counsel

- Yes (**8%**)
- No (**92%**)
- Pending (**0%**)
- Unsure (**0%**)

13. Did the other party in your case have a lawyer at any point?

- Yes **(43%)**
- No **(50%)**
- Unsure/Don't Know **(4%)**
- Missing **(3%)**

14. Did your case result in a court hearing?

- Yes **(33%)**
- No **(43%)**
- Pending **(16%)**
- Unsure **(8%)**

15. If yes,

a. How Many Court Appearances Were There For The Case? ____

- 1 **(17%)**
- 2 **(11%)**
- 3 **(2%)**
- 4 **(1%)**
- Not Applicable B/C of Q. 14 **(67%)**
- Missing **(2%)**

b. Were You Represented By Legal Counsel There?

- Yes **(4%)**
- No **(28%)**
- Not Applicable B/C of Q. 14 **(67%)**
- Missing **(1%)**

c. If Unrepresented, Was This By Your Choice?

- Yes **(9%)**
- No **(20%)**
- Not Applicable B/C of Q. 14 **(67%)**
- Missing **(4%)**

d. Did The Sac Advice Help You At The Hearing

- Yes **(15%)**
- No **(16%)**

- Not Applicable B/C of Q. 14 (67%)
- Missing (2%)

16. Overall, then, would you agree, disagree or be unsure about the following SAC outcomes for you:

		Agree	Disagree	Unsure
a.	The SAC Explained The Legal Issues Clearly	92%	6%	2%
b.	The SAC Was Polite And Courteous	98%	1%	1%
c.	The SAC Speeded Up The Handling Of My Case	36%	55%	8%
d.	The SAC Provided Helpful, Relevant Advice	83%	16%	1%
e.	If SAC Was Not Available, I Would Have Had No Legal Advice On My Case	41%	57%	2%
f.	I Would Recommend The SAC Service To Others In A Situation Similar To Mine	89%	8%	3%
g.	I Was Satisfied With The SAC Service I Got	86%	11%	3%

17. Are there any changes you would recommend for the SAC service?

- No Changed Required (47%)
- More Time (20%)
- Quicker Access (9%)
- More Lawyers (6%)
- In-Court Representation (6%)
- No Comment (3%)

- Better Promote Service (3%)
- Better Resources (2%)
- More Paperwork Help (1%)
- Deal w/ Conflicts (1%)

18. Finally, May I ask:

- a. Your Year Of Your Birth: **Range: 1940-1983.**
- b. The Highest Level Of Formal Education That You Have Successfully Completed?
 - Some Junior High (3%)
 - Some High School (9%)
 - Completed High School or Equivalent (21%)
 - Some College (6%)
 - Graduated from College (26%)
 - Some University (11%)
 - Graduated from University (22%)
 - Missing (2%)
- c. Does Your Income Level Exceed Legal Aid Eligibility (roughly \$20 000 per annum)?¹²²
 - Yes (76%)
 - No (23%)
 - Don't Know (1%)

Thank You Very Much For Your Cooperation!

[End of Interview]

¹²² Please see appended financial eligibility table.

INTERVIEWER COMMENTS

Please indicate your thoughts about this interview. Did it go well? Was the respondent communicative? Did the respondent say anything particularly surprising about the experience? Was there some main theme or issue that the respondent emphasized?

Atlantic Institute of Criminology
Summary Advice Counsel Project
Judge Interview Instrument



Judge's Name	
Interviewee's Contact Information	
Interviewer	
Interview Date	
Interview Format (Phone/In-Person)	

Introduction to the Study

The Atlantic Institute of Criminology at Dalhousie University has, in recent years, been exploring the phenomenon of unrepresented litigants in Nova Scotia Courts. In 2004, the Institute conducted a study of non-custodial accused charged with crimes in the Halifax Regional Municipality. Since then, the Institute has been conducting a comprehensive evaluation of the newly-introduced criminal court duty counsel system at the Halifax and Dartmouth Provincial Courts.

This study, funded by the Nova Scotia Department of Justice, seeks to examine and assess the summary advice counsel system launched in the Supreme Court (Family Division) in the Halifax Regional Municipality and Sydney regions.

General/Introductory Questions

1. Prior to the implementation of the summary advice counsel (SAC) system, how serious, in your opinion, was the problem of unrepresented litigants in the Supreme Court, Family Division?
2. What, in your opinion, are the objectives of the SAC system?
3. In your opinion, has the SAC system been implemented appropriately?
4. What do you believe to be the 'role' of the SAC system? Do you see the purpose as being to smooth out the functioning of court processes or do you see it more as a macro-social mandate?

