



Evaluation of the Saint John Family Law Pilot
Volume I – Final Report

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Prepared for:

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Executive Summary

Introduction

The New Brunswick Department of Justice and Attorney General (DJAG) launched a family law Pilot called the Saint John Family Law Pilot (the Pilot) in the Judicial District of Saint John in September 2010. The Pilot will run until March 29, 2013. DJAG required an evaluation of the Pilot and contracted PRA Inc. to assist in this process. The evaluation considered all components of the project, including the following:

- ▶ The Family Law Information Centre (FLIC)
- ▶ Triage
- ▶ Family Advice Lawyer (FAL) services
- ▶ Mediation services
- ▶ Case management
- ▶ New Rule of Court and Forms

The Pilot was implemented to increase access to legal information and legal assistance in family law matters, facilitate expanded use of alternatives to family courts to resolve family law issues, and provide more timely access to justice in resolving family law disputes. The overall objectives of the Pilot are to:

- ▶ provide more timely resolution of family cases;
- ▶ reserve court time for the most complex cases; and
- ▶ provide unrepresented litigants with the necessary information to navigate the process.

An evaluation matrix that aligned with the expected outcomes outlined in the Pilot's logic model guided the evaluation. The matrix identified the following three basic issues along with their related evaluation questions, indicators, and data sources:

- ▶ access/use of services
- ▶ impact on litigants
- ▶ impact on the New Brunswick Court system

Methodology

The evaluation used multiple lines of evidence as described below, with separate technical reports developed for each.

Integrated document and literature review: Relevant documents provided by DJAG and accessed through the department's website were reviewed to compile a summary and background of the Pilot. A brief review of literature was also conducted to identify and describe similar family law services offered by other jurisdictions.

Key informant interviews: A site visit to the Saint John Family Law Pilot took place May 2 and 3, 2012, to interview members of the New Brunswick justice system familiar with some or all aspects of the Pilot. Stakeholders not available during the site visit were interviewed at a later date by telephone. Key informants included three judges of the Court of Queen's Bench (Family

Division, Judicial District of Saint John), six members of the Access to Family Justice Implementation Team, eight Family Court staff associated with the Pilot, seven other Saint John Family Court staff, one Family Crown Counsel (Saint John Family Crown Services), one legal aid lawyer, nine private sector lawyers, and three other stakeholders. Interviews involved a total of 32 interviews with 38 participants.

Data review: This involved reviewing a variety of data provided by DJAG that related to the Pilot and Family Court services. This included, for example, annual statistical reports for the Saint John Family Law Pilot, the Court of Queen’s Bench Family Division, and the Court Social Worker Program, as well as data on the Child Support Conciliation Service, Mediation Services exit survey results, and salaries and operational costs for the Pilot.

Survey of clients: DJAG provided a sample of clients who had used some or all of the Pilot components and who had consented to participate in a survey, either by consent forms signed at the time of service or through follow-up telephone calls from DJAG staff. The survey was conducted by telephone and achieved a response rate of 54% of the 100 eligible numbers (DJAG provided 112 client names, 12 of which were either not in service, wrong numbers, or fax machines).

The Saint John Family Law Pilot

In the years leading up to the implementation of the Saint John Family Law Pilot, New Brunswick’s Family Court system was experiencing many backlogs and delays due to a variety of factors, including the increasing number of unrepresented litigants. As a result, the Government of New Brunswick appointed the Access to Family Justice Task Force in early 2008 to review the Family Court system and make recommendations. DJAG launched a Family Law Pilot in the Judicial District of Saint John in response to the Task Force’s findings and to address some of their recommendations. The legislative groundwork for the Pilot is housed under Rule 81, which came into effect on September 30th, 2010. The Rule describes the procedures and roles under the case management system established by the Pilot, and introduces 12 new court forms for the Judicial District of Saint John.

The Pilot components comprise:

- ▶ The Family Law Information Centre (FLIC), which is located at the courthouse and provides in-person and telephone assistance to individuals with family law matters. This includes general information on the family law process and other resources available, assistance with court forms, and access to the FLIC’s pamphlets/brochures and computer station.
- ▶ A Triage Coordinator, who conducts a variety of administrative duties for the Pilot and manages the FLIC. The latter includes providing assistance to FLIC clients, along with an administrative staff member. The Triage Coordinator also conducts the group information sessions on triage day, explaining the process to litigants and showing the video presentation.

- ▶ Family advice lawyers (FAL), who provide unrepresented litigants with general information on their family law matter as well as guidance on filling out court forms. The FAL will also review clients' forms for completeness and provide assistance with accessing community resources. Litigants can receive up to 60 minutes of free assistance from the FAL; the lawyers do not represent litigants in court. The FAL is located at the FLIC and appointments are made through FLIC staff.
- ▶ A mediator, who assists parties in discussing, negotiating, and developing their own mutually agreed-upon solutions to their family law issues. The mediator is also located at the FLIC; initial appointments are made by the FLIC staff.
- ▶ A Case Management Master, who acts in a judicial, quasi-judicial, and judicial administration capacity as a primary case manager conducting case conferences to assist litigants in achieving final or at least interim resolution, and to assist in preparing for court hearings before a judge.

Overall evaluation findings and recommendations

Overall findings for the evaluation are presented below by each of the following three main evaluation issues and their related evaluation questions.

- Access/use of services
- Impact on litigants
- Impact on the New Brunswick court system

Several recommendations are provided at the end of each evaluation issues section for DJAG's consideration. Some recommendations address more than one evaluation question and therefore are organized by evaluation issue rather than evaluation question. The Pilot is set to end in March 2013; the recommendations provided are based on the assumption that the Pilot will be extended or made permanent.

Evaluation issue 1: Access/use of services

Evaluation Question 1: Are clients aware of the FLIC?

The high level of usage for most of the components of the Pilot, as summarized below, suggests that litigants are gaining awareness of the FLIC and other Pilot components.

- ▶ 8,267 assists were provided by the FLIC between November 1, 2010, and March 31, 2012, which, considering this is close to four times the number of initiated filings, suggests a high number of litigants overall are using the FLIC, and/or people are making return visits to the FLIC for additional assistance.
- ▶ 1,461 appointments were made by the FAL between October 1, 2010, and March 31, 2012, with 1,870 hours of assistance provided.

- ▶ 107 cases either went to mediation or at least were assessed for appropriateness of mediation between January 1, 2011, and March 31, 2012.
- ▶ 709 appearances were made before the CMM between January 1, 2011, and March 31, 2012, with 436 of these as First Court Appearances and 273 as case conferences. Some case conferences included the same parties that had appeared in a First Court Appearance.

No conclusions can be drawn, however, on the overall level of awareness of availability of the services for all litigants or for the overall public. Key informants' perception is that the public, in general, is not aware of and does not make an effort to become educated about family law processes and the services available until individuals become involved in a family law issue. The public appears to gain awareness of the Pilot services through either word of mouth or by visiting the courthouse. Key informants believe it is mainly the latter (when people call or visit the courthouse, either to pick up or file forms, or because they do not know what to do about their issue and are seeking assistance). Clients themselves reported through the survey that they mainly learned of the FLIC, FAL and mediation through either someone at the courthouse or family, friends, and acquaintances. The FLIC was also an important source of learning of the FAL and mediation, particularly for clients of the former.

Evaluation Question 2:

Do litigants have access to the services, and are they using the services?

The evaluation found that the public has access to and is using the Pilot services offered by the FLIC, the FAL, and mediation, and is also having appearances before the CMM. Data on the access to and use of the Pilot components is illustrated above in Evaluation Question 1. Most key informants believe the main users of the Pilot services (FLIC, FAL, mediation) are unrepresented litigants. These are reported as low-income individuals who cannot afford a lawyer and do not qualify for legal aid, either because of financial or eligibility criteria. However, the client survey revealed that even litigants with lawyer representation are using the Pilot services, although feasibly some could have used the FLIC and FAL prior to hiring their lawyer.

The Pilot services are viewed as accessible, with key informants and client survey respondents agreeing the FLIC hours are convenient, and that the location of the FLIC, FAL, and mediator in the courthouse is in a convenient location. Similarly, the courthouse itself is viewed as centrally located in a downtown area, where a high level of low-income people who would need the services reside. Transportation is viewed as the only significant barrier for some potential clients. The Judicial District of Saint John covers a large area, with public transportation lacking for much of it.

There was suggestion that greater efforts could be made to communicate the Pilot services to other organizations, particularly to community organizations that provide services to the similar target population and who could refer their clients to the FLIC, FAL, and mediation.

Some key informants believe that the use of mediation services is lower than expected, and also that those going to mediation generally do so before filing or going to triage. This is confirmed by the data, where the number of cases going to mediation is relatively small when considering

the overall number of filings initiated in one year. Plus, the average number of cases mediated per month under the Pilot (7) is lower than under the previous Court Social Worker Program (22), which ended over a year before the Pilot was implemented. It is difficult, however, to make any statements on whether this is due to an unawareness of the services or rather that mediation is suitable for only certain cases and circumstances. However, given mediation's success in helping clients, the relatively low numbers using the service suggests potential exists for increased promotion of mediation as an effective alternative from the court process.

Evaluation Question 3:

Are the services meeting the needs of clients? (e.g., Are they helpful and useful? Are clients satisfied with the services? Are the available resources sufficient to meet demand?)

Clients are receiving a wide range of assistance from both the FLIC and the FAL, but are particularly receiving help on their forms, as confirmed by both key informants and client survey respondents. A majority of survey respondents that used the FLIC learned of which forms they needed to complete, and those using the FLIC and/or the FAL received help with completing and how to file the forms. Plus, close to three quarters of the survey respondents using the FAL also said the lawyer reviewed their forms/documents for completeness. Clients are also learning from the FLIC and/or the FAL about other resources available to assist them, as well as general information about their family law matter and the court process.

Clients highly valued the help received through the Pilot (FLIC, FAL, or mediation), with almost all survey respondents that used the FLIC, the FAL, and/or mediation services saying the services were either very or somewhat helpful (with the majority saying the former), suggesting the services are meeting the needs of clients. Most respondents believed their wait times for appointments with the FAL or for their initial mediation appointment were reasonable, again suggesting the resources available are sufficient for meeting demand.

That over half (55%) of the appearances before the CMM resulted in a final or interim consent order providing litigants with either full or temporary relief is indicative of the usefulness of this component of the Pilot to litigants. These appearances are also useful to litigants where procedural orders are given by the CMM to ensure parties file the appropriate documents for the next phase of their matter and for assisting in identifying issues. Available court data does not allow for indicating the total proportion of cases that are able to achieve complete or temporary relief through appearances before the CMM. However, most of the 25 client survey respondents who appeared before the CMM achieved either a consent order (20%) or an interim order (64%) through their session(s).

The helpfulness of mediation to clients is evident in the high proportion of cases reaching full agreement (73%) or at least partial agreement (9%). As well, the mediation exit surveys show clients strongly believe that mediation is useful for reaching agreement through a collaboratively achieved solution and provides a good alternative to court.

Recommendations for access/use of services

As a result of these findings, several recommendations for DJAG’s consideration with respect to the evaluation issue access/use of the services are provided below.

Recommendation 1: While the FLIC and FAL are experiencing high usage, there potentially are other members of the public that could benefit from the services but are not aware of their availability. The DJAG should consider some means of advertising and promoting the services. This could be through a variety of formats, including the following:

- ▶ advertisements in newspapers, posters at community agencies and other areas attended by a large proportion of the public, such as public libraries and shopping malls
- ▶ brochures/pamphlets provided to other community agencies that provide services to a similar population; these agencies could then either verbally refer their clients to the Pilot services and/or provide them with a brochure or pamphlet

Recommendation 2: Given the success rate of mediation but relatively low usage of this service, DJAG should particularly consider approaches for not only advertising the mediation services but encouraging and endorsing its use. Advertisement could be achieved through the same channels suggested above for the FLIC and FAL and could also include promotional material for outlining the potential benefits of mediation.

Recommendation 3: The evaluation learned that DJAG is currently reviewing the court forms implemented under Rule 81. As part of this review, DJAG may wish to consider including information with each form outlining the assistance available through the FLIC and FAL. In particular, this could be helpful to unrepresented respondents who are served the papers they must complete by the applicant, and therefore may not be aware of the services unless they visit the courthouse. Notification of the available services in the forms, or attaching a brochure or pamphlet to all forms outlining the services could be beneficial to respondents.

Evaluation issue 2: Impact on litigants

Evaluation Question 4:
Have the services resulted in an increased understanding of family law matters by litigants?

The evaluation found that the Pilot components are providing clients with an increased understanding of their family law matters. Most surveyed clients said they received a good understanding of the forms and documents they needed to complete and how to complete them. Clients are also receiving a good understanding of other options and the resources available to them, as well as an understanding of the court process.

This assistance is expected to contribute towards litigants who are better prepared and more informed during the court processes, helping them make decisions and reducing confusion and frustration. The majority of survey respondents who attended appearances before the CMM or a judge indeed agreed that they felt prepared for the session and understood what occurred and the

decisions that were made. And while the video shown at triage is considered helpful, the content is focussed on litigants with children and so may not be widely applicable to all parties attending triage day.

Evaluation Question 5:

Have litigants experienced more timely access to justice in resolving their family law disputes?

The FLIC and the FAL contribute towards access to justice through the assistance provided and the readily accessible services. Clients can access the FLIC at any time during business hours and most clients are able to book appointments with the FAL within two weeks.

Mediation is seen as a valuable and appreciated resource for those choosing this option. Mediation provides parties with the opportunity of working cooperatively to achieve faster resolution and to avoid court. From mediation statistics, as well as from the client survey, users of the mediation services are achieving high levels of agreement and are accessing and settling their matter within a time frame that clients view as reasonable. And parties using mediation appear to be reaching resolution in a timelier manner than those going through the court process. Almost half of survey respondents that settled/partially settled through mediation (9 of 20 respondents) said they did so in less than one month. In comparison, just over one quarter of other survey respondents who settled their matter (5 of 19 respondents) through the court process (appearance before a CMM or judge) said they did so in less than two months, with the others taking longer.¹

Key informants viewed the case conferencing with the CMM as a very important component of the Pilot. The time period of 40 days to triage after filing gives litigants an opportunity to mobilize their file, communicate with the other party, and work towards resolving their issues in a timelier manner than pre-Pilot. The majority of cases are not achieving this target of the First Court Appearance within 40 days of filing (approximately 24% of files are meeting the target). Despite this, First Court Appearances and case conferences before the CMM do appear to be occurring in a timelier manner than what existed prior to the Pilot (for hearings before a judge). The majority of appearances before the CMM for First Court Appearances and case conferences for child support variation are occurring within 70 days (79% and 69%, respectively) compared to average court delays pre-Pilot of from four to six months (other than for motions of interim relief). Those cases which are able to find some relief at their appearances before the CMM, either through consent or interim orders, are experiencing more timely access to justice for providing complete or temporary resolution for their family law disputes.

Key informants were somewhat divided on whether they believe that cases that do proceed to a hearing before a judge are doing so in a timelier manner. While comparisons of average court delays for Saint John do show declines in delays between 2010–11 and 2009–10, there is

¹ Those settling/partially settling through mediation were asked to estimate the time from when they first made their mediation appointment to when they settled/partially settled. Those settling by consent through appearances before the CMM or a hearing before a judge or by a court order were asked to estimate the time from filing and when their matter was settled.

insufficient data to attribute this change to the Pilot. Data is not available for 2011–12 and the Pilot was operational for only part of 2010–11.

Evaluation Question 6:

Do parents have continued efficient access to child support variations?

The Pilot appears to be meeting and exceeding the goal for a continuation of the improvements to the child support variation process achieved through the CSVS Pilot Project. The proportion of child support variation cases either settled or partially settled through case conferences with the CMM are similar to those settled through meetings with the conciliation officer. However, wait times between filing and some type of result have improved with the Pilot. Under the Pilot, one third (33%) of some type of result occurred within 45 days of filing, compared to approximately 3% for the pre-Pilot time period examined.

Evaluation Question 7:

Have the services helped litigants in their decision making and reduced families' financial and emotional stress?

Empowering parties through provision of tools and information for gaining knowledge on their family law matter and providing timelier access to justice contributes towards decision making and reducing the emotional and financial stress created by family law issues. The high success of mediation provides evidence that this service is assisting the parties in making decisions for resolving their family law issues. Furthermore, the collaborative nature of mediation should contribute to less emotional stress. As well, resolving issues in a timelier manner without the need of hiring a lawyer should reduce families' financial stress.

The findings that many litigants appearing before the CMM are able to obtain either a consent or interim order at this stage and that they are appearing before the CMM sooner than they would have before a judge pre-Pilot should also contribute to reduced financial and emotional stress.

Evaluation Question 8:

Is there increased compliance with parenting arrangements and/or support obligations?

The evaluation could find little evidence of how the Pilot might be affecting compliance with parenting arrangements and/or support obligations. This outcome is expected as a more long-term outcome of the Pilot. Plus, compliance with support obligations has apparently improved throughout New Brunswick, which is partly attributed to the *Support Enforcement Act* and the actions that can now be taken against payors that are in arrears of support payments.

Recommendations for impact on litigants

As a result of these findings, several recommendations for DJAG's consideration with respect to the evaluation issue impact on litigants are provided below.

Recommendation 4: The Pilot and the various components appear to be having a positive impact for clients through providing them with an increased understanding of their family law

matter and also increased access to justice. The main recommendation for this issue is to continue to provide these services to litigants by extending the Pilot beyond March 2013, or making this a permanent service for the Judicial District of Saint John.²

Recommendation 5: Given that the focus of the video shown at triage is on families with children, DJAG may wish to consider either providing/developing an alternative video for litigants without children, or giving them the option to forgo the video.

Recommendation 6: A challenge for the evaluation was that only one full year of data was available for the Pilot for assessing impact. With the implementation of the new NOTA system DJAG should take the opportunity to gather statistics on individual cases to make comparisons and assess whether the Pilot has facilitated access to justice in a timelier manner for litigants in Saint John compared to other parts of New Brunswick. This could include, for example, comparisons of the time between filing and receiving interim and/or final resolution and, for Saint John, whether this is received through hearings with the CMM or before a judge.

Evaluation issue 3: Impact on the New Brunswick court system

Evaluation Question 9:

Are litigants making greater use of alternatives to court to resolve their family law issues?

Mediation and appearances before the CMM both appear to be contributing towards fewer hearings with a judge. Considering no free mediation services were available in Saint John just prior to the Pilot, the Pilot has contributed to greater use of mediation as an alternative to court. The mediation services available through the Pilot have diverted some families from the court process, with 78 cases reaching full agreement and 10 cases reaching partial agreement through mediation. It would appear, however, that once cases reach the triage and First Court Appearance stage, few parties are choosing, or being referred to mediation. And, as already discussed, there are some concerns that families are not using the mediation services to the extent expected or desired. As well, not as many cases appear to be going to mediation under the Pilot in comparison to the previous Court Social Worker Program that ended in April 2009. Given the success of mediation, some potential appears to exist for increased promotion of this service as an effective alternative from the court process for resolving family law issues.

Appearances before the CMM are providing litigants with opportunities to work out consent orders or at least obtain an interim order, with 55% of the appearances before the CMM resulting in one of these outcomes. Those who settled their matter through a consent order would be diverted from the hearings before a judge, and those with interim orders may have their issues flow through the process of a hearing with a judge in a more efficient manner.

