

**THE SUMMARY ADVICE COUNSEL INITIATIVE**

**ASSESSING ITS IMPLEMENTATION, IMPACT AND**

**FUTURE DIRECTIONS IN TWO NOVA SCOTIA URBAN AREAS**

**EXECUTIVE SUMMARY**

**SUBMITTED TO:**

**COURT SERVICES DIVISION, NOVA SCOTIA DEPARTMENT OF  
JUSTICE**

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## EXECUTIVE SUMMARY

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. 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, the SAC initiative has aimed at improving the efficiency, effectiveness and equity of the family court process.

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 context, first by “placing” the initiative through a review of the salient literature and, secondly, through a comparison, if feasible and warranted, of the Cape Breton and Halifax organizational contexts for SAC.

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 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, contracted 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 with 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.

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.

The review of the literature highlighted three themes, namely (a) the growing problem of the unrepresented litigant in an increasingly complex family court process; (b) the unique character of family law and the family court process (especially the movements towards a more holistic premise and an emphasis on a more ‘collaborative’ and less adversarial process); (c) the implementation of the SAC approach in Canada and elsewhere (e.g., the range of services provided, the variety of service delivery models).

Turning to the actual SAC activity, The central objectives for the two major sponsors, 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. 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). The penetration rate (i.e., reaching the unrepresented) in both sites (Sydney Cape Breton and Halifax) would be at least about 35%. Examining the activity associated with the SAC involvement, 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 in advancing their case. The evidence points to the second perspective as the more empirically likely result. As for the impact of SAC on subsequent legal representation,

no major change in the level of representation by process stages would appear to 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.

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 clients were very positive about the SAC service. They considered that the SAC encounter had brought them better understanding of legal issues and better understanding of court processes. As for making it 'easier to apply to NSLA', the sample was fairly evenly split, but the large majority appreciated SAC making quicker legal advice available to them and 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. The high level of consensus among those completing the exit survey essentially precluded any analyses of variation by gender, income and so on.

As noted, a large number 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).

Among the eight judges interviewed, there was much consensus on the SAC initiative. 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 ‘first-past-the post’ (FPP)

problem, and that the penetration of SAC to all unrepresented persons appearing before them should be realized.

Court administration officials were very enthused about the SAC initiative. 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. Among the intake/conciliation staff persons the major themes were, 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; that SAC has been a very positive initiative for all Court role players but here they especially mentioned for conciliators; (3) that the SAC features advanced by researchers in the interviews were accurate save the reference to a “one-shot” consultation since in their view SAC exercised discretion on that matter; (4) certainly, they, 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.

The SAC lawyers, both secure in their employment with NSLA and in that sense disinterested, were very positive about the initiative. 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. Both SAC lawyers defined the features of their role quite similarly. 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

SAC Clients’ views are analysed in depth in the text. In a nutshell, they 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 clients' use and assessment of SAC services

Overall, then, 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 of 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.