The Dimensions of the SAC Role

5. As a result of interviews with other stake-holders, we have characterized the summary advice counsel system as possessing the following characteristics:
 - a. Free legal advice is provided to clients on a 'one shot' basis.
 - b. The advice is provided in person only and limited to twenty or thirty minutes in duration.
 - c. Counsel's role is limited to providing information/advice and he or she does not attend court hearings.

- d. Advice is limited to legal advice and tends not to encompass social, economic or other advice.
- e. The system works on a 'first past the post' basis such that the first party to the dispute to seek assistance from the SAC counsel will receive it whereas the other party will be ineligible to prevent a conflict of interest situation.

Can you think of any other characteristics or dimensions of the SAC system that are not encompassed in this list?

6. Some critics of SAC systems contend that the limited role of, and time constraints placed upon SAC lawyers creates a situation whereby they are constrained to providing 'general' or 'generic' legal advice as opposed to fact-specific legal advice. Do you think that there are dangers associated with this? In your opinion should SACs be attempting to provide specific advice on specific matters?
7. The "first past the post" approach to the provision of legal advice to unrepresented litigants appears to be problematic in instances where neither of the two parties to a dispute has representation. Other jurisdictions, such as British Columbia, have attempted to remedy this problem but to date, the problem remains in Nova Scotia. How, in your opinion, ought we to address this issue? Could SAC be a solution in some way?
8. The family court system and family matters litigation process, it appears, affords more emphasis to problem-solving and cooperation amongst the parties than does the criminal court system. For instance, it seems that opposing family court litigants are encouraged to work with each other toward amicable resolutions to issues in a way that is foreign to the criminal court system. Do you think that this approach, which encourages communication and collegiality, will influence the evolution of the SAC system? For instance, do you think that ultimately the system might evolve from its current approach of offering legal advice to a system that is focused on problem-solving in general?
9. Some people have suggested that the SAC system is important in that it introduces litigants to civil litigation procedure – it helps them to understand the various steps that must be taken from the commencement of an action to the conclusion, assistance is provided with the completion of paperwork, etc. Do you think that the SAC is important in this regard?

Impact and Assessment of the SAC System

10. What, in your opinion, has been the impact of the SAC system on the court process?
11. Have you observed any of the following, attributable to the introduction of the SAC system?
 - a. Fewer cases proceeding to hearings?
 - b. A decline in the number of court appearances per matter?
 - c. Fewer or more narrowly defined issues per case?
 - d. More legal aid-represented clients?
 - e. More privately-represented clients?
 - f. Better informed self-represented litigants?
12. Could you please describe the type of interaction you have with the summary advice counsel lawyer? How frequently do you come into contact with him? Is that contact in court or out-of-court, or both? What, generally, is the purpose of the communication between you and the lawyer?

13. Have you referred litigants to the SAC lawyer? If so, could you estimate how many?
14. What would you estimate to be the penetration rate for SAC among unrepresented litigants? That is, what proportion of all unrepresented litigants that appear before you, would you suggest, seek advice from the SAC lawyer?
15. When a litigant appears before you in court, do you know whether he or she is, at that time, represented or whether he or she has seen the SAC lawyer? How?
16. What do you believe to be the benefits of the SAC system for judges?
17. What do you believe to be the disadvantages of the SAC system for judges?
18. What do you believe to be the benefits of the SAC system for other court staff?
19. What do you believe to be the disadvantages of the SAC system for other court staff?
20. What do you believe to be the benefits of the SAC system for Nova Scotia Legal Aid?
21. What do you believe to be the disadvantages of the SAC system for Nova Scotia Legal Aid?
22. What do you believe to be the benefits of the SAC system for private counsel?
23. What do you believe to be the disadvantages of the SAC system for private counsel?
24. What do you believe to be the benefits of the SAC system for litigants?
25. What do you believe to be the disadvantages of the SAC system for litigants?