² The focus of this evaluation was the Saint John Pilot and its impact on litigants and the court system of the Saint John Judicial District. While an argument could be made that other parts of New Brunswick could benefit from a similar service as the Pilot, the evaluation did not examine or assess services in other areas of the province and cannot make recommendations beyond the Saint John Pilot.

Evaluation Question 10:

Are litigants better-prepared at case conferences or court?

The evaluation found that the Pilot components are assisting litigants in preparing for case conferences and court hearings before a judge. The majority of survey respondents using the FLIC and the FAL say these helped them gain a good understanding of how to complete their forms and an overall better understanding of their family law issues. This helps prepare litigants for the case conference, where the CMM will then identify any missing information or documents and assign a date of when these need to be in place. This, in turn, assists in preparing litigants for any court hearings before a judge. This is further confirmed by survey respondents, with the majority that appeared before the CMM and/or a judge saying they felt prepared and also that they understood what happened at the session and the decisions made.

Some private lawyers interviewed for the evaluation have observed that unrepresented litigants will still often need further instruction from the CMM for completing or submitting forms/documents. Follow-up case conferences can be time-consuming for lawyers and costly for clients. There is some suggestion that unrepresented litigants could benefit from further assistance from the FAL, either through increasing the time provided or expanding the level of assistance given, including to have the FAL act as Duty Counsel at First Court Appearances. One difficulty the evaluation encountered is in determining the differences in the roles of the FLIC and the FAL in the assistance provided for completing court forms. Because the FAL cannot provide legal advice, their role as providers of information appears to overlap somewhat with that of the FLIC. One could also question if this is an efficient use of this specialized legal resource.

Evaluation Question 11:

Have the services and any related policy/procedural changes (e.g., Rule 81) resulted in a more efficient flow of cases through the judicial system?

Given the successes of each component of the Pilot, all of this should result in a more efficient flow of cases through the judicial system. Without access to the FLIC and the FAL, those clients represented by the aforementioned 8,267 assists by the FLIC and 1,461 appointments by the FAL would have had few other resources available to them. As a result of the mediation services, the 78 cases that completely settled did not require any court time for finding resolution, and the 10 cases that partially settled should require less court time than otherwise. As already noted, appearances before the CMM appear to be occurring earlier than pre-Pilot before a judge. This is viewed as bringing the parties together earlier than they would have pre-Pilot, which provides an incentive for the parties (and their lawyers, where applicable) to prepare sooner, and provides an earlier opportunity for litigants and lawyers to discuss and work towards resolution. For those continuing to hearings before a judge, the CMM will identify the issues and make procedural orders to ensure readiness. This reduces or eliminates the need for adjournments and dealing with procedural matter at hearings before judges, making more efficient use of court time. Taken as a whole, all of these outcomes should contribute to a more efficient flow of cases.

However, the Pilot and its components cannot be looked at in isolation without considering the impact of other areas of the court system on the operation of the Pilot and vice versa. While the

Pilot has eased the burden for court services from public requests for assistance with court forms and information, the additional cases heard and shorter timelines has also increased the workload. As well, at the time of the evaluation, court services was operating with a reduced staff capacity. Efficiencies gained by the Pilot may be compromised if backlogs occur at court services due to workload.

While the Pilot is seen as primarily benefiting unrepresented litigants, the court and all stakeholders indirectly benefit from better-prepared litigants and more effective use of court resources. However, some private lawyers report that aspects of case conferencing can create additional costs to their clients, primarily through additional time requirements from the lawyers, such as for wait times on triage day, or for follow-up case conferences. More in-depth study would be required to determine if lawyer costs varied significantly pre- and post-Pilot.

The new court forms implemented with Rule 81 also do not appear to be contributing to the efficient flow of cases through the judicial system, with key informants from all stakeholder groups expressing dissatisfaction with the forms. The main areas of concern are that the forms are repetitious and complicated. As a result, they are time-consuming to complete and cause frustration for both litigants and lawyers. Many litigants apparently find the forms overwhelming and are uncertain if they are completing them properly. Several private lawyers also believe the forms present an invasion of privacy in that they request information on criminal records. However, DJAG is apparently aware of these concerns and is proactively taking steps to review the forms.

Evaluation Question 12:

For those cases going to court, is this mainly for those involving one or more of the following:

- **complex financial situations cases**
- **undue hardship**
- **lack of agreement**
- **high conflict (e.g., violence, mental health, addictions)?**

The evaluation could only address this question through key informant observations, with most, but not all, interviewed stakeholders believing that court time before a judge is now being reserved for more complicated and high-conflict cases or issues. Matters are either resolved or find interim relief at the case conference, freeing up the judge to deal with the more substantive issues.

Evaluation Question 13:

Is the Pilot operating at a reasonable cost?

Assessing the reasonableness of the Pilot costs is difficult without the ability to assess any savings to the justice system as a result of court efficiencies gained due to the Pilot. In order to conclude that costs are reasonable, annual savings achieved as a result of increased court efficiencies would have to exceed Pilot costs, which were \$393,610 in 2011–12. The costs of the additional FLIC support staff, which was not available to the evaluation, would have to be added to this total.

Evaluation Question 14:

Are other target groups besides clients satisfied with the services? Are there any suggestions for improving services?

Based on key informant interviews, most of these stakeholders are mainly satisfied with the services and components of the Pilot. Interviewees believe the help provided by the Pilot assists primarily unrepresented clients in preparing for court and allows for better use of court time. Litigants are getting into court and having their issues resolved more quickly, and this, as well as the availability of the CMM, is relieving pressures on court hearings with judges. Everyone is viewed as benefiting — including families, litigants’ lawyers, and the courts. The service is viewed as needed in Saint John, which has a high number of low-income residents who would not have the financial means to access private lawyers or private mediation services.

Stakeholders provided a variety of suggestions for improving the Pilot components with these mainly focussed around logistical or capacity changes that would increase the effectiveness of the appearance before the CMM; expansion of the services provided by the FAL; or increased communication efforts for promoting the Pilot services.

Recommendations for impact on the New Brunswick court system

As a result of these findings, several recommendations for the DJAG’s consideration with respect to the evaluation issue impact on the New Brunswick court system are provided below.

Recommendation 7: As an extension of Recommendation 0, the DJAG should determine how the new NOTA system could be used to assess the impact of the Pilot on the court system itself. This could include looking at, on an individual case basis, the length of time that cases are in the system, whether they are resolved at appearance before the CMM or a judge, the number of appearance parties make before the CMM or judge, the number of adjournments made by judges and why, and the total court time required. Comparisons could be made between Saint John and other parts of New Brunswick, as well as between case types.

Recommendation 8: The DJAG should reassess the role of the FAL in the Pilot and whether litigants are obtaining the best use of this resource. If the intent is to only provide legal information and guidance on the forms, this is a service that could effectively be completed by the FLIC or perhaps a paralegal position. Other ways in which the FAL could be utilized is through the provision of specific legal advice on clients’ cases, or, as suggested by some key informants, provision of duty counsel services at appearances before the CMM.

Recommendation 9: The DJAG is to be commended on the proactive step of reviewing the forms in acknowledgement of widespread concern. The DJAG should consider consulting with the various members of the justice system that use the forms for input on how best to revise the forms to meet the needs of all stakeholders. Specific concerns with the forms of interviewed stakeholders are documented in the evaluation.

Recommendation 10: The Pilot components are providing positive benefits, particularly to unrepresented litigants who cannot afford the services of a private lawyer. However, no litigants should accrue additional costs as a result of the Pilot components. Specifically, DJAG should look at ways of reducing wait times on triage day to reduce costs to litigants for wage-related losses or lawyer fees. This could be achieved through some type of appointment scheduling. DJAG could also look for other ways to achieve efficiencies as well, such as by reducing the need for all parties to attend follow-up case conferences that are mainly intended to ensure one of the parties has met the procedural orders.

Recommendation 11: The evaluation found that appearances before the CMM usually have no dedicated security provisions. It is recommended that the DJAG put in place sufficient security to ensure to the safety of all those participating in case conferences before the CMM.

Recommendation 12: Similarly, for the protection of all those involved in case conferencing and decisions made, it is recommended that DJAG audio record all appearances before the CMM.

Recommendation 13: Administrative tasks, while a necessary aspect of any function, can also be time-consuming. It is recommended that DJAG provide administrative support to the CMM to maximize the efficient use of this position.

Recommendation 14: While there were some suggestions by key informants for expanded authority of the CMM to make more effective use of this position, the evaluation was not able to accumulate sufficient evidence that this is warranted. A recommendation is for DJAG to further consider the role and authorities of the CMM, any legislative requirements for expanding the authority of the CMM, and how this might further improve the effectiveness of the Pilot.

1.0 Introduction

The New Brunswick Department of Justice and Attorney General (DJAG) launched a family law Pilot called the Saint John Family Law Pilot (the Pilot) in the Judicial District of Saint John in September 2010. The Pilot will run until March 29, 2013. DJAG requires an evaluation of the Pilot and contracted PRA Inc. to assist in this process. The evaluation considered all components of the project, including the following:

- ▶ The Family Law Information Centre (FLIC)
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- ▶ New Rule of Court and Forms

The Pilot was implemented to increase access to legal information and legal assistance in family law matters, facilitate expanded use of alternatives to family courts to resolve family law issues, and provide more timely access to justice in resolving family law disputes.

1.1 Research issues and questions

The overall objectives of the Pilot are to (Government of New Brunswick, 2010):

- ▶ “provide more timely resolution of family cases
- ▶ reserve court time for the most complex cases, and
- ▶ provide unrepresented litigants with the necessary information to navigate the process.”

DJAG developed a logic model and performance measurement strategy to assist in identifying and measuring achievement of the Pilot objectives (Appendix A). The logic model defines activities and outputs, target groups, and direct, intermediate, and final outcomes. Direct outcomes are mainly related to access to the various services. This, in turn, should lead to such intermediate outcomes as the following:

- ▶ increased understanding of family law matters and processes
- ▶ services that are helpful and meet the needs of litigants
- ▶ litigants that are better-prepared at each step of the process
- ▶ mediation that assists in resolving family law issues
- ▶ more efficient flow of cases through the justice system
- ▶ courts being reserved for more difficult cases

Final outcomes, which are expected to be achieved into the future, include the following:

- ▶ greater access to legal information and assistance
- ▶ more timely access to justice
- ▶ greater use of alternatives to court
- ▶ enhanced decision making by litigants
- ▶ reduced financial and emotional stress for litigants
- ▶ increased compliance with respect to support obligations and parenting arrangements

The evaluation was guided by an evaluation matrix that aligns with the expected outcomes outlined in the logic model and the corresponding indicators and data sources identified in the performance measurement and evaluation strategy. The matrix identifies three basic issues to consider in the evaluation, with a series of evaluation questions, indicators, and data sources outlined for each. Appendix B provides the evaluation matrix. The three issues are:

- ▶ access/use of services
- ▶ impact on litigants
- ▶ impact on the New Brunswick Court system

2.0 Methodology

This section briefly describes the methodology used for the evaluation. The evaluation tasks included the following:

- ▶ an integrated document and literature review
- ▶ key informant interviews
- ▶ a data review
- ▶ a survey of clients

Technical reports were developed and provided to DJAG for each of the above lines of evidence. This final report integrates the findings from each of the lines of evidence to provide overall findings.

2.1 Integrated document and literature review

The methodology for both the document and literature review components of the report is described below.

- ▶ **Document review:** this comprised a review of relevant documents provided by DJAG or accessed through the department's website. This assisted in compiling a summary of the background of the Pilot and the factors that precipitated its implementation, as well as a profile of the Pilot, the system that existed in Saint John prior to the Pilot, and the current system in the rest of New Brunswick. Examples of documents reviewed include the following:
 - Access to Family Justice Task Force report
 - applicable legislation and Rules of Court
 - program development and implementation documents
 - program documents, such as Committee terms of references, job descriptions for Pilot staff positions, and Pilot-related program policies and manuals
 - discussion papers
- ▶ **Literature review:** a brief review of the literature was conducted to identify similar family law services offered by other jurisdictions and also to locate any available reviews or evaluations with findings on the impact of these services both for families and for the court system. The literature review also cites the family law Pilot in Ottawa that directly influenced the Task Force's recommendations and, as a result, the subsequent design of the Pilot in Saint John.

The document and literature review were integrated into one technical report.

2.2 Key informant interviews

DJAG provided a list of justice system service providers with familiarity with some or all components of the Pilot, and according to the groups identified by the logic model. DJAG invited stakeholders to participate in an interview either by telephoning or emailing potential participants. Interviews were conducted in the official language of the participant's choice, mainly during a site visit to the Saint John Family Law Pilot that took place on May 2 and May 3, 2012. Some interviews took place by telephone at a later date. Interviews were 30–60 minutes in duration and were audio-recorded for note-taking purposes and with permission from the interviewee. Participants received an interview guide in advance to help them prepare considered responses. The interview guide, developed in consultation with DJAG, addressed the evaluation questions. PRA conducted 32 interviews with a total of 38 participants from the following groups:

- ▶ 1 interview with the Access to Family Justice Implementation Team (6 participants)
- ▶ 3 judges from Court of Queen's Bench, Family Division, Judicial District of Saint John
- ▶ 7 interviews with 8 Family Court staff associated with the Pilot
- ▶ 7 other Saint John Family Court staff
- ▶ 1 Family Crown Counsel, Saint John Family Crown Services
- ▶ 1 legal aid lawyer
- ▶ 9 private sector lawyers
- ▶ 3 other stakeholders (private mediators, Public Legal Education and Information Services of New Brunswick)

2.3 Data review

DJAG provided all data for this task. PRA reviewed and organized the data according to how it could be used to address each of the evaluation issues and questions. Information provided and used for the report includes:

- ▶ Court of Queen's Bench Saint John Family Law Pilot Annual Statistical Report, September 2010 to March 31, 2012
- ▶ Court of Queen's Bench Family Division Annual Statistical Reports for 2006–07 to 2009–10, plus data for 2010–11 for Saint John and Moncton only
- ▶ Child Support Conciliation Service Comparison Statistics (pre- and post-Pilot)
- ▶ Court of Queen's Bench Court Social Worker Annual Statistical Reports for 2004–05 to 2006–07 and data for 2007–08
- ▶ Mediation Services Exit Survey Results (2007 and 2012)
- ▶ Saint John Pilot salaries and operational costs
- ▶ Report for the Evaluation of the Child Support Variation Service Pilot Project in Saint John, 2004

2.4 Survey of clients

The survey was conducted by telephone. PRA developed a survey questionnaire in consultation with DJAG, with questions designed to address the evaluation matrix questions. The survey included several open-ended questions, mainly those that asked respondents to describe their reasons for choosing a particular response category to a closed-ended question. PRA then developed a set of response categories based on these descriptive responses and coded the open-ended responses.

DJAG provided the sample list of clients for the survey. DJAG obtained consent from clients to be surveyed either through consent forms clients had signed when they received services or by follow-up telephone calls from DJAG staff. Voluntary consent forms were provided to all clients who used the Saint John Family Law Pilot services commencing in January 2012; however, clients who accessed the FLIC only by telephone were not included. To acquire additional consents, DJAG obtained client names from the Triage Coordinator's list of cases that met with the Case Management Master. In order to develop a list of clients that had some experience with all or some components of the Pilot, Family Division court files identified other Pilot services these clients may have accessed. DJAG then proceeded to telephone these clients and request their consent to participate in the survey.

The sample list provided by DJAG included the clients' name, phone number, and, where available, the services or component of the Pilot used. PRA conducted the survey between June 14 and July 7, 2012. We made repeat phone calls over this period to numbers where there was no answer, an answering machine, or a busy line, with most numbers being called a minimum of 10 times. The survey obtained a response rate of 54% (Table 1). This is a very good response rate, given the short period of time within which the survey was conducted and that it was conducted at the beginning of the summer period.

Table 1: Call record for client survey	
Item	Number
Total numbers attempted	112
Not in service/wrong number/fax	12
Total eligible numbers	100
Busy/answering machines/no answer	38
Refusals	6
Not qualified	2
Completed interviews	54
Response rate (completed interviews/eligible numbers)	54%

3.0 Background and context for the Saint John Family Law Pilot

This section examines the overall background and context for the Saint John Family Law Pilot. It begins with a brief description of New Brunswick’s family law system, and then summarizes the findings from the Access to Family Justice Task Force, including the perceived need for the Task Force, their recommendations, and the Government of New Brunswick’s response.

3.1 New Brunswick’s Family Law System

There are eight Judicial Districts of the Court of Queen’s Bench in New Brunswick, including the Judicial District of Saint John. The Family Division of the Court of Queen’s Bench hears all matters concerning family law in all eight Judicial Districts. Appeals from this court go to the Court of Appeal for New Brunswick. The *Judicature Act*, R.S.N.B. 1973, c. J-2 (the *Judicature Act*) provides for the composition and administration of the superior courts of New Brunswick, these being the Court of Queen’s Bench and the Court of Appeal.

The New Brunswick *Family Services Act*, S.N.B. 1980, c.F. 2-2 (the *Family Services Act*) governs a wide range of family matters, such as adoption, child and adult protection, support obligations, custody and access, children in care, and other matters. Proceedings related to divorce and marital property are governed by the *Divorce Act* R.S.C., 1985, c. 3 (2nd Supp) (the *Divorce Act*) and the *Marital Property Act SNB 1980, c M-1.1* (the *Marital Property Act*), respectively. The more specific forms and procedures necessary for carrying out this framework are found under Rules 72 and 73 of the Rules of Court, which are contained in a regulation under the *Judicature Act*.

People can choose several routes for resolving their family law issues. Those with sufficient funds may hire a private lawyer to represent them throughout or for parts of the process. Individuals that meet the financial eligibility criteria may qualify for legal aid representation provided by the New Brunswick Legal Aid Services Commission (NBLASC) on certain family matters. This includes family duty counsel for First Court Appearances for certain matters and legal representation for matters related to child protection proceedings, obtaining child and spousal support, variations of child support orders made under the *Family Services Act*, and custody and access (New Brunswick Legal Aid Services Commission, n.d.).³ Others self-represent, either by choice or because they cannot afford a lawyer and do not qualify for legal aid.

Self-representation is a growing trend across Canada, including in New Brunswick. However, in the absence of formal legal representation, individuals can find it challenging to steer their way through the complicated and technical legal system. Unrepresented individuals often lack knowledge of the Rules of Court, rules of evidence, and court procedures in general, and therefore do not take the appropriate steps when needed (such as completing and filing the proper forms). This causes delays in procedures and at court hearings and contributes to an already backlogged court system, which not only adds to the stress and frustration of individuals already in a difficult situation, but also places stress upon the court system.

³ However, Legal Aid does not provide assistance for divorce, variations of spousal support, division of marital property, or variations of any orders made under the *Divorce Act* (New Brunswick Legal Aid Services Commission, n.d.).

3.2 The Access to Family Justice Task Force

In the years leading up to the implementation of the Saint John Family Law Pilot, New Brunswick's Family Court system was experiencing many backlogs and delays, giving rise to growing concern that the system was in a state of crisis (New Brunswick DJAG, 2011a, p.2). These backlogs and delays were attributed to various factors, such as the increasing number of unrepresented litigants, more numerous and complex child protection hearings, and instances of intensified procedural requirements (Province of New Brunswick, 2009, p. 5). In recognition of these problems and of the general changes in the needs of family law litigants, the Government of New Brunswick appointed the Access to Family Justice Task Force in early 2008. The Task Force had the mandate of reviewing the Family Court system and making recommendations that would decrease court delays, encourage alternate dispute resolution mechanisms, and improve access to legal information and legal assistance (Province of New Brunswick, 2009, p. 2).