The Future of the SAC System and Potential Alternatives

26. What changes, if any, would you recommend be made to the current summary advice counsel system model?
27. At the end of the term of the current pilot project, should the SAC system, in your opinion, be renewed or perpetuated? Why or why not?
28. If the SAC system is *not* renewed, what other alternatives do you believe should be considered? What do you think about roster and emergency-model approaches?
29. Some academics and practitioners have suggested that a reasonable alternative to the perpetuation of the SAC system would be to simply raise the legal aid eligibility threshold. What do you think about that proposal?
30. Others have suggested a “medi-care” type model for family law whereby individuals will automatically be eligible for legal assistance on certain pre-defined categories (“menus”) of matters. What do you think about such an approach? Would this be feasible?
31. Are you familiar with other models employed in other jurisdictions that ought to be considered?
32. The family court system has been described, in recent years, as being fundamentally different from other areas of law in so far as it seeks to be less-adversarial and more cooperative or collegial than, for instance, criminal procedure. In your opinion, is the SAC system compatible with this “less adversarial” approach heralded by family law?

33. Some have described one of the major benefits of the SAC system as its ability to acquaint litigants with basic and fundamental legal information and refer clients to quintessential services and resources which the client may then use to direct their own engagement. Do you see this function of the SAC system as being significant?

Situation Specific Questions and Answers

Interviewer's Comments

Atlantic Institute of Criminology
Summary Advice Counsel Project
Academic Practitioner Interview Instrument



Introduction to the Study

The Atlantic Institute of Criminology at Dalhousie University has, in recent years, been exploring the phenomenon of unrepresented litigants in Nova Scotia Courts. In 2004, the Institute conducted a study of non-custodial accused charged with crimes in the Halifax Regional Municipality. Since then, the Institute has been conducting a comprehensive evaluation of the newly-introduced duty counsel system at the Halifax and Dartmouth criminal courts.

This study, funded by the Department of Justice, seeks to examine the summary advice counsel system launched in the Supreme Court of Nova Scotia (Family Division) in the Halifax Regional Municipality and Sydney. This interview is intended to be informal and qualitative in nature. It is our understanding that you are a leading academic in this facet of law and we appreciate you having agreed to talk with us.

Themes for Exploration

1. How familiar are you with the concept of the summary advice counsel system? How familiar are you with the operation of the summary advice counsel system in the province of Nova Scotia? Have you had much/any practical or academic experience with the system or its players? Have you heard any positive or negative things about its operation/performance to date?
2. In your opinion and to your knowledge, what is the role of the summary advice counsel system in Nova Scotia? Where does it “fit” in the family court division of the Supreme Court of Nova Scotia?
3. In your opinion, what are the practical advantages (pros) of the existence of a SAC system in the Province of Nova Scotia?
4. In your opinion, how does the system in Nova Scotia compare to systems in other jurisdictions in Canada? In other countries?
5. What effects, if any, do you think that the SAC system has on the business of private lawyers in Nova Scotia? Do you think that it has a negative impact on the business of some private lawyers/law firms? In some instances do you think that it results in some individuals who may not have otherwise sought private advice to seek advice after speaking with the SAC?
6. What impact do you think the SAC system has on Nova Scotia Legal Aid? Do you think it promotes effectiveness or streamlining? Do you think it is possible that, in some instances, the SAC results in litigants who otherwise would have gone to legal aid not having to seek legal aid? Or, do you think that the SAC may increase the number of referrals to legal aid?
7. In assessing the effectiveness/usefulness of the SAC system in Nova Scotia, which of the factors/variables/indicators ought, in your opinion, to be examined:

- a. More or less recourse to legal aid and private counsel?
 - b. Better decisions from the standpoint of the appellant or respondent?
 - c. More “comfort” for the judges?
 - d. Reduces required court time/court costs/speeds up the process?
 - e. Less costs to litigants?
 - f. Confidence in the knowledge that unrepresented litigants have at least basic knowledge of their rights/obligations?
8. From a methodological stand point, how do you think the system may be critically assessed? (e.g., the measures that might be used, especially those that could be derived from the Civil Index or clients contact sheets.) What measures, for instance, may be employed to understand the effects of the civil index system, etc.?
 9. The service is often described as being useful for routine and “uncomplicated” matters. Do you think that litigants involved in more complicated litigation ought to obtain private legal advice? Further, do you think that the service could potentially be detrimental insofar as it may result in individuals involved in complicated litigation who may have otherwise received private advice opting for the free service? In your opinion, are there any other practical disadvantages (cons) of the existence of a SAC system in the Province of Nova Scotia? Practical advantages of the system in Nova Scotia?
 10. How serious of a problem are self-represented litigants in the family court regime?
 11. What are the risks to a client of being unrepresented in a family court proceeding?
 12. What are the risks of unrepresented litigants to the opposing party and his or her counsel?
 13. In later phases of this evaluation, we will be interviewing the other players/stake-holders. Are there any particular themes that you think might be useful to explore with counsel, litigants, judges, court administrators, etc?
 14. The family court system and family matters litigation process, it appears, affords more emphasis to problem-solving and cooperation amongst the parties than does the criminal court system. For instance, it seems that opposing family court litigants are encouraged to work with each other toward amicable resolutions to issues in a way that is foreign to the criminal court system. Do you think that this approach, which encourages communication and collegiality, will influence the evolution of the SAC system? For instance, do you think that ultimately the system might evolve from its current approach of offering legal advice to a system that is focused on problem-solving in general?
 15. Are there other academics or practitioners that you would suggest we talk with?
 16. Are you aware of any literature in this area that may be of significance to this study?