The Task Force, appointed by the then Minister of Justice and Consumer Affairs, the Honourable Thomas J. Burke, Q.C. (Province of New Brunswick, 2009, p. 5) and led by Mr. Justice Raymond Guerette, worked throughout 2008 and presented a report to the Minister on January 23, 2009 (Province of New Brunswick, 2009, p.3). The report was then tabled in the Legislature on June 2, 2009.

In their consultations with stakeholders, the Task Force heard that the system backlogs meant parties could wait months to obtain a court date for simple motions and years for their trials to come to court. These delays were resulting in increasing support arrears, children kept in foster homes while waiting for their parents' court dates, and loss of public respect for and confidence in the Family Court (Province of New Brunswick, 2009, p. 6-7).⁴

The Task Force also reported that there were inconsistencies between New Brunswick's judicial districts, which suggested that the system needed a set of unified practices (Province of New Brunswick, 2009, p. 7). Furthermore, the Task Force found it problematic that there was no system in place to manage cases. The lack of case management meant that all cases were going to court, while many of them would settle just before the trial (Province of New Brunswick, 2009, p. 8).

The Task Force identified the above issues as symptoms of a problem with the underlying philosophy of the system itself: "New Brunswick's adversarial court system, while effective for criminal and civil cases, does not facilitate respectful resolution of family cases" (Province of New Brunswick, 2009, p. 9). The Task Force's recommendations therefore were made with the intention of a complete paradigm shift within the system. Rather than having all cases proceed to court, the new system would encourage early and more participative resolution of disputes (Province of New Brunswick, 2009, p. 9).

⁴ For example, average delays (time of filing to the hearing date) for a four month snapshot over 2008-09 (April, July, and October, 2008, and January, 2009) in the Saint John Judicial District Family Court were 2.75 months for a Motion of Interim Relief, 5.25 months for a half-day hearing, 5.5 months for a full day hearing, and 8.25 months for a hearing of three days or more (data supplied by DJAG).

The Task Force recommended various ways to create a system that would better reflect the philosophy of the new paradigm, including the following:

- ▶ to require parties to participate in settlement conferences prior to trial
- ▶ to provide more public information on the family law system
- ▶ to require education regarding child and spousal support
- ▶ to create streamlined Rules of Court
- ▶ to create simpler forms
- ▶ to provide dispute resolution options as alternatives to the traditional court system
- ▶ to implement a case management triage system
- ▶ to file affidavits only after having tried other forms of dispute resolution
- ▶ to appoint masters to each judicial district

3.3 New Brunswick's response to the Task Force findings

In response to the Task Force's findings and to address some of their recommendations, DJAG launched a Family Law Pilot in the Judicial District of Saint John. DJAG established two committees to guide the implementation of the Pilot:

- ▶ **The Implementation Committee** was an internal committee formed to review the Task Force recommendations and provide feedback to senior management of DJAG. Upon reviewing the report, senior management asked the committee to propose a model based upon the Task Force recommendations. The Minister of Justice and Attorney General decided that a Pilot model would be implemented in the Saint John jurisdiction. The Implementation Committee consisted of members from DJAG's Policy and Planning and Program Support Branches, as well as a senior child welfare consultant from the Department of Social Development. The committee's mandate included program design and implementation upon the approval of the Minister of Justice and Attorney General. The Implementation Committee had authority over the local Saint John Pilot subcommittee (Saint John's Family Justice Pilot Subcommittee, 2010, p.1).
- ▶ **The Saint John Family Justice Pilot Subcommittee** was composed of a variety of local stakeholders from the family law system, and which included two members of the Task Force. This committee was established to facilitate implementation in Saint John at the ground level by considering issues such as training, implementation of protocols/procedures, space allocation and organization, scheduling systems, local communications, and the integration of the Pilot with the already existing Court Services framework (Saint John's Family Justice Pilot Subcommittee, 2010, p.1-2).

The Pilot was officially set up in September 2010 with a budget of \$350,000 and was set to run for a period of three years (Government of New Brunswick, 2010). The FLIC opened in June 2010, followed by initiation of mediation services on September 7; the Pilot was fully launched on September 30, when the new Rule of Court came into effect.

Given that legislative modifications were required in order to make the necessary changes to the system, the Implementation Committee sought the counsel of experienced family law practitioners to help develop a policy for a Rule of Court to be used in the Saint John Pilot (Cox & Palmer, 2009, p. 1). In a detailed policy report, legal counsel from the law firm Cox and

Palmer provided specific directions to Legislative Services drafters to use in preparing the new Rule (which became known as Rule 81). In providing these directives, legal counsel studied both the family law system in New Brunswick as well as the Family Case Manager Pilot in Ottawa, which had been lauded by the Task Force in its report. Cox and Palmer followed the recommendation of the Task Force that New Brunswick look to the Ottawa Pilot Project for modelling the Saint John Pilot (Cox & Palmer, 2009, p.3). In suggesting model clauses to be included in the new Rule, Legal Counsel operated under the assumption that existing Rules should be used where possible and that changes be made only where required.

The short-term objectives were to “implement a Pilot that will reasonably reflect the recommendations of the Task Force and result in a reformed and improved Family Court system that can be tested and evaluated over a period of 3 years” (Saint John’s Family Justice Pilot Subcommittee, 2010, p. 3).

The DJAG Implementation Committee developed policy and procedure manuals, guidelines, and forms to clarify the procedures and responsibilities of those working within the Pilot. These manuals communicate the objectives of the Pilot while tying them to the roles and responsibilities outlined (New Brunswick DJAG, 2010a; New Brunswick DJAG, 2010b; New Brunswick DJAG, 2010e; New Brunswick DJAG, 2011b; New Brunswick DJAG, 2011a). Members of the DJAG Implementation Committee were also involved with the Pilot legislative and regulatory amendments as well as position description questionnaires to facilitate the hiring of staff. They also created public information materials stocked at the FLIC and contributed to the preparation of several news releases describing the objectives of the project. Besides news releases, DJAG also sent letters to local community organizations to inform them of the new Pilot and its components.

4.0 Profile of the Saint John Family Law Pilot

This section describes the Saint John Family Law Pilot, first by observing its legislative framework, and then by examining the components and processes that make up the Pilot.

4.1 Legislative framework

Mostly due to time constraints, the Saint John Family Law Pilot was created with the mindset that only the necessary changes should be made to the legislation. As such, the Pilot operates within the existing legislative framework described in Section 3.1, except that certain provisions have been added or amended to accommodate the procedures set out in the Pilot. Among these changes are the addition of Rule 81 to the Rules of Court and the provision for Case Management Masters (CMMs) in Section 56 of the *Judicature Act*. Section 60.1 of the *Judicature Act* also gives the legislative authority for appointment of the Triage Coordinator for the purposes of Rule 81. While the CMM position currently exists only in Saint John, Section 56 of the Act gives the authority and process for appointing CMMs in any judicial district. Subrule 81.02 specifies that the Rules of Court continue to apply where they are not inconsistent with Rule 81.

4.1.1 Rule 81

The legislative groundwork for the Pilot is housed under Rule 81, which came into effect on September 30th, 2010. The following table summarizes which procedures are encompassed by the Pilot (and are subject to triage) and which are not.

Included under Rule 81 (each of these procedures will be subject to triage)	Not included under Rule 81
<ul style="list-style-type: none"> • Contested Divorce • Custody & Access • Child Support • Division of Property if there are accompanying custody, access or support matters • Motion to Change 	<ul style="list-style-type: none"> • Uncontested Divorce • Child Protection • Adoption • Applications dealing with mentally incompetent persons • Division of Property if there are no accompanying custody, access, or support matters • Enforcement Applications • Inter-jurisdictional Support Orders/Reciprocal Enforcement of Maintenance Orders and Applications • Emergency Applications

Source: *Judicature Act*, R.S.N.B 1973, Rules of Court, Rule 81; New Brunswick DJAG, 2010d

Rule 81 was drafted with the intention of creating simpler, more streamlined and user-friendly procedures. The Rule describes the procedures and forms which make up the foundation of the case management system under the Pilot. In total, Rule 81 introduces 12 new forms (Forms 81A through L, whose functions are described in Table 3 below). Rule 81 also describes the roles, duties, purposes, and procedures for the Triage Coordinator, Case Conferences and Settlement Conferences, as well as Hearings and Motions. The Rule further sets out the role of the CMM and gives him or her the authority to conduct a case management conference and to make interim orders. As was the case prior to Rule 81, judges are vested with the authority to conduct

settlement conferences, as well as the power to make both interim and final orders. Though judges will not typically conduct case management conferences, they will do so where a Master is not available or where there are exceptional circumstances. Rule 81 states that case management conferences are mandatory unless ordered otherwise.

The following table summarizes the procedures covered by Rule 81 forms and indicates the similar forms covered by Rules 72 and 73 for other areas of New Brunswick (and for Saint John pre-Pilot).

Table 3: Summary of forms and procedures under Rule 81 in Saint John and comparison to other areas of New Brunswick and Saint John pre-Pilot		
Rule 81 procedure and forms used in Saint John Family Law Pilot		Forms used for similar procedure elsewhere in New Brunswick and in Saint John pre-Pilot
Procedure	Form	
Commence proceeding for divorce, support obligation, custody and access and for claim under the <i>Marital Property Act</i>	81A	72A for Petition for Divorce; 72B for Joint Petition for Divorce; 73A or 73AA for Custody, Access and Support Applications under the <i>Family Services Act</i>
Affidavit to accompany application claiming custody of or access to a child	81B	No form. Affidavit drafted by the parties.
Answer to an application	81C	72D for Divorce
Reply to an answer	81D	72E for Divorce
Notice of conference — served to each party after scheduling of either a case or settlement conference	81E	None
Motion to change — motion to change agreement or final order	81F	72U to vary a child support order 37A to vary support/custody/access
Change information form — accompanies 81F providing information on circumstances for change	81G	72U and Affidavit
Response to motion to change — filed by respondents who do not agree with the motion	81H	Responding Document (no form)
Consent motion to change — for respondent that agrees with the motion to change	81I	Agreement to change signed by both parties, or if there is a pre-existing order, consent order is drafted and signed by both parties (or their lawyers, if applicable).
Consent motion to change child support — for requests for changes to agreements for child support only	81J	Agreement to change signed by both parties, or if there is a pre-existing order, consent order is drafted and signed by both parties (or their lawyers, if applicable).
Certificate of solicitor — filed by a solicitor requesting waiving of filing fees for services paid by legal aid.	81K	72FF
Notice of motion for leave to appeal — for appealing Case Management Master decisions	81L	None
Source: Public Legal Education and Information Service of New Brunswick, 2009; Rules 72–74 and Rule 81, Rules of Court, <i>Judicature Act</i> ; New Brunswick DJAG, 2010a.		

4.2 Components of the Pilot

The Family Law Pilot is predicated on “encouraging parties to come to an earlier resolution of family law issues through triaging, case management and the availability of mediation services” (New Brunswick DJAG, 2010a, p.2). The Pilot attempts to ensure that court time is reserved for emergency matters and high conflict matters only (New Brunswick DJAG, 2010a, p.2). Keeping this in mind, the components of the Pilot Project are: The FLIC, the Triage Coordinator, the FAL, mediators, the Case Management Master, and a new Rule of Court (Rule 81). Below is a detailed description of each of these components; Rule 81 was described in the previous section.

The Family Law Information Centre

The FLIC was created with the purpose of providing information to potential and current users of the Court of Queen’s Bench, Family Division. It was designed particularly with the needs of unrepresented litigants in mind. The FLIC is located in an office in the court house and is staffed by the Triage Coordinator, as well as an administrative staff member who provides client assistance and back-up coverage to the Triage Coordinator. An on-site mediator and the FAL can be accessed by appointment. Members of the public can phone or visit the FLIC from Monday to Friday during the hours of 8:30 to 4:30 to obtain information on the family law system and to ask questions, pick up forms, and receive assistance in completing forms. The FLIC also provides information on community resources and has a publicly available computer workstation that is set up to access the province’s family law information website (familylawnb.ca) (New Brunswick DJAG, 2010a, p.2). In addition, the FLIC has a collection of DVDs about divorce and separation available for clients to watch (New Brunswick DJAG, 2011b, p.12). Clients can also leave voice mail messages 24 hours daily, seven days a week, for call-back assistance.

The Triage Coordinator

The Triage Coordinator works out of the FLIC, with the position staffed by an individual with a background in Family Court administrative services (New Brunswick DJAG, 2010f, p.1). The Triage Coordinator is the main contact person and administrator of the FLIC. The Triage Coordinator and the FLIC administrative staff member are available for anyone who would like to drop in or to call the FLIC to ask general questions about the process, the forms, or about where to obtain information. They also schedule appointments with the FAL and with the mediator for the initial mediation appointment. The administrative duties of the Coordinator include tasks such as following up with parties and lawyers, compiling statistics, scheduling case conferences, and tracking the progress of each case (New Brunswick DJAG, 2010F, P.1, New Brunswick DJAG, 2011a, p.9). The Triage Coordinator also conducts the group information sessions on triage day, explaining the process to litigants and showing the video presentation.

Family Advice Lawyers

The FAL position is staffed by lawyers with a background in practicing family law in the province of New Brunswick (New Brunswick DJAG, 2011b, p.5). The title Family “Advice” Lawyers implies that these lawyers have the role of providing information rather than the more traditional role of a lawyer, which would also include representing clients at case conferences or court hearings (New Brunswick DJAG, 2011b, pp. 6–7).

Clients can approach the FAL with general questions such as how to select a legal counsel and what to expect from their lawyer to get them started in the process. Unrepresented clients can also ask the FAL to advise on the court forms/documents needed and provide guidance on properly completing the forms, to review their pleadings, and to answer general family law or court process questions. FALs can also help clients access community resources (New Brunswick DJAG, 2011b, pp. 6-7).

Clients can discuss matters related to separation and divorce with the FAL, such as, for example, child and spousal support, custody and access, and marital property (New Brunswick DJAG, 2011b, p. 5). However, the guidelines specifically set out that FALs can only give broad advice on the division of marital property, spousal support, and extraordinary expenses for the purposes of child support guidelines (New Brunswick DJAG, 2011b, p.7). Litigants can receive up to 60 minutes of free assistance.

Mediators

In implementing the Pilot, DJAG sought out mediators with a background in social work and training in family mediation (New Brunswick DJAG, 2010g, p.1). Mediators assist the parties in discussing and negotiating and do not have any decision-making power; rather, they help the parties to develop their own solutions to the issues and arrive at mutually agreeable decisions (New Brunswick DJAG, 2011a, p. 3). In the Saint John Family Law Pilot, parties make an appointment through the Triage Coordinator, either when they visit or call the FLIC, or at triage. Mediation services under the Pilot are limited to the following issues: custody, access, child support, exclusive possession of the marital home (provided relief is requested at the same time), and variation of existing orders for custody, access, and/or child support (New Brunswick DJAG, 2011a, p. 14). The mediation process itself is described in the next section.

Case Management Master

The position of the CMM is staffed by an experienced lawyer with a background in family law (New Brunswick DJAG, 2010g, p.1). The CMM acts in a judicial, quasi-judicial, and judicial administration capacity as a primary case manager. By conducting case conferences, the CMM plays a central role in the management of the flow of cases through the family law system. The CMM has the power to make interim orders, procedural orders, directives, and consent orders, and may also refer issues to mediation (*Judicature Act*, Rules of Court, Subrule 81.10 (6)). The CMM can conduct case conferences; however, settlement conferences are only to be conducted by judges. Case and settlement conferences are described in the next section.

4.3 Processes

Triage or First Court Appearance

Triage days, introduced through the Family Law Pilot, are a new feature for the Saint John Family Court system. The intent of triage day is to provide couples with information on the separation and divorce process (through a video); mediation; and the case conference process (New Brunswick DJAG, 2011b, p.4). Triage days (referred to as First Court Appearance Dates) take place on Tuesdays and Thursdays for applications for custody, access, and/or child or spousal support. First Court Appearances are scheduled for all applications that are subject to the triage process. The target is to schedule First Court Appearances within 40 days from the filing of new applications. There can be up to 8–10 cases scheduled for each triage day, and parties are asked not to schedule anything else on that day (New Brunswick DJAG, 2010a, p. 18). The Triage Coordinator keeps track of files for which First Court Appearance Dates are approaching and will review files with the CMM prior to this date as required.

On triage day, there is first a group information session in which the Triage Coordinator describes the Case Management Process and plays a video about the separation and divorce process (New Brunswick DJAG, 2010a, p. 16). As well, the mediator may attend triage to inform the group of mediation services (New Brunswick DJAG, 2010a, p. 16).

Parties that do not choose or are not eligible/suitable for mediation proceed to a same-day case conference, or First Court Appearance, with the CMM; unrepresented parties may also first see the FAL on the same day and prior to the case conference.

The case conference will take place regardless of whether the Respondent attends the scheduled First Court Appearance Date and/or has filed an Answer (however, the Applicant must still show proof of service) (Hackett, 2012, p.1; New Brunswick DJAG, 2010d, p.5). If only the Applicant attends the First Court Appearance Date but does not have proof of service on the Respondent, the First Court Appearance will be rescheduled (New Brunswick DJAG, 2010d, p.5).

If both parties do not appear at their scheduled First Court Appearance Date, the Triage Coordinator will notify the parties that their case will be discontinued unless they contact the court. If the parties contact the court, they will be given a new First Court Appearance Date (New Brunswick DJAG, 2010d, p.5). Represented parties attend the First Court Appearance with their lawyers.

One Tuesday or Thursday per month is devoted to Minister of Social Development- initiated child support applications on behalf of the custodial parent on social assistance. Mediation is not an option for such matters, but the parties are shown the video. The advice lawyer can act as duty counsel for the unrepresented respondents and attend the First Court Appearance (Hackett 2012, p.2). This duty counsel assistance is provided for these matters in order to align with the duty counsel services offered by the New Brunswick Legal Services Commission in other areas of New Brunswick.

Case Conferences

Parties attending their First Court Appearance who do not proceed to mediation attend a case conference, normally with the CMM, with a view to identifying and clarifying the issues and addressing interim and procedural matters. The CMM will attempt to address as many issues as are under his or her jurisdiction, but will request a court date or a settlement conference with a judge if the parties are requesting an order that is outside of the CMM's jurisdiction (Saint John Family Justice Pilot Implementation Committee, 2010, p.7). The CMM can make temporary (interim) orders for custody, access, and support matters (New Brunswick DJAG, 2011b, p.3).

As was outlined in Table 2, several outcomes can occur from a First Court Appearance (Hackett 2012):

- ▶ The parties come to agreement and an interim order on consent or final consent order is prepared.
- ▶ The parties are not in agreement, and the CMM may make an interim order (for custody, access, and/or support but not with respect to division of marital property) and/or procedural orders if required to ensure the parties are prepared for a hearing before a judge.
- ▶ The parties come to partial agreement on some issues, in which case the CMM will make a consent order on agreed-upon matters and may also make interim or procedural orders on other matters.
- ▶ A continuation of a case conference may occur when the CMM gave procedural orders (e.g., that certain documents need to be prepared/filed) in order to address interim relief.
- ▶ A review case conference may occur where the CMM made an interim order and the matter needs reviewing (e.g., at the First Court Appearance, one party had indicated their intention of trying to secure legal aid).
- ▶ A matter is set down for hearing before a judge and the time required is estimated.

The above explains the process for new applications. Motions for changing custody, access, or spousal support orders are scheduled for Mondays, while Child Support Variation motions are typically scheduled for Wednesdays. The CMM will draft agreements or consent orders for child support variations, with consent orders then requiring signature of a Court of Queen's Bench judge (New Brunswick DJAG, 2010b, p.4). Prior to the Saint John Family Law Pilot, there was a federally-funded Child Support Variation Service (CSVS) Pilot operating in Saint John that began in 2002. This service assisted parties who wanted to change an existing child support order, with conciliation officers assisting parties who were placed on a roster in reaching agreement through a conciliation meeting that took place prior to a hearing. The CSVS has been incorporated into the Saint John Family Law Pilot, with the case conference replacing the conciliation meeting (Hackett 2012, p.2).

Family Mediation

Parties can call the FLIC at any point during the process of ending their relationship to make an appointment to meet with the mediator, whether or not they have filed an application with the court. Parties are also informed of the mediation option at triage.

An initial appointment is made for each party to meet with the mediator individually. Once the mediator determines whether the parties' situation is suitable for mediation, parties are then notified as to whether or not they will be proceeding with joint mediation meetings or referred to other family law resources. (New Brunswick DJAG, 2010d, p.6).

If the parties are eligible for mediation, they will make an appointment to meet the mediator located at the FLIC. Mediation is expected to require an average of four to five 90-minute to two-hour sessions, to a maximum of 10 hours, with the 10-hour maximum including the individual initial assessment appointments described above (New Brunswick DJAG, 2011a, p.21). A maximum of three hours of mediation is expected for matters where the only issue is with respect to child support (New Brunswick DJAG, 2011a, p.54). If the parties have not reached agreement within the maximum allowed time for mediation, the case will be referred to a case conference (New Brunswick DJAG, 2010d, p.6). If mediation is successful, however, the CMM prepares a consent order (based on minutes of the parties' proposed agreements drafted by the mediator) to be signed by the parties and subsequently filed with the court. Likewise, if some of the issues are resolved but others are not, the parties will sign a consent order for the agreed-upon issues and will be referred to a case conference for the outstanding issues (New Brunswick DJAG, 2010d, p.6).

Family Advice Lawyer Service

The FAL is available to parties free of charge with no requirement to meet any financial eligibility criteria. Parties can only spend up to 60 minutes with a FAL (which can be divided into two 30-minute meetings), and two parties with one dispute are each entitled to 60 minutes but with a different FAL. Clients may also access the FAL during the triage days outside of the 60-minute limit (New Brunswick DJAG, 2011b, p. 4).

Parties can meet with a FAL either by appointment through the FLIC or at their First Court Appearance Date; appointments are not required for the latter. One FAL is available for appointments three afternoons per week and two are available in the mornings on triage day, in the event both parties wish to speak with the FAL (New Brunswick DJAG, 2011b, p. 4).

Settlement Conferences

Settlement conferences are presided over by judges of the Court of Queen's Bench and provide a final opportunity for parties to reach an agreement before going to trial. During the settlement conference, the judge may provide the parties with his or her unbinding opinion of the case, which is meant to encourage parties to settle. Though the filing of affidavits is discouraged earlier in the process, parties may file affidavits if they reach the settlement conference stage (Saint John Family Justice Pilot Implementation Committee, 2010, p.8). If the parties reach an agreement, the judge signs an order and the process is complete.

If, after a case conference and a settlement conference, an agreement cannot be reached and the matter must proceed to a formal court hearing, the CMM or Settlement Conference Judge will ensure that the case is “court-ready” (i.e., by ensuring that the parties have all the proper documentation filed and that any relevant procedures, such as blood tests, etc., have been ordered, if necessary).

5.0 Evaluation findings

This section summarizes evaluation findings by issue and evaluation question. Note that throughout the discussions of the evaluation findings, references to key informant observations are with respect to those members of the New Brunswick family law system that participated in key informant interviews as outlined in Section 2.2. References to survey findings refer to the survey of clients as outlined in Section 2.4. Tables based on the client survey are labelled as from the Client Survey, while tables based on data provided by DJAG are labelled as from the Data Review.

5.1 Access/use of services

Evaluation Question 1: Are clients aware of the FLIC?

As described in the previous sections, the FLIC provides litigants with information, forms, brochures, access to technological resources (e.g. a computer and helpful DVDs), and referrals to other community resources. The FLIC also informs the public of the availability of the Pilot's mediation service and FAL and makes appointments for both. Awareness and use of the FLIC are important given that this service can be unrepresented litigants' first point of contact for obtaining their needed assistance. Interviewed key informants believe the public does not become aware of the law in general, including the family law justice process, until they become involved in a legal matter. Thus the public does not become informed of or seek out available services, such as those at the FLIC, until they have a need for these services.

If usage can be considered an indication of awareness by those members of the public that might need the FLIC services, the FLIC has experienced a high level of use since first opening, providing 8,267 assists between November 1, 2010 and March 31, 2012 (Table 4). Plus, the 6,555 assists provided in 2011–12 are close to four times the 1,809 of total initiated filings in the Judicial District of Saint John for 2010–11 (the most recent data available; Program Support Services, 2010-11 Saint John Statistics Combined July 5, 2012.xlsx). One inference that might be drawn from this is that a high proportion of litigants involved in a family law matter are aware of and using the FLIC. The high level of assists compared to filings also suggests individuals are likely making return calls or visits to the FLIC, and/or individuals are calling or visiting for information but, for various reasons, do not subsequently file applications or motions for change.

Table 4: Data review, services received at the FLIC, November 1, 2010 to March 31, 2012							
Fiscal year and month	Number of clients served by type of service*			Number of clients served by gender*		Number of appointments made to	
	By phone	In-person	Total	Male	Female	Initial mediation (per case)	FAL (per client)
2010–11							
November 2010	139	**	139	41	98	29	74
December	134	**	134	57	77	21	107
January	292	**	292	114	178	24	100
February	406	130	536	231	305	16	92
March	445	166	611	246	365	17	111
2011–12							
April 2011	434	115	549	231	318	16	88
May	377	159	536	221	315	30	114
June	347	194	541	231	310	18	114
July	401	124	525	204	321	12	107
August	364	199	563	217	346	12	115
September	378	159	537	209	328	24	103
October	360	166	526	222	304	25	97
November	357	138	495	180	315	19	115
December	322	172	494	194	300	19	112
January	374	257	631	287	344	16	124
February	288	214	502	267	235	18	110
March	338	318	656	288	368	18	103
Total for fiscal year 2011–12	4,340	2,215	6,555	2,751	3,804	227	1,302
Total All	5,756	2,511	8,267	3,440	4,827	334	1,786
% All	70%	30%	100%	42%	58%		

Source: Program Support Services, Court of Queen's Bench Saint John Family Law Pilot Annual Statistical Report, September 2010–March 31, 2012, Table 5.
 *Represents total assists and therefore may include repeat calls/visits by clients
 **In-person visits not recorded for these months

Most key informants related to the court system believed litigants find out about the FLIC and the other services offered through the Pilot when they call or visit the courthouse. When individuals call/visit the courthouse to pick up/file forms, or because they do not know what to do about their legal issue, they are directed to the FLIC. All key informant groups also widely believe that litigants hear of the FLIC and the other Pilot services through word of mouth. This was confirmed by the client survey, where just over one third (34%) of the 38 respondents that used the FLIC said they learned of the service through friends, family, or acquaintances, and 29% said they were informed of the FLIC by someone at the courthouse. Close to one half (48%) of the 27 survey respondents that had used the FAL said they learned of this service through the FLIC, as did close to one quarter (22%) of the 27 respondents that used the mediation services. And almost half (48%) of respondents using the mediation services said they found out about these services through word of mouth.

According to both survey respondents and key informants, the public is also informed of the Pilot services through legal aid, social workers, private lawyers, the support enforcement office (Family Support Orders Service), the Family Law Information Line, the Department of Social Development, private mediators, the For the Sake of the Children parent education program, and websites (e.g., the Public Legal Education and Information Service of New Brunswick [PLEIS-NB]'s Family Law website: www.familylawnb.ca).

Table 5: Client survey, how respondents’ found out about the Saint John Family Law Pilot services (FLIC, FAL, and mediation services)

Source	FLIC (n=38)		FAL (n=27)		Mediation services (n=27)	
	Number	%	Number	%	Number	%
Called or visited the FLIC	n/a	n/a	13	48%	6	22%
Friends, family, or acquaintances	13	34%	3	11%	13	48%
Someone else at the courthouse	11	29%	6	22%	-	-
At their First Court Appearance	-	-	3	11%	-	-
A private lawyer	9	24%	1	4%	-	-
Someone at legal aid	2	5%	1	4%	1	4%
The Internet	1	3%	1	4%	2	7%
The FAL	-	-	-	-	2	7%
A judge	-	-	-	-	-	-
The Family Law Information telephone line	-	-	-	-	-	-
Other	4	11%	-	-	4	15%
Don't know/no response	-	-	-	-	-	-

Respondents could provide more than one response; totals may sum to more than 100%.
 n/a—not applicable

Of the 54 respondents to the client survey, 70% had used the FLIC. Of the 16 respondents that had not used the FLIC, 10, or 19% of survey respondents overall, said they were not aware of its availability, suggesting not all clients are aware of the service. Several key informants commented there was little publicity or advertisement for the FLIC and its services or for other components of the Pilot, and that this was an area that could have benefited and still could benefit from increased promotion. This could include, for example, advertisements in newspapers or distribution of information, such as posters or pamphlets, to relevant community organizations serving similar target populations.

**Evaluation Question 2:
 Do litigants have access to the services, and are they using the services?**

Accessing the services

Clients can access the FLIC by telephone or in-person visits. The number of people visiting the FLIC for in-person assistance displayed an increasing trend from February 2011 onward (Figure 1). For example, while telephone assists represented 79% of the total in April 2011, the assists were almost evenly split between telephone and in-person visits (52% and 48%, respectively) by March 2012 (see Table 4). As the public became more aware of the extent of services available at the FLIC, individuals may have been more willing to make an in-person visit. Similarly, as organizations serving a similar population, as well as private lawyers, became more aware of the FLIC services, they would be more likely to inform people of and recommend they visit the FLIC. This trend could also reflect an increasing number of people making return visits to the FLIC for continued assistance.

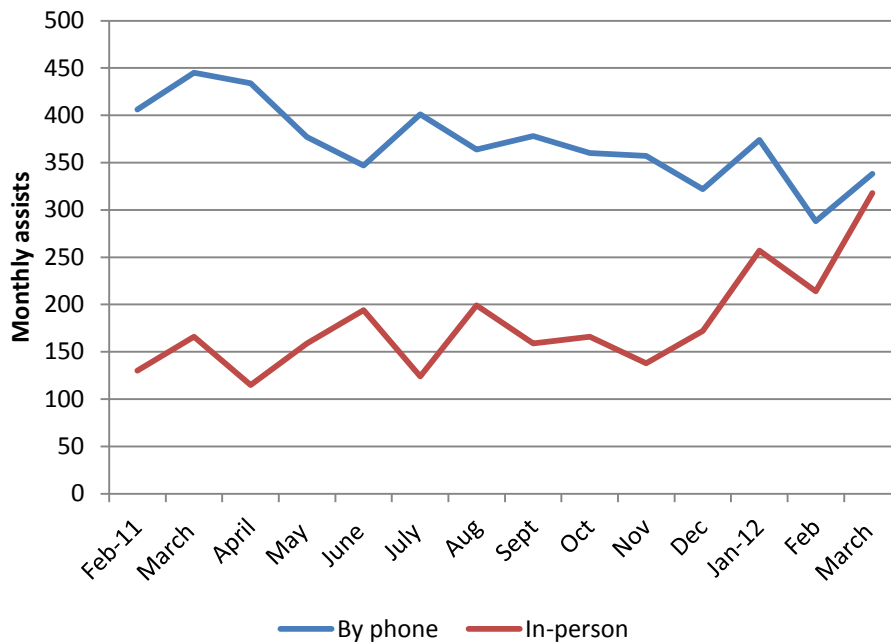


Figure 1: Monthly by phone and in-person FLIC assists, February 1, 2011 to March 31, 2012

(Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September, 2010–March 31, 2012, Table 5)

Clients can access the mediation services or the FAL through appointments made through the FLIC. As seen in Table 4, between November 1, 2010 and March 31, 2012, the FLIC made 334 initial appointments for mediation and 1,786 appointments for the FAL.⁵ Clients can also access the FAL at their First Court Appearance. Most (78%) of the 27 survey respondents that used the FAL did so by appointment rather than at their First Court Appearance. Key informants also were of the opinion that clients mainly used the FAL prior to triage.

Key informants and client survey respondents believe the Pilot services are accessible. Most survey respondents using the FLIC agreed that the FLIC’s location and hours are convenient, 91% and 87%, respectively (Table 6). Key informants believe that the FLIC’s location on the main floor of the courthouse, along with the mediator and FAL who are located in the same space, is convenient for clients. The courthouse itself is considered to be in a good location, centrally located downtown and in an area where a high level of low-income people who would need the services reside. Similarly, the new courthouse building that is expected to open later in 2012 is viewed as in a convenient downtown location. The FLIC’s hours of operation are mainly considered reasonable, with an observation that it is open all day (i.e., does not close at lunch).

⁵ Mediation appointments in Table 4 are initial appointments made by the requesting party and therefore both parties are counted as one case in mediation statistics. Any party can book their own individual FAL appointment, and may also book additional appointments if they have not used all of their available time. FAL appointments also include where the FAL acted as Duty Counsel at First Court Appearances before the CMM for matters concerning Minister of Social Development initiated child support applications on behalf of the custodial parent on social assistance.

Table 6: Client survey, respondents' views on accessibility of the FLIC		
The FLIC's location is convenient*	Number (n=35)	%
Agree	32	91%
Disagree	3	9%
Not applicable	-	-
Don't know/no response	-	-
The FLIC's hours are convenient	(n=38)	
Agree	33	87%
Disagree	2	5%
Not applicable	-	-
Don't know/no response	3	8%

* Includes only those respondents who visited the FLIC in person.

Key informants reported that the FLIC is wheelchair accessible, although several commented that the ramp is in an inconvenient location at the side of the courthouse. Several key informants also commented that the FLIC staff members are sensitive to and patient with clients with disabilities, as well as those with literacy issues. Most key informants saw no language accessibility issues for any of the Pilot components. They reported that there is not a high demand in Saint John for services in a language other than English, and when needed, there are bilingual (English/French) court staff members available. The Case Management Master (CMM) has an alternate bilingual resource to draw upon, as required.

Key informants said the main barriers to accessing the Pilot services are related to transportation. The Judicial District of Saint John covers a wide area, with public transportation reportedly lacking for much of the area, putting residents of these areas without their own transportation at a disadvantage. To ease this barrier, the FLIC will mail forms to litigants and provide telephone assistance, and the mediator will, if necessary, conduct the pre-mediation session by phone to first assess whether mediation is feasible. Several suggestions were for satellite offices in locations outside Saint John, such as Sussex and St. Stephen.

Use of the FLIC

Key informants believe the public is making good use of the FLIC for assistance with forms or for general information on their family law matter, as well as to access the FLIC's other resources, such as pamphlets and brochures. As was shown in Table 4, the FLIC provided 8,267 assists between November 1, 2010 and March 31, 2012. Looking at the 6,555 assists provided over the 2011–12 fiscal year and assuming approximately 250 working days in a year, the FLIC provided a daily average of 26 telephone and in-person assists. Plus, an inference that can be made from the high number of assists made by the FLIC compared to total initiated filings in the Judicial District of Saint John, as discussed for Evaluation Question 1, is that individuals are making return calls or visits to the FLIC for continued assistance.

Most key informants believe the main users of the FLIC, as well as the FAL and mediation services, are unrepresented litigants. These are reported as low-income individuals that cannot afford a lawyer and do not qualify for legal aid, either for financial or criteria eligibility reasons. Several commented on the high level of low-income families in Saint John and the importance of the Pilot services for those people who cannot afford a lawyer and who often do not know what

steps to take for resolving their family law matter. Several stakeholders commented, however, that people from all income levels make use of the FLIC. From the client survey, close to three quarters of respondents had a household income level of \$50,000 or less, and 43% had income levels of \$25,000 or less. As well, even some survey respondents that said they had a lawyer representing them throughout their family law matter said they used various Pilot services. Of the 16 respondents with a lawyer, 10 (63%) used the FLIC, 7 (44%) used the mediation services, and 6 (38%) used the FAL.

Use of the FAL

Key informants also believe the public is using the FAL, seeking the lawyer’s assistance with their forms and for general information on their family law matter. The FAL provided assistance through 1,461 appointments with clients between October 2010 and the end of March 2012, providing 1,870 hours of assistance (Table 7). This equates to an averages of 81 appointments per month and 1.3 hours of assistance per appointment. Comparing the 1,786 FAL appointments made by the FLIC from November 1, 2010, to March 2012 (see Table 4 above), to the 1,427 appointments by the FAL over this time period, it would appear that approximately 20% of appointments are not kept. This figure is also likely somewhat higher, given that walk-ins apparently account for approximately 10% of the clients assisted.

Month	Number of appointments*	Number of hours
2010–11		
October 2010	34	53
November	60	91
December	80	102
January 2011	79	97
February	80	96
March	89	116
2011–12		
April	72	89
May	79	107
June	92	113
July	89	98
August	102	123
September	91	105
October	79	103
November	94	124
December	94	116
January 2012	92	115
February	79	111
March	76	111
Total for fiscal year 2011–12	1,039	1,315
Total All	1,461	1,870
Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September, 2010–March 31, 2012, Table 7.		
*Includes initial appointments, Duty Counsel at First Court Appearance before the CMM, walk-ins, and triage, and can include repeat visits by the same client.		

Use of mediation services

Key informants were generally positive about the importance of offering the mediation services, with a few commenting that young, low-income litigants particularly benefit from the service. Between January 1, 2011, and March 31, 2012, 107 cases either went to mediation or at least were assessed for appropriateness of mediation (Table 8).

Table 8: Data review, use of mediation services, pre- and post-Pilot for Saint John		
Outcome	Post-Pilot January 1, 2011 to March 31, 2012*	Pre-Pilot averages for 2004– 05 to 2007–08**
Cases that went to or were assessed for mediation	107	260 annually
Monthly average	7	22
*The Pilot had 1.5 mediators to January, 2012 and 1.0 full-time mediator thereafter. **Pre-Pilot refers to mediation services offered by Court Social Workers; the Court Social Worker Program consisted of 2-3 full-time mediators. Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September, 2010–March 31, 2012, Table 6; Court of Queen’s Bench, Court Social Worker Annual Statistical Reports, 2004-05 to 2006-07; Section C - 2007-2008 Outcome of Mediation Referral.xls		

From Table 9, parties that use the mediation services are mainly self-referred (31% of total referrals) or referred by friends or relatives (28% of total referrals). Therefore, over half (59%) of total referrals are through personal sources (self, friend, or relative), although presumably parties may have first heard of the mediation services through justice-related services or community organizations.