Atlantic Institute of Criminology

Summary Advice Counsel Project
Court Staff Interview Instrument



Interviewee's Name	
Interviewee's Position/Employer	
Interviewee's Contact Information	
Interviewer	
Interview Date	
Interview Format (Phone/In-Person)	

Introduction to the Study

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General/Introductory Questions

1. Could you please describe your position and role in the court process?
2. What would you identify as being problems or issues that existed prior to the implementation of the summary advice counsel system?
3. In your opinion, what are the objectives of the summary advice counsel system?
4. Do you believe that the summary advice counsel system was properly and effectively implemented? Why or why not?
5. Could you please describe your relationship with the summary advice counsel lawyer at your court house?
 - a. How much contact do you have with the summary advice counsel lawyer? If you do have contact, is it generally in person, over the telephone, through email or via other means? What, generally, in the purpose of that communication?
 - b. Do you refer clients to the summary advice counsel lawyer? If so, how frequently?
 - c. Does the summary advice counsel lawyer refer clients to you? If so, how frequently?

The Dimensions of the SAC Role

6. As a result of interviews with other stake-holders, we have characterized the summary advice counsel system as possessing the following characteristics:
 - a. Free legal advice is provided to clients on a ‘one shot’ basis.
 - b. The advice is provided in person only and limited to twenty or thirty minutes in duration.
 - c. Counsel’s role is limited to providing information/advice and he or she does not attend court hearings.
 - d. Advice is limited to legal advice and tends not to encompass social, economic or other advice.
 - e. The system works on a ‘first past the post’ basis such that the first party to the dispute to seek assistance from the SAC counsel will receive it whereas the other party will be ineligible to prevent a conflict of interest situation.

Can you think of any other characteristics or dimensions of the SAC system that are not encompassed in this list?

7. The family court system has been described, in recent years, as being fundamentally different from other areas of law in so far as it seeks to be less-adversarial and more cooperative or collegial than, for instance, criminal procedure. In your opinion, is the SAC system compatible with this “less adversarial” approach heralded by family law?
8. Some critics of SAC systems contend that the limited role of, and time constraints placed upon, SAC lawyers creates a situation whereby they are constrained to providing ‘general’ or ‘generic’ legal advice as opposed to fact-specific legal advice. Do you think that there are dangers associated with this? In your opinion should SACs be attempting to provide specific advice on specific matters?
9. The “first past the post” approach to the provision of legal advice to unrepresented litigants appears to be problematic in instances where neither of the two parties to a dispute has representation. Other jurisdictions, such as British Columbia, have attempted to remedy this problem but to date, the problem remains in Nova Scotia. How, in your opinion, ought we to address this issue? Could SAC be a solution in some way?
10. The family court system and family matters litigation process, it appears, affords more emphasis to problem-solving and cooperation amongst the parties than does the criminal court system. For instance, it seems that opposing family court litigants are encouraged to work with each other toward amicable resolutions to issues in a way that is foreign to the criminal court system. Do you think that this approach, which encourages communication and collegiality, will influence the evolution of the SAC system? For instance, do you think that ultimately the system might evolve from its current approach of offering legal advice to a system that is focused on problem-solving in general?
11. Some people have suggested that the SAC system is important in that it introduces litigants to civil litigation procedure – it helps them to understand the various steps that must be taken from the commencement of an action to the conclusion, assistance is provided with the completion of paperwork, etc. Do you think that the SAC is important in this regard?