Table 9: Data review, sources of referrals to the Saint John Pilot mediation services, January 1, 2011 to March 31, 2012		
Referral source	Referral count	Percent of total referrals
Self	61	31%
Friend/Relative	56	28%
Private Lawyer	15	8%
Court	10	5%
Income Assistance	9	5%
Social Services	9	5%
Family Support Orders Service (FSOS)	7	4%
Community Agency Legal Aid	5	3%
Community Agency	5	3%
For the Sake of the Children Program	3	2%
Legal Aid Lawyer	3	2%
Saint John Pilot Staff/Client Services	3	2%
Other	12	6%
Total	198	100%
Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September, 2010–March 31, 2012, Table 6a.		

Several key informants expressed concerns that the mediation service is not being used to its full potential. The 107 cases that went to mediation or were assessed for mediation between January 1, 2011, and March 31, 2012, is relatively small in comparison to both initiated filings and final or consent orders. For example, in the most recent year available (2010–11) there were 1,809 initiated filings in the Saint John Court of Queen’s Bench, Family Division and 1,485 final or consent orders (Program Support Services, 2010–11 Saint John Statistics Combined July 5, 2012.xlsx). Several key informants commented that some people and their situations are not conducive to mediation. Another concern expressed is that the cancellation of the free community-based mediation services in the rest of New Brunswick in late 2011 may have given the perception that there is also no longer a free mediation service available in Saint John. However, this would only have had an impact on the number of cases going to mediation for the last few months of the post-Pilot period shown in Table 8.

The intent of the Pilot was that some people would be diverted to mediation from triage, rather than proceeding to the First Court Appearance with the CMM. Key informants believe most litigants choosing mediation appear to be doing so prior to filing and the First Court Appearance. None of the survey respondents that used the mediation services said they found out about the service at their First Court Appearance (see Table 5). Several key informants speculated that once people arrive at triage day, most would prefer to appear before the CMM to achieve at least some immediate resolution rather than wait for mediation, or that once people get to the stage of filing and then triage, they are not in the frame of mind to mediate.

As well, use of mediation services under the Pilot appears to have declined somewhat compared to the previous mediation services offered through the Court Social Worker Program. A monthly average of seven cases have gone through mediation or at least been assessed for mediation under the Pilot, compared to the monthly average of 22 under the previous program (see Table 8). Court Social Workers’ provided an expanded set of services beyond mediation, including provision of information and counselling, referrals to other resources, assessing individual’s eligibility for legal aid services, assistance to parties in formalizing their mediated agreements, and preparation of documentation for most family law matters. This increased interaction with litigants may have given them greater opportunities to divert cases to mediation. As the first point of contact for parties applying for legal aid, the Family Court social workers/mediators would offer mediation services to those not meeting the legal aid eligibility criteria. This gave the program an opportunity to divert some cases to mediation rather than proceeding to the court process, and could explain some of the differences in mediation cases pre- and post-Pilot.

Triage, First Court Appearances, and case conferences

First Court Appearances and case conferences are not optional services, as with the other features of the Pilot, but rather are a component of the court process. There were 436 First Court Appearances before the Case Management Master (CMM) between January 1, 2011, and March 31, 2012, relating to an average of 29 per month, or four appearances per semi-weekly sessions. The 273 case conferences before the CMM are for subsequent sessions after the First Court Appearances, or appearances for Motions to Change (excluding child support variation conferences), or related to child protection cases.⁶ In total, 709 appearances were made before the CMM from January 1, 2011, to March 31, 2012, which includes any repeat sessions with the same party.

Table 10: Data review, First Appearances and case conferences before the CMM, January 1, 2011 to March 31, 2012

Month	Number of First Appearances before CMM (Triage Day)	Number of case conferences before CMM	Total number of appearances before CMM
2010–11			
January 2011	23	4	27
February	22	13	35
March	24	11	35
2011–12			
April	21	10	31
May	24	19	43
June	34	18	52
July	33	11	44
August	31	22	53
September	41	19	60
October	37	17	54
November	23	34	57
December	25	16	41
January 2012	52	25	77
February	23	31	54
March	23	23	46
Total for fiscal year 2011–12	367	245	612
Total All	436	273	709
% All	61%	39%	100%

Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September, 2010–March 31, 2012, Tables 2, 2a, &2b.

⁶ Triage and First Court Appearances are for applications only and do not include motions to change or cases with respect to child protection. Judges may refer child protection cases to the CMM after their initial appearances where a respondent had indicated an intent to seek legal representation; the CMM will confirm representation has been obtained and determine the time required for preparing for the trial

Evaluation Question 3:
Are the services meeting the needs of clients? (e.g., Are they helpful and useful? Are clients satisfied with the services? Are the available resources sufficient to meet demand?)

The FLIC

Both survey respondents and key informants reported positively on the helpfulness and usefulness of the assistance provided at the FLIC. Survey respondents that used the FLIC said they received a wide range of assistance, with two thirds or more receiving help with their court forms, such as provision of the forms, and help and information on how to complete and file their court forms and other documents (Table 11). The FLIC also provided respondents with information on what happens in court and on other resources available, such as the FAL, mediation services, legal aid, or a private lawyer.

Table 11: Client survey, assistance received at the FLIC and through the FAL

Assistance	FLIC (n=38)		FAL (n=27)	
	Number	%	Number	%
Information about the availability of the advice lawyer	30	79%	n/a	n/a
Information on how to file court forms/documents	26	68%	16	59%
Provided the court forms/documents for completing	26	68%	n/a	n/a
Help/information on how to complete court forms/documents	25	66%	18	67%
Went to see mediator or advice lawyer	25	66%	n/a	n/a
Information about what happens in court	18	47%	16	59%
Information about how to make an appointment for mediation	18	47%	n/a	n/a
Information on how to find a private lawyer or how to apply for legal aid	18	47%	8	30%
Information on other resources available	15	40%	8	30%
Reviewed forms/documents for completeness	n/a	n/a	19	70%
Information about mediation	n/a	n/a	12	44%
General information about your family law issues	n/a	n/a	20	74%
Other	-	-	1	4%
Don't know/no response	1	3	-	-

Respondents could provide more than one response; totals may sum to more than 100%.
 n/a—not applicable

Key informants said it is beneficial for unrepresented litigants to have access to a resource centre where they can receive in-person assistance from knowledgeable staff. The FLIC is credited with providing clients with a better understanding of their issue and their options, which then increases litigants' comfort level for working through their issue. FLIC clients themselves show a high level of satisfaction with the services they received. Almost all survey respondents (93%) said the help they received at the FLIC was either very helpful (61%) or somewhat helpful (32%) to them. And almost all also said they would use the FLIC again if needed (90%) and that they would recommend the service to others (95%). Survey respondents gave various reasons why they were satisfied with the FLIC services, such as the staff told them what they needed to know for their family law matter; helped them understand their issue; helped resolve their issue; or answered their questions.

The FAL

The FAL is also perceived as providing useful and helpful information. Several key informants observed that this provides unrepresented people an opportunity to speak with a lawyer at no charge, in comparison to pre-Pilot where no such options were available. Both key informants and survey respondents (see Table 11) report that the time with the FAL gives litigants assistance with understanding their family law issue and the court process and what they might expect to occur, as well as information on completing their forms and what documents they will need. The majority (70%) of survey respondents who used the FAL also did so for reviewing their court forms for completeness. As with the FLIC, most survey respondents (86%) using the FAL found the assistance either very helpful (56%) or somewhat helpful (30%), and most would use the services again if needed (93%) and would recommend the services to others (93%).

Several key informants believe litigants may need more than the 60 minutes provided by the FAL. Some people will reportedly use up their free 60 minutes early on in their process on general information and then cannot return for specific information.⁷ In the client survey, a few respondents (2 of 27) gave the reason of not enough time with the lawyer for why they found the FAL only somewhat helpful or neither helpful or unhelpful. There is also some concern among key informants that the advice lawyer can only give legal information and not legal advice, limiting the position’s scope and usefulness.

Mediation services

Key informants and survey respondents view mediation as a valuable and appreciated resource. This value is confirmed in the high level of agreement achieved (Table 12), with 73% of cases reaching full agreement and another 9% partial agreement. Mediation outcomes under the Pilot also compare favourably to those achieved pre-Pilot through the Court Social Worker Program.

Outcome	Post-Pilot January 1, 2011 to March 31, 2012		Pre-Pilot Annual average for 2004-05 to 2007-08*	
	Number	Percent of total	Number	Percent of total
Full agreement	78	73%	159	61%
Partial agreement	10	9%	45	17%
No agreement	7	7%	22	9%
Mediation inappropriate	2	2%	27	10%
Matter withdrawn/terminated during mediation	10	9%	7	3%
Total individual cases	107	100%	260	100%

*Pre-Pilot refers to mediation services offered by Court Social Workers.
Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September, 2010–March 31, 2012, Table 6; Court of Queen’s Bench, Court Social Worker Annual Statistical Reports, 2004-05 to 2006-07; Section C - 2007-2008 Outcome of Mediation Referral.xls

⁷ However, key informants did not comment on the fact that clients could access additional advice lawyer assistance at their First Court Appearance.

Key informants credit mediation with providing the parties with an opportunity to work cooperatively to achieve a faster resolution and without going to court. Mediation clients completing exit surveys showed a high level of agreement that mediation was a good alternative to court, was useful for gaining awareness of and addressing their family law issue, and was useful for reaching agreement through the parties working out their own solution. As well, respondents showed a high satisfaction level on the timeliness, accessibility, and quality of the services (Table 13). In most areas, 2012 results (post-Pilot) were similar to or slightly higher than those for the 2007 survey (pre-Pilot), which included all of New Brunswick.

Table 13: Data review, mediation services exit survey, 2012 and 2007 Federal Survey, where 1=strongly disagree and 5=strongly agree

Mediation was ...	Saint John 2012 average (n=43)	New Brunswick 2007 average (n=34)
A good alternative to court	4.5	n/a
Useful for giving awareness of the issues	4.3	n/a
Useful for addressing the issues	4.6	n/a
Useful for addressing the other parties' concerns	4.5	n/a
Useful for reaching an agreement	4.4	n/a
Helpful for becoming aware of children's needs	3.3	4.3
An opportunity for parties to work out own solution	4.6	4.5
Overall satisfaction level with ...		
Amount of time it took to get the mediation service	4.4	3.9
Accessibility of the mediation services	4.6	4.3
Overall quality of the mediation services	4.3	4.5
n/a –not applicable, question was not asked in 2007 survey		
Source: Mediation services exit survey (2012 Federal Survey) Saint John only; Mediation services client satisfaction survey (All NB Regions) (2007 Federal Government Survey)		

From the client survey conducted for the evaluation (Table 14), parties are choosing mediation for a variety of reasons, most notably as a means to settle their matter in a way that is best for their children (60%), as well as because they did not want to go to court (32%), or either could not afford to or did not want to hire a lawyer (24% and 20%, respectively).

Table 14: Client survey, respondents' reasons for choosing mediation

Reason	Number (n=25)	%
To settle matters together in a way best for the children	15	60%
Did not want to go to court	8	32%
Could not afford a lawyer	6	24%
Did not want to hire a lawyer	5	20%
Wanted to settle faster than going to court	5	20%
To resolve issues/settle matters	3	12%
Free service/save money	2	8%
Other	3	12%
Don't know/no response	-	-
Respondents could provide more than one response; totals may sum to more than 100%. Includes only those respondents who decided to continue with mediation.		

Most (92%) survey respondents that used the mediation services also found the services either very helpful (68%) or somewhat helpful (24%). Also, most said they would use the services again if needed (88%) or would recommend the services to others (96%).

The high success of achieving resolution through mediation coupled with the relatively low number of overall cases that appear to attempt to resolve their issues through mediation, as discussed under Evaluation Question 2, suggest there is some potential for increased promotion of mediation as an effective alternative from the court process for resolving family law issues.

First Court Appearance and case conferencing

Key informants see the sessions with the CMM as a very important component of the Pilot, and several view this as the most important feature. The First Court Appearance for applications or case conference for motions to change is credited with providing litigants with an opportunity for quick interim relief or for working out a final order. For the time period shown in Table 15, over half of the First Court Appearances (57%) and case conferences (51%) resulted in a consent or interim order (55% of the sessions in total). And of the 25 survey respondents that appeared before the CMM, most (84%) were able to either achieve temporary relief through an interim order (64%) or settle their matter through a consent order (20%).

Some sessions with the CMM also result in procedural orders (16% in Table 15), with these given to ensure the parties have the proper information in place (e.g., blood test to determine paternity, filing of financial information), thus ensuring litigants are better-prepared for proceeding, either with the CMM or a judge.

Table 15: Data review, outcomes of First Court Appearances and case conferences with the CMM (excluding child support variation conferences), January 1, 2011 to March 31, 2012				
Outcome	First Court Appearance	Case Conference	Total	% of total
Outcomes involving an interim or consent order				
Consent Order	54	61	115	16%
Interim Consent Order	13	8	21	3%
Interim Order	57	18	75	11%
Interim Order, Adjourned to Case Conference	62	26	88	12%
Interim Order, Adjourned to Queen's Bench judge	64	27	91	13%
Adjourned with procedural order				
Procedural Order, Adjourned to Case Conference	23	15	38	5%
Procedural Order, Adjourned to Queen's Bench judge	34	39	73	10%
Other adjournments to case conference or Queen's Bench judge				
Adjourned to Case Conference	33	23	56	8%
Adjourned to Queen's Bench judge	20	26	46	6%
Other outcomes	76	30	106	15%
Total sessions	436	273	709	100%
<i>Percent interim or consent order</i>	<i>57%</i>	<i>51%</i>	<i>55%</i>	<i>-</i>
<i>Percent adjourned with a procedural order</i>	<i>13%</i>	<i>20%</i>	<i>16%</i>	<i>-</i>
<i>Percent to Queen's Bench judge (with or without interim order)</i>	<i>27%</i>	<i>34%</i>	<i>30%</i>	<i>-</i>
Source: Program Support Services, Court of Queen's Bench Saint John Family Law Pilot Annual Statistical Report, September 2010–March 31, 2012, Tables 2, 2a, & 2b.				

Key informants also noted that sessions with the CMM bring litigants together sooner than what occurred pre-Pilot, facilitating earlier discussion of issues and working towards resolving issues. This is helpful for achieving full agreement or at least an interim solution, and for preparing cases for hearings before the judge. As well, where litigants are both represented, this also compels lawyers to prepare, meet, and work towards settlement in a timely manner. However, a disadvantage for represented litigants is that the requirement to attend triage and the First Court Appearance can increase costs for lawyers’ clients, particularly where litigants and their lawyers have to wait all day to see the CMM, or where litigants have to return in front of the CMM for another case conference.

Family Law Pilot Child Support Conciliation Services

Litigants that appeared before the CMM in 2011–12 with child support variation issues were able to obtain full or partial relief for half (50%) of the individual cases (Table 16). The proportion of cases that were settled or partially settled at appearances before the CMM post-Pilot were similar to those settled at appearances before the conciliation officer under the Child Support Variation Service (CSVS) pre-Pilot.⁸ Those proceeding to court varied throughout the period shown in Table 16, with a low of 25% in 2008–09 to a high of 49% in 2009–10.

Table 16: Data review, child support variation services outcomes, pre-Pilot (2005–06 to August 31, 2010) and post-Pilot (September 1, 2010 to March 31, 2012)							
Outcome	2011–12*	2010–11*	2009–10	2008–09	2007–08	2006–07	2005–06
	Percent of cases by outcome**						
Settled	40%	50%	43%	43%	54%	45%	50%
Partially settled	10%	3%	6%	4%	1%	1%	3%
Withdrawn	9%	6%	4%	5%	5%	7%	8%
Proceeded to court	44%	33%	49%	25%	39%	32%	31%
Re-scheduled	21%	12%	9%	-	1%	16%	6%
Adjourned	4%	12%	17%	39%	22%	28%	23%
Total individual cases	142	162	162	182	167	164	154
* 2010–11 data is partially pre-Pilot and post-Pilot (September, 2010 to March 31, 2012 is post-Pilot).							
**Column totals do not add to 100%; one case may have more than one outcome (e.g., issues could be partially settled and remaining issues proceed to court).							
Source: Program Support Services; 2005–2011 CSCS Comparison Statistics.xlsx							

⁸ New Brunswick implemented the Child Support Variation Service (CSVS) Pilot Project in the Saint John Judicial District in 2002. By meeting with a conciliation officer prior to proceeding to court, the CSVS provided litigants seeking to vary a child support order an alternative to the adversarial court process (Bertrand and Paetsch 2004, p.1). The CSVS has been incorporated into the Saint John Family Law Pilot, with the case conference replacing the conciliation meeting (Hackett 2012, p.2)

Also, with respect to the overall assistance clients are provided at the Saint John courthouse, survey respondents that indicated they had had a family law matter that involved the courts anywhere in New Brunswick prior to September 2010 (pre-Pilot) were more positive with the current experience. Of the 22 survey respondents who had previous experiences, two thirds (64%) said the help and information they received at the Saint John courthouse for their most recent matter (post-Pilot) was either better or much better than their previous experience (Table 17).

Table 17: Views on experiences with the current Saint John court system compared to pre-September 2010 experiences with any New Brunswick court system*		
Help and information available from the Saint John courthouse for the current matter compared to last time was....	Number (n=22)	%
Much better	9	41%
Better	5	23%
About the same	3	14%
Worse	1	5%
Much worse	-	-
Don't know/no response	4	18%

Columns may not sum to 100% due to rounding.
 *Includes only those respondents indicating they had been involved in a family law matter before September 2010 at either Saint John or another area of New Brunswick.

5.2 Impact on litigants

**Evaluation Question 4:
 Have the services resulted in an increased understanding of family law matters by litigants**

Based on key informants’ observations and client feedback, the Pilot components appear to be providing clients with an increased understanding of their family law matter. Although no information is available for comparing client understanding under the Pilot to pre-Pilot, clients do appear to be obtaining a high level of understanding from the services. Key informants view the FLIC, the FAL, and the CMM as helping mainly unrepresented litigants to gain an increased understanding of their family law matter. Plus, parties that choose mediation are educated on their family law matter and support obligations through the mediation process. Some key informants could only speak in general on how the overall Pilot experience is providing litigants with a better understanding of their family law matter. Courthouse-based staff report observing this greater understanding in their interactions with litigants and that litigants appear thankful for the assistance provided. Several private lawyers spoke of observing this when the other party is unrepresented. Stakeholders said that unrepresented litigants have an option for accessing knowledgeable court resources, whereas they had few such options prior to the Pilot. An example provided is that, pre-Pilot, unrepresented litigants may have had 5–10 minutes with a duty counsel lawyer and then would have had to navigate the system on their own.

The FLIC

Both key informants and clients believe the FLIC is providing clients with an increased understanding of their family law matter. In particular, from the client survey, the FLIC helps clients with the court forms/documents. For survey respondents who said they received assistance from the FLIC for their forms, almost all (92%) agreed that the help gave them a good understanding of what forms and other documents or information they needed, as well as an understanding of how to complete the forms/documents (Table 18). Key informants also identified this as a main area of how the FLIC assists clients. Survey respondents said the FLIC also gave them a good understanding of the options available for settling their family law matter (83%) and what other help is available to them (69%). A specific example for the former given in key informant interviews is when individuals facing reduced income situations cannot meet their child support payments and are directed to the FLIC. FLIC staff will explain their available options and how to proceed. Just over half (58%) of survey respondents also agreed the help from the FLIC provided them with a good understanding of how to prepare for court.

Table 18: Client survey, respondents' agreement on the FLIC's contribution to understanding their family law matter		
Assistance from the FLIC provided a...	Number agreeing	%
Good understanding of forms and other document/information to complete (n=26)*	24	92%
Good understanding of how to fill out the forms/documents (n=29)*	23	92%
An overall better understanding of available options for settling their family law matter (n=36)	30	83%
Good understanding of what other help is available (n=35)*	24	69%
Good understanding of how to prepare for court (n=36)	21	58%
* Includes only those respondents who said they got help or information with this matter.		

The FAL

Most survey respondents that received information from the FAL on either the court process, or what other resources are available to assist them, or with their forms said that the help provided them with a good understanding in each of these areas (Table 19). The majority of respondents (70%) also believe the help they received gave them an overall better understanding of their family law issue. Key informants also commented that the FAL informs litigants on procedures and options and provides assistance with form completion.

Table 19: Client survey, respondents' agreement on the FAL's contribution to understanding their family law matter		
Assistance from the FAL provided a...	Number agreeing	%
Good understanding of the court process (n=16)*	14	88%
Good understanding of what other help is available (n=18)*	15	83%
Good understanding of how to fill out the forms/documents (n=22)*	18	82%
An overall better understanding of their family law issue (n=27)	19	70%
* Includes only those respondents who said they got help or information with this matter.		

The video viewed at triage

The majority of the 16 survey respondents who viewed the video shown at triage (Table 20) agreed it was helpful for understanding the separation and divorce process (63%) and for gaining more awareness of their children’s needs during separation and divorce (63%). Some key informants also said the video is helpful to litigants for understanding the family law process, as well as for considering the potential impact of their family law matter on their children. However, the video is seen as focusing on marriage breakdown where children are involved, and so is not applicable to all litigants, such as those without children. Plus, from key informant interviews, some litigants can find it intimidating to view the video in the presence of their former partner.

	Number	%
Viewed the video (n=25)	16	64%
Agreed the video was helpful for understanding the separation and divorce process (n=16)	10	63%
Agreed the video was helpful for gaining more awareness of children’s needs during separation and divorce (n=16)	10	63%

Appearances before the CMM

Assistance provided through the FLIC and the FAL are expected to contribute towards unrepresented litigants gaining a better understanding of, and achieving a greater level of preparedness for, the court process, whether this be before the CMM or a judge or both. The appearances before the CMM are also expected to assist in ensuring that litigants proceeding to a hearing before a judge are better-prepared and ready to proceed. Just over two thirds (68%) of the 25 respondents who appeared before the CMM agreed that they felt prepared for this session, and just over three quarters (76%) agreed they understood what occurred and the decisions made (Table 21). Key informants said the CMM provides litigants with explanations of the documents required and their options, and gives litigants a better understanding of the process. Several private lawyers, however, commented that unrepresented litigants are not necessarily coming to their First Court Appearance with a better understanding of their family law matter than they would have in the past to a hearing before a judge. It would be expected that this is where the appearances before the CMM assists these litigants by providing them direction on how to proceed next and the information they require.

Of the 12 survey respondents who have had a hearing before a judge, 9 (or 75%) agreed that they felt prepared and 8 (67%) agreed that they understood what happened at the hearing. Although not shown in Table 21 because of the small sample size, respondents without a lawyer showed higher levels of agreement regarding their preparedness and understanding compared to those with a lawyer.

	Number (n=25)	%
Sessions before the CMM		
Felt prepared at the first session	17	68%
After their sessions, understood what occurred and decisions made	19	76%
Sessions before a judge (n=12)		
Felt prepared at the hearing	9	75%
Understood what happened at the hearing	8	67%

**Evaluation Question 5:
 Have litigants experienced more timely access to justice in resolving their family law disputes?**

Accessing the FLIC and FAL

Clients have timely access to the FLIC in that they can use the FLIC at any time through visiting the FLIC in person or calling for assistance. Also, clients calling the FLIC after hours have the option of leaving a message for a call-back. Clients must make appointments to see the FAL, but most (75%) of the 24 survey respondents that made an appointment to see the FAL said they waited less than two weeks for their appointment and most (77%) respondents viewed their wait time as reasonable.

Access to justice through mediation services

Clients using the mediation services are achieving high levels of agreement and appear to be able to access the services and settle their matter within a reasonable time frame. Of the 27 survey respondents that used the mediation services, 73% had a wait time of less than one month for their initial mediation appointment, and almost all respondents (92%) believed their wait time was reasonable. As was shown in Table 12, most clients using the mediation services reach either full (73%) or partial (9%) agreement. Close to half (45%) of the survey respondents that achieved full or partial agreement were able to do so in one month or less and 50% said it took over one month. Mediation outcomes under the Pilot compare favourably to those achieved pre-Pilot through the Court Social Worker Program (see Table 12).

Access to justice through appearances before the CMM

The target for the First Court Appearance for new applications is within 40 days of filing and is within approximately 30 days from filing for motions to change, or sooner for matters of urgency (Hackett 2012, pp.1 & 2). This is intended to provide an opportunity for obtaining earlier relief through settlement or through provision of interim relief. Most key informants view this 40 days as reasonable, although a few believe 20 to 25 days is sufficient time for serving and responding to documents. From Table 22, the Pilot has been able to achieve this 40-day target in approximately one quarter (24%) of First Court Appearances, with the largest proportion (42%) occurring within 46–60 days of filing, and just over one third (35%) occurring over 60 days from filing. The longer wait times are mainly attributed to rescheduling requests by parties to postpone the appearance.

Table 22: Data review, First Court Appearances — Wait times between filing and appearance before the CMM (January 1, 2011 to March 31, 2012)*

Wait time (days)	Number	%
0–20	30	7%
21–45	74	17%
46–60	181	42%
61–70	55	13%
Over 70 days	96	22%
Total	436	100%

*Represents days between date of filing and date of the First Court Appearance, after possible delays due to rescheduling
 Source: Program Support Services, Court of Queen’s Bench Saint John Family Law Pilot Annual Statistical Report, September 2010–March 31, 2012, Table 3.

Despite not achieving the target wait time for the majority of First Court Appearances, litigants appear to be able to access and initiate the court process in a timelier manner than pre-Pilot. Table 23 provides average court delays in Saint John and Moncton for 2009–10 and 2010–11. Looking at 2009–10 as illustrative of the pre-Pilot time period (since 2010–11 includes some post-Pilot months), average wait times in Saint John were from two months for a motion of interim relief to six months for hearings requiring three days or more. While the data in Table 22 and Table 23 are not directly comparable, an observation is that post-Pilot, 79% of First Court Appearances are occurring within just over two months of filing, whereas for pre-Pilot, only those hearings for motions of interim relief had average delays of two months, with other hearings experiencing longer delays of from four to six months.⁹

Table 23: Data review, Saint John and Moncton, New Brunswick, average court (hearings before a judge) delays in months, 2009–10 and 2010–11				
Type of hearing	Saint John		Moncton	
	2010–11	2009–10	2010–11	2009–10
	Average delay in months*			
Motion of interim relief	1	2	2	1
Half-day hearing	3	4	3	2
Full-day hearing	3	5	4	2
Hearings of three days or more	4	6	5	4
Child protection hearing**	3	3	3	4
*Delay refers to time period between filing and a hearing date				
**Other than interim guardianship				
Source: Data provided by Program Support Services (2011–12 Saint John Statistics Combined July 5, 2012.xlsx)				

Key informants also widely view the case conferencing with the CMM as providing litigants with timelier access to justice. Several see this as a central feature of the Pilot, providing litigants with access into the system within 40 days of filing compared to waiting four to six months to a year for a hearing before a judge as occurred pre-Pilot. This is viewed as mobilizing the file, compelling parties, including lawyers, to prepare and meet earlier than in the past. Also, meetings with the CMM can assist litigants in identifying issues and solutions even where these sessions do not result in a consent or interim order.

Key informants believe litigants are primarily achieving interim relief from case conferencing, but say that this can provide stability to difficult situations and may, for some, provide a satisfactory final resolution. From Table 15, 36% of the total sessions with the CMM resulted in an interim order. However, this represents the proportion of total sessions, not the proportion of individual cases. From the client survey, two thirds (64%) of the 25 respondents that appeared before the CMM achieved temporary relief through an interim order, plus 20% were able to settle their matter through a consent order (Table 24). Key informants also believe that cases that would have been viewed as low priority pre-Pilot and, therefore, may have waited even longer for a hearing before a judge, are now expected to be triaged and attend the First Court Appearance within the 40 days. And with interim or even final resolution achieved in a timelier manner, child support payors are not faced with accumulated support arrears, custodial parents should receive child support payments sooner, and children, in particular, should benefit from resolutions achieved.

⁹ Average delays for child protection hearings are not included in the comparison; child protection hearings do not have First Court Appearances under the Saint John Pilot.

Table 24: Client survey, respondents' outcomes of sessions with the CMM

Outcome	Number (n=25)	%
Interim order made by the CMM	16	64%
CMM adjourned matter to judge	7	28%
Consent order signed and matter settled	5	20%
Still have to return to the CMM for a case conference	4	16%
Decision by one or both parties not to proceed	-	-
Other	1	4%
Don't know/no response	-	-
Respondents could provide more than one response; totals may sum to more than 100%.		

Access to justice through hearings before a judge

Key informants were somewhat divided on whether they believe that cases that do go to a hearing before a judge are doing so in a timelier manner, with some believing the time has been reduced, others saying there has been no change in wait times, and others saying they do not know. Those who said there was no change mainly thought the wait times were too long, with no clearly identifiable cause of the wait, although there is some concern that the high number of child protection cases continue to create backlogs. Another view is that the process is delayed for those cases requiring more than one appearance before the CMM.

Table 23, shows that Saint John experienced declines in the average court (before a judge) delays in 2010–11 compared to 2009–10 for each of half-day hearings, full-day hearings, and hearings of three days or more, with the latter declining from six months to four months. In comparison to Moncton, while Saint John had greater average delays for all types of hearings in 2009–10 (other than for child protection hearings), Saint John's average delays were similar to or slightly lower than Moncton in 2010–11. However, not enough is known of all the factors affecting delays for both these years in each of Saint John and Moncton to attribute any differences in time or location to the Pilot. One substantial consideration is the appointment of an additional Queen's Bench judge to the Saint John Family Court in 2008. This would have assisted in reducing some of the delays and backlogs, but may have taken some time to have an impact, such as into 2010–11. Furthermore, using the 2010–11 fiscal year as a point of comparison is difficult, given that the Pilot was implemented in September 2010, partway through the fiscal year. Any reductions in delays for Saint John cannot be attributed to a reduction in filings, as initiated filings actually increased by 14% in 2010–11 compared to 2009–10 (Program Support Services, 2010-11 Saint John Statistics Combined July 5, 2012.xlsx).

Of the 19 survey respondents that have settled their matter, either through consent (before the CMM or the judge) or an order of the court, over half (58%) said settlement took less than four months from filing and close to one third (31%) said between four and ten months (Table 25). Of the 21 survey respondents that had not yet settled their matter, only 28% said it had been four months or less since first filing. No data is available to compare time required for achieving settlement pre-Pilot. However, for the survey respondents, 63% of those that had reached settlement believed the time required to do so was reasonable. In comparison, 58% of respondents who had not yet achieved settlement believed the process was taking too long.

Table 25: Client survey, respondents' estimated length of time in the family law justice system (excluding those who completely settled their matter through mediation)*

Length of time	Length of time from filing to settling**		Length of time since first filing (for those not yet settled)	
	Number (n=19)	%	Number (n=21)	%
Less than two months	5	26%	3	14%
2 months to less than 4 months	6	32%	3	14%
4 months to less than 6 months	4	21%	3	14%
6 months to less than 8 months	1	5%	4	19%
8 months to less than 10 months	1	5%	2	10%
10 months to less than 12 months	-	-	1	5%
12 months or more	2	11%	2	10%
Not filed yet	n/a	n/a	1	5%
Don't know/no response	-	-	2	10%
Time it took or is taking to settle matter was or is...	(n=19)		(n=19)	
Reasonable	12	63%	8	42%
Too long	5	26%	11	58%
Don't know/no response	2	11%	-	-

*Includes respondents that went through mediation and either only partially settled, reached no agreement, or did not continue with mediation.
 **This could include respondents who settled through consent at the CMM stage or consent or by order through a hearing before a judge
 Columns may not sum to 100% due to rounding.
 n/a—not applicable

**Evaluation Question 6:
 Do parents have continued efficient access to child support variations?**

As noted previously, New Brunswick had already implemented changes in 2002 to make improvements to the child support variation process in the Saint John Judicial District through the CSVS Pilot Project. A 2004 evaluation of the CSVS found that two thirds of cases were able to reach settlement through the meetings with the conciliation officer (Bertrand and Paetsch 2004, p.x). Just over half (51%) of the clients surveyed for that evaluation said they waited one month or less for their CSVS meeting (p.16). And several key informants interviewed for the evaluation believed that clients' wait times had been significantly reduced.

The expectation was that the improvements made for child support variation through the CSVS Pilot would continue with the Family Law Pilot. As was shown in Table 16, the proportion of child support variation cases either settled or partially settled through case conferences with the CMM are similar to those that were settled through meetings with the conciliation officer, although there is only one full year of data for the post-Pilot period and the proportion of cases completely settled varies between 40% and 50% over the period shown.

However, wait times between filing and obtaining any result appear to have declined since the implementation of the Pilot.¹⁰ From Table 26, one third (33%) of some type of result is occurring within 45 days of filing since the implementation of the Pilot, compared to approximately 3% for the pre-Pilot time period shown (April 2005 to September 2010). In the pre-Pilot period, two

¹⁰ Any result refers to the outcome of the meeting/appearance/case conference and may include, for example, interim order, procedural order, adjournment, or rescheduling.

thirds (66%) of the results did not take place until over 70 days from filing, compared to one third (32%) of the results post-Pilot.

Table 26: Data review, child support variation cases—wait times between filing and any result, pre- and post-Pilot

Wait time (days)	Post-Pilot (Sept 2, 2010 to March 31, 2012)		Pre-Pilot (April 2009 to Sept 8, 2010)		Pre-Pilot (April 2005 to Sept 8, 2010)	
	Number	%	Number	%	Number	%
0–20	7	3%	1	<1%	5	<1%
21–45	83	30%	8	3%	33	3%
46–60	72	26%	28	9%	138	13%
61–70	28	10%	48	16%	190	18%
Over 70 days	90	32%	213	71%	710	66%
Number of meetings	280	100%	299	100%	1,076	100%

Source: Program Support Services; 2005-2011 CSCS Comparison Statistics.xlsx
 Note: Column percentages may not all total to 100% due to rounding.

Some key informants saw advantages to clients with child support variation matters appearing before the CMM as opposed to the conciliation officer, in that the latter could not make procedural orders. As a result, litigants might arrive in court without the proper documents and the judge would adjourn the matter or send litigants back to the conciliation officer to try to settle. However, regarding the latter outcome, from Table 27, most child support variation cases went through the system only once both pre- and post-Pilot, with 87% and 77% of cases going through the system once in 2010–11 and 2011–12, respectively, and a range of 67% to 77% of cases going through the system once for 2005–06 to 2009–10.¹¹ For both pre- and post-Pilot, most remaining cases only went through the system twice with few going through three times or more. More years of post-Pilot data are required for a meaningful comparison.

Table 27: Data review, child support variation services, number of times through the system for each case, pre-Pilot (2005–06 to August 2010) and post-Pilot (September 2010 to March 31, 2012)

Times through the system	2011–12*	2010–11*	2009–10	2008–09	2007–08	2006–07	2005–06
	Percent of cases						
One time	77%	87%	76%	71%	77%	67%	75%
Two times	18%	11%	18%	24%	20%	25%	23%
Three times or more	5%	2%	6%	5%	2%	8%	3%
Total individual cases**	142	161	157	170	162	148	146

* 2010–11 data is partially pre-Pilot and post-Pilot (September 2010 to March 31, 2012 is post-Pilot)
 **Total individual cases are based on the cases reporting the number of times through the system for each fiscal year and do not all match the corresponding numbers in Table 16.
 Note: Columns may not all add to 100% due to rounding.
 Source: Program Support Services; 2005–2011 CSCS Comparison Statistics.xlsx

¹¹ Going through the system once means clients did not have to return for further meetings/appearances with the conciliation officer or CMM.

Evaluation Question 7:

Have the services helped litigants in their decision making and reduced families' financial and emotional stress?

Family law matters can create emotionally and financially stressful situations for families, which, according to the Access to Justice Task Force, are exacerbated by lengthy court delays, with these delays having the potential to particularly affect the children involved (Province of New Brunswick, 2009, p.25). Key informants spoke of how increasing litigants' understanding of their family law matter contributes to both a greater comfort level and greater sense of control, assists litigants in their decision making, and increases their openness for negotiation.

Mediation

The high success of mediation (see Table 12) provides evidence that this service is assisting the parties in making decisions for resolving their family law issues. Furthermore, the process of working to resolve their issues collaboratively through mediation and coming to a mutually-agreeable solution should contribute to less emotional stress than litigants might experience through the court process. And if parties are able to resolve their issues in a timelier manner and without the need of hiring a lawyer, this should also reduce families' financial stress. Children are a major motivational factor for deciding to mediate, with 60% of the 25 survey respondents who used the mediation services saying they did so because they wanted to settle their matter together in a way that was best for the children. As well, survey respondents reported positively in general on how their experiences at the Saint John courthouse assisted them in decision making for their children. Over two thirds (64%) of survey respondents said that their overall experience with the Saint John court system helped them in making decisions to meet the needs of their children.

Appearances before the CMM

The findings for Evaluation Question 6 suggest that litigants are appearing before the CMM sooner than they would have before a judge pre-Pilot. Plus, over half (55%) of the sessions in front of the CMM are resulting in either a consent or interim order (see Table 15). Together, these findings provide evidence that the Pilot is helping families achieve timelier final or interim relief, which should contribute to reduced financial and emotional stress. This was also identified in key informant interviews as a benefit of appearance before the CMM, with shorter wait times and achievement of either final or interim resolution reducing stress on families, with children as the greatest beneficiaries. As well the reported less formal nature of the appearance before the CMM is apparently less intimidating to litigants. This coupled with the assistance provided by the FLIC and FAL are considered to contribute to an increased comfort level to litigants when meeting with the CMM. And where the CMM is able to assist litigants with identifying issues, this should, in turn, assist with decision-making.

Evaluation Question 8:

Is there increased compliance with parenting arrangements and/or support obligations?

The evaluation could find little evidence of how the Pilot might be affecting compliance with parenting arrangements and/or support obligations. Also, these are expected as more long-term outcomes. The further into the future a program or initiative is expected to produce a particular desired result, the greater the likelihood the interplay of other influencing factors, which makes attribution to the program a challenge. Few key informants could provide observations on whether the Pilot has had an impact on increased compliance in either parenting or support obligations, although a few commented they have not noticed any changes. Several commented on an increase in the number of payors with reduced income situations that are filing for motions for support variations rather than going into an arrears situation. However, compliance with support obligations has apparently improved throughout New Brunswick, with some of this attributed to the *Support Enforcement Act* (which was in place prior to the Pilot). The Act provides for actions that can be taken against payors not making their required support payments, such as suspension of their driver's license.