The Impact and Interviewee’s Evaluation of the SAC System

12. What impact, if any, do you think the summary advice counsel system has had on the processing of court cases? Do you believe that it has resulted in an increase or decrease in efficiency, etc.?

13. How has the summary advice counsel system impacted your work personally and that of your colleagues?
14. What do you believe to be the benefits of the summary advice counsel system for you and your colleagues?
15. What do you believe to be the benefits of the summary advice counsel system for litigants?
16. What do you believe to be the disadvantages of the summary advice counsel system for litigants?
17. What do you believe to be the benefits of the summary advice counsel system for judges?
18. What do you believe to be the disadvantages of the summary advice counsel system for judges?
19. What do you believe to be the benefits of the summary advice counsel system for other court staff, such as intake staff, conciliators, etc.?
20. What do you believe to be the disadvantages of the summary advice counsel system for other court staff, such as intake staff, conciliators, etc.?
21. What would you identify as being the problems or shortfalls associated with the summary advice counsel system as implemented?
22. What changes, if any, would you recommend be made to the current summary advice counsel system or model?
23. Situation Specific questions.

Atlantic Institute of Criminology
Summary Advice Counsel Project
Other Stake Holders Interview Instrument



Interviewee's Name	
Interviewee's Position/Employer	
Interviewee's Contact Information	
Interviewer	
Interview Date	
Interview Format (Phone/In-Person)	

Introduction to the Study

The Atlantic Institute of Criminology at Dalhousie University has, in recent years, been exploring the phenomenon of unrepresented litigants in Nova Scotia Courts. In 2004, the Institute conducted a study of non-custodial accused charged with crimes in the Halifax Regional Municipality. Since then, the Institute has been conducting a comprehensive evaluation of the newly-introduced criminal court duty counsel system at the Halifax and Dartmouth Provincial Courts.

This study, funded by the Nova Scotia Department of Justice, seeks to examine and assess the summary advice counsel system launched in the Supreme Court (Family Division) in the Halifax Regional Municipality and Sydney regions.

Introduction to the Organization

Introduction to the Interviewee

General/Introductory Questions

1. Could you please describe your role in or experience with the family court process?

2. In your opinion, what are the strengths and weaknesses of the family court as it currently exists? What does it do well and what does it do poorly?

3. Do you think that the family court system provides adequate legal information and advice to litigants and potential litigants?

The SAC System

“Last year, the Nova Scotia Department of Justice introduced, in the family court system, a ‘summary advice counsel’ service which seeks to provide free legal advice to unrepresented litigants. Under the system, litigants are afforded half an hour of free legal advice. The advice provided tends to be general as opposed to specific in nature, is a “one-shot deal,” is provided to the first of the two parties to the dispute to request the advice and the lawyer does not attend the actual hearing or trial.”

4. Were you aware of the existence of this summary advice counsel system? If so, how and in what capacity?
 - Yes aware of it.
 - I always assumed that it existed because it existed everywhere else. When I became pro bono coordinator I met Heather and she introduced me to the system formally –the details, going to the court, etc.

If Interviewee Was Aware of SAC System:

5. As a result of interviews with other stake-holders, we have characterized the summary advice counsel system as possessing the following characteristics:
 - f. Free legal advice is provided to clients on a ‘one shot’ basis.
 - g. The advice is provided in person only and limited to twenty or thirty minutes in duration.
 - h. Counsel’s role is limited to providing information/advice and he or she does not attend court hearings.
 - i. Advice is limited to legal advice and tends not to encompass social, economic or other advice.
 - j. The system works on a ‘first past the post’ basis such that the first party to the dispute to seek assistance from the SAC counsel will receive it whereas the other party will be ineligible to prevent a conflict of interest situation.

Can you think of any other characteristics or dimensions of the SAC system that are not encompassed in this list?

6. In your opinion, what are the advantages or strengths of the SAC system as it currently operates?
7. In your opinion, what are the disadvantages or weaknesses of the SAC system as it currently operates?
8. Have you, in the past, referred individuals to the SAC lawyer?

9. Have individuals been referred to you in the past by the SAC lawyer?

10. Could you please describe what impact, if any, the SAC system has had on your organization and the individuals affiliated with it?

11. What changes, if any, would you recommend be made to the current summary advice counsel system model?

If Interviewee Was Not Aware of SAC System:

12. Do you believe that the summary advice counsel system that I just described will impact your organization or its clients or users? If yes, how so? If no, why not?

Other Situation Specific Questions and Responses

Interviewer's Comments