5.3 Impact on the New Brunswick court system

Evaluation Question 9:

Are litigants making greater use of alternatives to court to resolve their family law issues?

Mediation as an alternative to court

As demonstrated in Table 12, mediation can be highly successful for those parties that choose to use this service and whose issues are suitable to mediation, thereby diverting all or some of their issues from the court process. Similar positive results were found in a 2009 evaluation of Alberta's Family Justice Services Mediation Program, where 77% of Edmonton and 54% of Calgary cases achieved full agreement, with partial agreement reached in another 14% and 36%, respectively (Canadian Research Institute for Law and the Family, 2009, p. 45).

Key informants were generally not aware if, since the implementation of the Pilot, parties are making greater use of mediation over going to court for resolving their issues. A few key informants are of the opinion that families are not using the mediation services to the extent expected or desired, although it is not immediately clear why this is the case. One suggestion is that some circumstances and/or personalities are not suitable for mediation. And, as previously discussed (see Table 8), the monthly average of cases going through mediation is somewhat lower for the Pilot in comparison to the previous Court Social Worker Program (averages of 7 and 22 cases to mediation per month, respectively). As previously noted, however, as the first point of contact for parties applying for legal aid, the Family Court social workers/mediators would offer mediation services to those not meeting the legal aid eligibility criteria. Plus, that program ended April 2009, such that between that time and the implementation of the Pilot, parties had no other options for free mediation services. Given the success of mediation, some potential appears to exist for increased promotion of this service as an effective alternative from the court process for resolving family law issues.

An objective of the Pilot was to inform litigants of the mediation services at triage with the hope that some would choose this option, thereby diverting these cases from the court process. It would appear, however, that few parties are proceeding to mediation once attending triage. This is evidenced both from key informant observations, as well as from the mediation referrals statistics, where few mediation clients identified Saint John Pilot staff/client services (2%) or the court (5%) as their source of referral for mediation (see Table 9).¹² This is consistent with the pre-Pilot Court Social Worker Program, where few participants of mediation identified the court as a source of referral. Few cases are also referred to mediation from the First Court Appearance, with mediation accounting for only 1% of the First Court Appearance outcomes (see Table 15). Key informants believe that once parties reach triage, most would prefer to see if resolution can be achieved at the appearance before the CMM that same day rather than wait for mediation. Plus, again, some issues and personalities are not conducive to mediation, particularly once the litigation process is initiated.

Resolving issues at appearances before the CMM

Although appearances before the CMM are part of the court process and not an optional alternative, resolving some or all issues at the case conferencing stage does divert these cases from hearings before a judge. From Table 15, just over half (55%) of the appearances before the CMM are resulting in a consent or interim order. Also, most of the 25 survey respondents who had appearances before the CMM were able to either settle their matter through a consent order, or at least achieve temporary relief through an interim order (see Table 24). Those who settled their matter through a consent order would be diverted from the hearings before a judge, and those with interim orders may have their issues flow through the process of a hearing with a judge in a more efficient manner. Also, key informants observed that even where cases go on to hearings with a judge, appearances before the CMM can assist in preparing litigants, as well as in identifying the issues and resolving some issues. While some key informants believe fewer cases are proceeding to hearings before a judge, a few said they have not observed any declines or they did not know if this was occurring.

Evaluation Question 10:

Are litigants better-prepared at case conferences or court?

Key informants observed that together, the Pilot components are contributing to better-prepared litigants. The FLIC ensures that litigants are using the correct forms, and the FLIC and the FAL, particularly the latter, give some assistance in how to complete the forms. This helps prepare litigants for the case conference, where the CMM will then identify any missing information or documents and assign a date of when these need to be in place. This, in turn, assists in preparing litigants for any court hearings before a judge.

Although there is nothing to compare to pre-Pilot, most of the survey respondents who appeared before either the CMM or a judge said they felt prepared at these sessions. For example, just over two thirds (68%) of the 25 survey respondents who appeared before the CMM and 9 of the 12 (75%) respondents who appeared before a judge said they felt prepared (see Table 21). Furthermore, survey respondents were asked to give their overall perspective on how the

¹² Referrals from the court in Table 9 include referrals from the CMM and the judiciary.

assistance they received at the Saint John courthouse helped them, with 74% saying this assistance helped prepare them for each step of the process.

The fact that 55% of appearances before the CMM, as discussed in the previous question, are resulting in consent or interim orders implies that those litigants with consent orders are prepared and those receiving interim orders are coming with some level of preparedness. Again, however, there is nothing to make comparisons to pre-Pilot. Where the CMM makes procedural orders, this should contribute towards better-prepared parties at the next stage of their process, whether this is a return to the CMM or a hearing before the judge.

Some of the private lawyers interviewed have observed that unrepresented litigants are coming to the First Court Appearance somewhat better-prepared than they might have in the past (to a hearing before a judge). Most private lawyers commented that unrepresented litigants often still need further instruction from the CMM at the First Court Appearance, such as on how to correctly complete their forms and/or submit required documents/information. This does assist in improving litigants' readiness for court hearings before a judge. However, it can also involve follow-up case conferences that are time-consuming to lawyers and costly to clients. Another observation is that unrepresented applicants tend to be more prepared than unrepresented respondents, with the speculation that the former seek assistance from the FLIC and advice lawyers more so than the latter. Of note is that none of the forms introduced under Rule 81 make reference to the assistance available at the FLIC or through the FAL. Applicants are more likely to learn about the services when they go to the courthouse to pick up the required forms. Respondents, who are served the papers they must complete by the applicant, may not necessarily be aware of the services available unless they go to the courthouse seeking some assistance. Overall, from key informant observations, it would appear that unrepresented litigants using the Pilot services are achieving a certain level of preparedness prior to the case conference, but further direction is often required from the CMM.

Evaluation Question 11:

Have the services and any related policy/procedural changes (e.g., Rule 81) resulted in a more efficient flow of cases through the judicial system?

The expectation with the Pilot is that each of the components should collectively facilitate a more efficient flow of cases through the judicial system. The assistance available from the FLIC and the FAL will help ensure that litigants' forms are properly completed and all their documentation and other needed information is in order, that those cases amenable to mediation will be diverted from the court process, and that the appearances before the CMM will provide litigants with an opportunity to resolve all or some of their issues outside of a formal court setting before a judge, as well as in a timelier manner. This should result in fewer cases going to a hearing before a judge, and those that do should be better-prepared as a result of their prior assistance from the FLIC and FAL and direction from the CMM. Because fewer cases are going before a judge, those that do should also do so in a timelier manner than pre-Pilot.

The FLIC and the FAL

Without access to the FLIC and the FAL, those clients represented by the 8,267 assists provided by the FLIC between November 1, 2010 and March 31, 2012 (see Table 4), and the 1,461 appointments by the FAL between October 1, 2010, and March 31, 2012 (see Table 7) would

have had few other resources available to them. Other than the assistance they could obtain through PLEIS-NB's Family Law website or information telephone line, unrepresented litigants would have mainly had to rely on their own resources for ensuring their documentation and information was properly completed and in place prior to their First Court Appearance or case conference. Clients themselves report positively on the assistance provided from the FLIC and FAL, with most survey respondents who used one or both of these services saying this gave them a good understanding of how to complete their forms/documents, as well as a good understanding of their family law matter and the court process (see Table 18 and Table 19).

Mediation

Between January 1, 2011 and March 31, 2012, the mediation services at the Pilot facilitated achievement of full agreement for 78 cases and partial agreement for 10 cases (see Table 12); those achieving full agreement were completely diverted from the court process, and those reaching partial agreement that proceed to court have fewer issues to resolve and, therefore, should require less court time. As well, even for those few cases (7 of 107) where no agreement was reached, it would be expected that the sessions with the mediator would assist in identifying issues, which should better prepare litigants that proceed to the court process.

Appearances before the CMM

The evaluation found that cases generally are entering the court system through the appearance before the CMM in a timelier fashion than pre-Pilot, when litigants had to wait for their first court appearance before a judge. For example, the majority (66%) of First Court Appearances before the CMM are occurring within 60 days, or two months, of filing, and 79% of the appearances are occurring within 70 days or just over two months (see Table 22). In comparison, before the Pilot, hearings before a judge in Saint John, other than for motions of interim relief, had average delays of four to six months (see Table 23). Key informants have also observed that the resolution phase of cases has been accelerated (as opposed to litigants waiting for their court appearances) through the scheduling of First Court Appearances with the CMM. This is viewed as bringing the parties together earlier than they would have pre-Pilot, which provides an incentive for the parties (and their lawyers, where applicable) to prepare sooner, and provides an earlier opportunity for litigants and lawyers to discuss and work towards resolution.

Additionally, many cases are achieving interim or final resolution at the CMM appearance stage, with 55% of appearances in front of the CMM (excluding those for child support variation) finding full or temporary relief through a consent or interim order (see Table 15). Appearances before the CMM for child support variation found similar levels of resolution, with 50% achieving complete or partial agreement (see Table 16). Key informants also believe that many cases are able to resolve or find temporary resolution through the appearance before the CMM and that matters are achieving this resolution in a shorter time frame than pre-Pilot. Also, for those continuing to hearings before a judge, the CMM will identify the issues and make procedural orders to ensure readiness. This reduces or eliminates the need for adjournments and dealing with procedural matter at hearings before judges, making more efficient use of court time and also freeing up judges' time for dealing with more complex and high-conflict matters. Several key informants also noted that judges are now less lenient to those litigants who either do not show up in court on scheduled dates or who do not comply with procedural orders provided by the CMM.

Private lawyers made several observations on how the efficient flow of cases through triage and case conferencing could be further improved. One is for scheduled appointments with the CMM on First Court Appearance days because the current wait requirements on triage day is time-consuming to both lawyers and their clients and result in higher lawyer fees to clients. Also, it was believed that litigants and their lawyers should not have to attend triage and the First Court Appearance day for issues outside the CMM's authority. Both of these moves would provide efficiencies to lawyers and their clients. Several private lawyers also noted that many unrepresented litigants still arrive at the First Appearance/case conference unprepared and need further direction from the CMM. This is viewed as inefficient from the represented clients' perspective and their lawyers, particularly when a second follow-up appearance is required before the CMM and/or when litigants and lawyers are travelling from outside of the city of Saint John. One suggestion to improve the level of preparedness at the CMM appearance stage was to allow the FAL to provide more extensive assistance to litigants, or even to impose a financial penalty on unprepared parties. Child protection issues are also still seen as consuming too much court time, causing delays for other matters, with the suggestion that child protection issues should either have a dedicated docket or that the parties should have an initial appearance before the CMM to ensure they are prepared for their hearing before the judge.

Court forms

As was described in Section 4.1.1, Rule 81 introduced 12 new court forms for the Judicial District of Saint John. Key informants from all stakeholder groups expressed concerns with the forms, with the main ones being that the forms are repetitious and complicated. Observations are that unrepresented litigants find the forms confusing and overwhelming, and lawyers and their staff find them time-consuming to complete, which results in increased client costs. With respect to the repetitious nature of the form, key informants said the forms ask for the same information in numerous areas, such as litigants' name and other personal information. This is time-consuming and can also confuse unrepresented litigants, who often believe they are completing the forms incorrectly. Also, the forms have many areas not applicable to a litigant's particular situation, again confusing the litigant as to whether they are properly entering information. On the other hand, there are some areas that unrepresented litigants may not realize require a written description and will leave blank. While checkboxes are considered efficient, they are not viewed as visually easy to follow in the forms, and are redundant in some cases where written explanations are required. Additionally, the forms are believed to pose a challenge to court staff with respect to identifying the issues when processing the forms. Some litigants have apparently expressed concerns over the costs of photocopying these long forms, in that the cost is a financial burden to litigants with limited finances.¹³ Also, the forms are not available in electronically fillable formats, although some law firms have apparently created their own electronic versions.

Several key informants also believe that the forms were largely adopted from those used by the Ottawa Family Law Pilot, with a few commenting that the revision process was somewhat rushed, and a few others commenting that the forms were styled in a manner to encompass child protection issues. Several examples given for the latter are the inclusion of questions asking litigants about any previous criminal records, or asking if they had acted as guardians to any

¹³ Recipients of income assistance from the Department of Social Development are waived of all fees related to photocopying, filing and servicing of documents and are informed of this by the FLIC.

children. Several private lawyers believe asking litigants about their criminal record is inappropriate for a family law matter and perceive it as an invasion of privacy.

That said, the evaluation heard that DJAG is aware of the concerns and is in the process of reviewing the forms for potential revisions. Also, several positive comments made are that the forms are written in plain language, which is beneficial to unrepresented litigants, and that they are easy to complete once one becomes familiar with them. However, the latter is seen as benefiting lawyers and law firms rather than litigants, who would only need to complete the forms once.

Client services at Court of Queen’s Bench

Key informants reported on how the implementation of the Pilot has both relieved some pressures on the client services at the Family Court and created some additional pressures. Client services staff can now make referrals to the FLIC for assistance rather than consuming client services time trying to help people who come to the counter or call with questions about the forms or the process. However, client services has also reportedly experienced an increased workload as a result of more cases being heard due to the additional court position hearing cases (the CMM position) and also due to the reduction to 40 days between filing and triage. Also, because cases are settling sooner, at the case conference stage, this has increased the settled cases that must be processed. To add to the workload, client services recently lost a full-time staff member who has been replaced with a part-time person (with the intent to add an additional part-time staff position). Staff are apparently facing challenges in keeping up with the paperwork from increased applications and motions, court orders, adjournments, and court dates. This has apparently exacerbated the backlog in scheduling in the courts as well as in providing applications or motions to the FLIC for scheduling.

Evaluation Question 12:

For those cases going to court, is this mainly for those involving one or more of the following:

- **complex financial situations cases**
- **undue hardship**
- **lack of agreement**
- **high conflict (e.g., violence, mental health, addictions)?**

No data was available to the evaluation regarding the types of cases that are completely or partially resolved at the First Court Appearance or case conference stage and those that are going on to a hearing before a judge. The evaluation could only address this question through key informant observations, with most believing that court time before a judge is now being reserved for more complicated and high-conflict cases or issues. Matters are either resolved or find interim relief at the case conference, freeing up the judge to deal with the more substantive issues. Examples given by key informants of issues that tend to be resolved at case conferencing include those related to support variations or child support where the financial information is in order. Matters requiring a hearing before a judge include those where contentious issues exist around custody/support, marital property, and spousal support. Expanded authority for the CMM to deal with marital property is viewed as an opportunity to have further resolution of issues at the case conference. Again, a concern expressed is that complicated matters also have to be

triated even though they will end up before a judge and that this is costly to clients with respect to lawyer expenses. A few key informants do not believe that there are any differences in the types of cases or issues going to court before a judge since the implementation of the Pilot, although more cases are resolved before this stage. Also, cases are more court-ready when they do reach the judge and so are resolved in a timelier manner.

**Evaluation Question 13:
 Is the Pilot operating at a reasonable cost?**

The salaries and operational costs for the Saint John Pilot for 2011–12, the first full fiscal year of operation, were \$393,610 (Table 28). Pilot costs, however, do not include the additional FLIC support person salary, which is incorporated into the CSVS costs. Assessing the reasonableness of the Pilot costs is difficult without the ability to assess any savings to the justice system as a result of any court efficiencies gained as a result of the Pilot. These efficiencies would be expected to occur through diverting some cases from the court system through mediation, diverting cases from hearings before a judge through appearances before the CMM, and ensuring litigants are better-prepared for their appearances before either the CMM or a judge. Better-prepared litigants should lead to fewer adjournments and less time spent by the CMM and judges in informing litigants and ensuring proper documents and information are in place, with all of these contributing to a more effective and efficient use of court time. In order to conclude that costs of the Pilot are reasonable, annual savings achieved as a result of increased court efficiencies from the Pilot would have to exceed the \$393,610 Pilot costs plus the costs of the additional FLIC support staff.

Another factor that must be considered, and which cannot be measured, is whether the costs are reasonable relative to the financial and emotional benefits provided to clients. This would include, for example, access to free mediation services, reduced frustration and confusion through provision of assistance to self-represented litigants to guide them through the process, and more timely access to justice.

Category	2011–12	2010–11	2009–10
Salaries*	\$281,707	\$117,655	\$0
Operational costs	\$111,903	\$86,061	\$73,510
Total	\$393,610	\$203,716	\$73,510
*Note: Saint John Pilot costs include salaries for the mediator, CMM & Triage Coordinator. Costs of the additional support staff for the FLIC are not included. Source: Data provided by NB DJAG, Program Support Services Branch			

**Evaluation Question 14:
 Are other target groups besides clients satisfied with the services? Are there any suggestions for improving services?**

The satisfaction level of other target groups with the Pilot services was assessed through interviews with key informants. Interviewed stakeholders are mainly satisfied with the services and components of the Pilot. Interviewees believe the help provided by the Pilot assists primarily unrepresented clients in preparing for court and allows for better use of court time. Litigants are getting into court and having their issues resolved more quickly and relieving pressures on court hearings with judges. Everyone is viewed as benefiting — including families, litigants’ lawyers,

and the courts. The service is viewed as needed in Saint John, which has a high number of low-income residents who would not have the financial means to access private lawyers or private mediation services. While not all stakeholders were satisfied with all Pilot components, the main area of dissatisfaction is with the forms, which DJAG is apparently currently reviewing.

Stakeholders made a variety of suggestions for improving the services, which are summarized below:

- ▶ Security should be provided on triage/case conference days. Several stakeholders relayed incidents where security was a concern due to highly stressed and emotional litigants. It was observed that case conferencing is considered a court procedure, yet the safety of those participating in this process cannot be guaranteed without security. Security in the form of a sheriff is apparently only available for child support variation hearings before the CMM and when court is taking place elsewhere in the building.
- ▶ The CMM should receive administrative support. A few stakeholders pointed out that the CMM has no administrative support, and this is required to increase the efficiency and effectiveness of the position.
- ▶ Case conferences should be recorded to protect all involved parties in the event that a decision is appealed.
- ▶ The CMM should have expanded authority. This could include, for example, for variations of child support orders, for providing interim relief under the *Marital Property Act*, or to grant restraining orders. Also, there should be a standby judge available to deal with issues outside the CMM's authority so that such matters could potentially be settled on the same day as the case conference.
- ▶ There should be greater communication about the role and components of the Pilot to both the private bar and other community stakeholders
 - The private bar could benefit from clarification on the jurisdiction of the CMM.
 - More communication to other community agencies and stakeholders on the services provided by the Pilot (FLIC, FAL, mediation) would be beneficial for informing the target audience about the availability of the services. This could be in the form of letters, or distribution of pamphlets/brochures or posters. These organizations often provide services to the same populations that might benefit from the FLIC, FAL, and/or mediation and could refer their clients to the Pilot.
- ▶ The role of the FAL should be expanded to provide litigants with more time with the FAL and/or have the FAL act as duty counsel at all First Court Appearances before the CMM.
- ▶ More education should be provided to litigants on, for example, the impact of conflict on children, resolving issues cooperatively, and, for self-represented litigants, the costs of their actions to the court system when proceeding on issues of questionable merit.
- ▶ Steps should be taken to avoid additional appearances at case conferences scheduled to deal with procedural matters. This can increase legal costs to represented litigants. One

suggested possibility was the option to cancel a scheduled follow-up case conference if the responsible party submits the needed information when required.

- ▶ Some high-conflict cases could benefit from mental health assessments conducted on the litigants prior to court.
- ▶ Other justice-related stakeholders that deal with the same target population could be trained on how to complete the forms. For example, the Family Support Orders Service has a high level of interaction with clients of the support enforcement program. These clients may be more comfortable coming to the Support Enforcement Officer for assistance rather than to the FLIC.
- ▶ Some of the suggestions already mentioned in previous sections include the following:
 - Appearances before the CMM should be scheduled to avoid the current wait times experienced on triage day, which are time-consuming to lawyers and costly to clients.
 - Litigants and their lawyers should not have to attend triage and the First Court Appearance day for issues outside the CMM’s authority, as again, this would provide time savings to lawyers and litigants and cost savings to clients.
 - Child protection issues should either have a dedicated docket or the parties should have an initial appearance before the CMM to ensure they are prepared for their hearing before the judge.

6.0 Conclusions and recommendations

This section provides overall conclusions based on the findings from the evaluation. The evaluation matrix identified the following three basic issues to consider in the evaluation, with a series of evaluation questions to address within each issue.

- Access/use of services
- Impact on litigants
- Impact on the New Brunswick court system

Conclusions are presented for each of the evaluation questions organized within their evaluation issues. Several recommendations are provided at the end of each evaluation issues section for DJAG's consideration. As some recommendations address more than one evaluation question, they are organized by evaluation issue rather than evaluation question. The Pilot is set to end in March 2013; the recommendations provided are based on the assumption the Pilot will be extended or made permanent.

6.1 Access/use of services

Evaluation Question 1: Are clients aware of the FLIC?

The high level of usage for most of the components of the Pilot, as summarized below, suggests that litigants are gaining awareness of the FLIC and other Pilot components.

- ▶ 8,267 assists were provided by the FLIC between November 1, 2010, and March 31, 2012, which, considering this is close to four times the number of initiated filings, suggests a high number of litigants overall are using the FLIC, and/or people are making return visits to the FLIC for additional assistance.
- ▶ 1,461 appointments were made by the FAL between October 1, 2010, and March 31, 2012, with 1,870 hours of assistance provided.
- ▶ 107 cases either went to mediation or at least were assessed for appropriateness of mediation between January 1, 2011, and March 31, 2012.
- ▶ 709 appearances were made before the CMM between January 1, 2011, and March 31, 2012, with 436 of these as First Court Appearances and 273 as case conferences. Some case conferences included the same parties that had appeared in a First Court Appearance.

No conclusions can be drawn, however, on the overall level of awareness of availability of the services for all litigants or for the overall public. Key informants' perception is that the public, in general, is not aware of and does not make an effort to become educated about family law processes and the services available until individuals become involved in a family law issue. The public appears to gain awareness of the Pilot services through either word of mouth or by visiting the courthouse. Key informants believe it is mainly the latter (when people call or visit the courthouse, either to pick up or file forms, or because they do not know what to do about their

issue and are seeking assistance). Clients themselves reported through the survey that they mainly learned of the FLIC, FAL and mediation through either someone at the courthouse or family, friends, and acquaintances. The FLIC was also an important source of learning of the FAL and mediation, particularly for clients of the former.

Evaluation Question 2:

Do litigants have access to the services, and are they using the services?

The evaluation found that the public has access to and is using the Pilot services offered by the FLIC, the FAL, and mediation, and is also having appearances before the CMM. Data on the access to and use of the Pilot components is illustrated above in Evaluation Question 1. Most key informants believe the main users of the Pilot services (FLIC, FAL, mediation) are unrepresented litigants. These are reported as low-income individuals who cannot afford a lawyer and do not qualify for legal aid, either because of financial or eligibility criteria. However, the client survey revealed that even litigants with lawyer representation are using the Pilot services, although feasibly some could have used the FLIC and FAL prior to hiring their lawyer.

The Pilot services are viewed as accessible, with key informants and client survey respondents agreeing the FLIC hours are convenient, and that the location of the FLIC, FAL, and mediator in the courthouse is in a convenient location. Similarly, the courthouse itself is viewed as centrally located in a downtown area, where a high level of low-income people who would need the services reside. Transportation is viewed as the only significant barrier for some potential clients. The Judicial District of Saint John covers a large area, with public transportation lacking for much of it.

There was suggestion that greater efforts could be made to communicate the Pilot services to other organizations, particularly to community organizations that provide services to the similar target population and who could refer their clients to the FLIC, FAL, and mediation.

Some key informants believe that the use of mediation services is lower than expected, and also that those going to mediation generally do so before filing or going to triage. This is confirmed by the data, where the number of cases going to mediation is relatively small when considering the overall number of filings initiated in one year. Plus, the average number of cases mediated per month under the Pilot (7) is lower than under the previous Court Social Worker Program (22), which ended over a year before the Pilot was implemented. It is difficult, however, to make any statements on whether this is due to an unawareness of the services or rather that mediation is suitable for only certain cases and circumstances. However, given mediation's success in helping clients, the relatively low numbers using the service suggests potential exists for increased promotion of mediation as an effective alternative from the court process.

Evaluation Question 3:

Are the services meeting the needs of clients? (e.g., Are they helpful and useful? Are clients satisfied with the services? Are the available resources sufficient to meet demand?)

Clients are receiving a wide range of assistance from both the FLIC and the FAL, but are particularly receiving help on their forms, as confirmed by both key informants and client survey respondents. A majority of survey respondents that used the FLIC learned of which forms they needed to complete, and those using the FLIC and/or the FAL received help with completing and how to file the forms. Plus, close to three quarters of the survey respondents using the FAL also said the lawyer reviewed their forms/documents for completeness. Clients are also learning from the FLIC and/or the FAL about other resources available to assist them, as well as general information about their family law matter and the court process.

Clients highly valued the help received through the Pilot (FLIC, FAL, or mediation), with almost all survey respondents that used the FLIC, the FAL, and/or mediation services saying the services were either very or somewhat helpful (with the majority saying the former), suggesting the services are meeting the needs of clients. Most respondents believed their wait times for appointments with the FAL or for their initial mediation appointment were reasonable, again suggesting the resources available are sufficient for meeting demand.

That over half (55%) of the appearances before the CMM resulted in a final or interim consent order providing litigants with either full or temporary relief is indicative of the usefulness of this component of the Pilot to litigants. These appearances are also useful to litigants where procedural orders are given by the CMM to ensure parties file the appropriate documents for the next phase of their matter and for assisting in identifying issues. Available court data does not allow for indicating the total proportion of cases that are able to achieve complete or temporary relief through appearances before the CMM. However, most of the 25 client survey respondents who appeared before the CMM achieved either a consent order (20%) or an interim order (64%) through their session(s).

The helpfulness of mediation to clients is evident in the high proportion of cases reaching full agreement (73%) or at least partial agreement (9%). As well, the mediation exit surveys show clients strongly believe that mediation is useful for reaching agreement through a collaboratively achieved solution and provides a good alternative to court.

6.1.1 Recommendations for access/use of services

As a result of these findings, several recommendations for DJAG’s consideration with respect to the evaluation issue access/use of the services are provided below.

Recommendation 1: While the FLIC and FAL are experiencing high usage, there potentially are other members of the public that could benefit from the services but are not aware of their availability. The DJAG should consider some means of advertising and promoting the services. This could be through a variety of formats, including the following:

- ▶ advertisements in newspapers, posters at community agencies and other areas attended by a large proportion of the public, such as public libraries and shopping malls
- ▶ brochures/pamphlets provided to other community agencies that provide services to a similar population; these agencies could then either verbally refer their clients to the Pilot services and/or provide them with a brochure or pamphlet

Recommendation 2: Given the success rate of mediation but relatively low usage of this service, DJAG should particularly consider approaches for not only advertising the mediation services but encouraging and endorsing its use. Advertisement could be achieved through the same channels suggested above for the FLIC and FAL and could also include promotional material for outlining the potential benefits of mediation.

Recommendation 3: The evaluation learned that DJAG is currently reviewing the court forms implemented under Rule 81. As part of this review, DJAG may wish to consider including information with each form outlining the assistance available through the FLIC and FAL. In particular, this could be helpful to unrepresented respondents who are served the papers they must complete by the applicant, and therefore may not be aware of the services unless they visit the courthouse. Notification of the available services in the forms, or attaching a brochure or pamphlet to all forms outlining the services could be beneficial to respondents.

6.2 Impact on litigants

Evaluation Question 4:
Have the services resulted in an increased understanding of family law matters by litigants?

The evaluation found that the Pilot components are providing clients with an increased understanding of their family law matters. Most surveyed clients said they received a good understanding of the forms and documents they needed to complete and how to complete them. Clients are also receiving a good understanding of other options and the resources available to them, as well as an understanding of the court process.

This assistance is expected to contribute towards litigants who are better prepared and more informed during the court processes, helping them make decisions and reducing confusion and frustration. The majority of survey respondents who attended appearances before the CMM or a judge indeed agreed that they felt prepared for the session and understood what occurred and the decisions that were made. And while the video shown at triage is considered helpful, the content

is focussed on litigants with children and so may not be widely applicable to all parties attending triage day.

Evaluation Question 5:

Have litigants experienced more timely access to justice in resolving their family law disputes?

The FLIC and the FAL contribute towards access to justice through the assistance provided and the readily accessible services. Clients can access the FLIC at any time during business hours and most clients are able to book appointments with the FAL within two weeks.

Mediation is seen as a valuable and appreciated resource for those choosing this option. Mediation provides parties with the opportunity of working cooperatively to achieve faster resolution and to avoid court. From mediation statistics, as well as from the client survey, users of the mediation services are achieving high levels of agreement and are accessing and settling their matter within a time frame that clients view as reasonable. And parties using mediation appear to be reaching resolution in a timelier manner than those going through the court process. Almost half of survey respondents that settled/partially settled through mediation (9 of 20 respondents) said they did so in less than one month. In comparison, just over one quarter of other survey respondents who settled their matter (5 of 19 respondents) through the court process (appearance before a CMM or judge) said they did so in less than two months, with the others taking longer.¹⁴

Key informants viewed the case conferencing with the CMM as a very important component of the Pilot. The time period of 40 days to triage after filing gives litigants an opportunity to mobilize their file, communicate with the other party, and work towards resolving their issues in a timelier manner than pre-Pilot. The majority of cases are not achieving this target of the First Court Appearance within 40 days of filing (approximately 24% of files are meeting the target). Despite this, First Court Appearances and case conferences before the CMM do appear to be occurring in a timelier manner than what existed prior to the Pilot (for hearings before a judge). The majority of appearances before the CMM for First Court Appearances and case conferences for child support variation are occurring within 70 days (79% and 69%, respectively) compared to average court delays pre-Pilot of from four to six months (other than for motions of interim relief). Those cases which are able to find some relief at their appearances before the CMM, either through consent or interim orders, are experiencing more timely access to justice for providing complete or temporary resolution for their family law disputes.

Key informants were somewhat divided on whether they believe that cases that do proceed to a hearing before a judge are doing so in a timelier manner. While comparisons of average court delays for Saint John do show declines in delays between 2010–11 and 2009–10, there is insufficient data to attribute this change to the Pilot. Data is not available for 2011–12 and the Pilot was operational for only part of 2010–11.

¹⁴ Those settling/partially settling through mediation were asked to estimate the time from when they first made their mediation appointment to when they settled/partially settled. Those settling by consent through appearances before the CMM or a hearing before a judge or by a court order were asked to estimate the time from filing and when their matter was settled.

Evaluation Question 6:

Do parents have continued efficient access to child support variations?

The Pilot appears to be meeting and exceeding the goal for a continuation of the improvements to the child support variation process achieved through the CSVS Pilot Project. The proportion of child support variation cases either settled or partially settled through case conferences with the CMM are similar to those settled through meetings with the conciliation officer. However, wait times between filing and some type of result have improved with the Pilot. Under the Pilot, one third (33%) of some type of result occurred within 45 days of filing, compared to approximately 3% for the pre-Pilot time period examined.

Evaluation Question 7:

Have the services helped litigants in their decision making and reduced families' financial and emotional stress?

Empowering parties through provision of tools and information for gaining knowledge on their family law matter and providing timelier access to justice contributes towards decision making and reducing the emotional and financial stress created by family law issues. The high success of mediation provides evidence that this service is assisting the parties in making decisions for resolving their family law issues. Furthermore, the collaborative nature of mediation should contribute to less emotional stress. As well, resolving issues in a timelier manner without the need of hiring a lawyer should reduce families' financial stress.

The findings that many litigants appearing before the CMM are able to obtain either a consent or interim order at this stage and that they are appearing before the CMM sooner than they would have before a judge pre-Pilot should also contribute to reduced financial and emotional stress.

Evaluation Question 8:

Is there increased compliance with parenting arrangements and/or support obligations?

The evaluation could find little evidence of how the Pilot might be affecting compliance with parenting arrangements and/or support obligations. This outcome is expected as a more long-term outcome of the Pilot. Plus, compliance with support obligations has apparently improved throughout New Brunswick, which is partly attributed to the *Support Enforcement Act* and the actions that can now be taken against payors that are in arrears of support payments.

6.2.1 Recommendations for impact on litigants

As a result of these findings, several recommendations for DJAG's consideration with respect to the evaluation issue impact on litigants are provided below.

Recommendation 4: The Pilot and the various components appear to be having a positive impact for clients through providing them with an increased understanding of their family law matter and also increased access to justice. The main recommendation for this issue is to

continue to provide these services to litigants by extending the Pilot beyond March 2013, or making this a permanent service for the Judicial District of Saint John.¹⁵

Recommendation 5: Given that the focus of the video shown at triage is on families with children, DJAG may wish to consider either providing/developing an alternative video for litigants without children, or giving them the option to forgo the video.

Recommendation 6: A challenge for the evaluation was that only one full year of data was available for the Pilot for assessing impact. With the implementation of the new NOTA system DJAG should take the opportunity to gather statistics on individual cases to make comparisons and assess whether the Pilot has facilitated access to justice in a timelier manner for litigants in Saint John compared to other parts of New Brunswick. This could include, for example, comparisons of the time between filing and receiving interim and/or final resolution and, for Saint John, whether this is received through hearings with the CMM or before a judge.

6.3 Impact on the New Brunswick court system

Evaluation Question 9:

Are litigants making greater use of alternatives to court to resolve their family law issues?

Mediation and appearances before the CMM both appear to be contributing towards fewer hearings with a judge. Considering no free mediation services were available in Saint John just prior to the Pilot, the Pilot has contributed to greater use of mediation as an alternative to court. The mediation services available through the Pilot have diverted some families from the court process, with 78 cases reaching full agreement and 10 cases reaching partial agreement through mediation. It would appear, however, that once cases reach the triage and First Court Appearance stage, few parties are choosing, or being referred to mediation. And, as already discussed, there are some concerns that families are not using the mediation services to the extent expected or desired. As well, not as many cases appear to be going to mediation under the Pilot in comparison to the previous Court Social Worker Program that ended in April 2009. Given the success of mediation, some potential appears to exist for increased promotion of this service as an effective alternative from the court process for resolving family law issues.

Appearances before the CMM are providing litigants with opportunities to work out consent orders or at least obtain an interim order, with 55% of the appearances before the CMM resulting in one of these outcomes. Those who settled their matter through a consent order would be diverted from the hearings before a judge, and those with interim orders may have their issues flow through the process of a hearing with a judge in a more efficient manner.

¹⁵ The focus of this evaluation was the Saint John Pilot and its impact on litigants and the court system of the Saint John Judicial District. While an argument could be made that other parts of New Brunswick could benefit from a similar service as the Pilot, the evaluation did not examine or assess services in other areas of the province and cannot make recommendations beyond the Saint John Pilot.

Evaluation Question 10:

Are litigants better-prepared at case conferences or court?

The evaluation found that the Pilot components are assisting litigants in preparing for case conferences and court hearings before a judge. The majority of survey respondents using the FLIC and the FAL say these helped them gain a good understanding of how to complete their forms and an overall better understanding of their family law issues. This helps prepare litigants for the case conference, where the CMM will then identify any missing information or documents and assign a date of when these need to be in place. This, in turn, assists in preparing litigants for any court hearings before a judge. This is further confirmed by survey respondents, with the majority that appeared before the CMM and/or a judge saying they felt prepared and also that they understood what happened at the session and the decisions made.

Some private lawyers interviewed for the evaluation have observed that unrepresented litigants will still often need further instruction from the CMM for completing or submitting forms/documents. Follow-up case conferences can be time-consuming for lawyers and costly for clients. There is some suggestion that unrepresented litigants could benefit from further assistance from the FAL, either through increasing the time provided or expanding the level of assistance given, including to have the FAL act as Duty Counsel at First Court Appearances. One difficulty the evaluation encountered is in determining the differences in the roles of the FLIC and the FAL in the assistance provided for completing court forms. Because the FAL cannot provide legal advice, their role as providers of information appears to overlap somewhat with that of the FLIC. One could also question if this is an efficient use of this specialized legal resource.

Evaluation Question 11:

Have the services and any related policy/procedural changes (e.g., Rule 81) resulted in a more efficient flow of cases through the judicial system?

Given the successes of each component of the Pilot, all of this should result in a more efficient flow of cases through the judicial system. Without access to the FLIC and the FAL, those clients represented by the aforementioned 8,267 assists by the FLIC and 1,461 appointments by the FAL would have had few other resources available to them. As a result of the mediation services, the 78 cases that completely settled did not require any court time for finding resolution, and the 10 cases that partially settled should require less court time than otherwise. As already noted, appearances before the CMM appear to be occurring earlier than pre-Pilot before a judge. This is viewed as bringing the parties together earlier than they would have pre-Pilot, which provides an incentive for the parties (and their lawyers, where applicable) to prepare sooner, and provides an earlier opportunity for litigants and lawyers to discuss and work towards resolution. For those continuing to hearings before a judge, the CMM will identify the issues and make procedural orders to ensure readiness. This reduces or eliminates the need for adjournments and dealing with procedural matter at hearings before judges, making more efficient use of court time. Taken as a whole, all of these outcomes should contribute to a more efficient flow of cases.

However, the Pilot and its components cannot be looked at in isolation without considering the impact of other areas of the court system on the operation of the Pilot and vice versa. While the Pilot has eased the burden for court services from public requests for assistance with court forms

and information, the additional cases heard and shorter timelines has also increased the workload. As well, at the time of the evaluation, court services was operating with a reduced staff capacity. Efficiencies gained by the Pilot may be compromised if backlogs occur at court services due to workload.

While the Pilot is seen as primarily benefiting unrepresented litigants, the court and all stakeholders indirectly benefit from better-prepared litigants and more effective use of court resources. However, some private lawyers report that aspects of case conferencing can create additional costs to their clients, primarily through additional time requirements from the lawyers, such as for wait times on triage day, or for follow-up case conferences. More in-depth study would be required to determine if lawyer costs varied significantly pre- and post-Pilot.

The new court forms implemented with Rule 81 also do not appear to be contributing to the efficient flow of cases through the judicial system, with key informants from all stakeholder groups expressing dissatisfaction with the forms. The main areas of concern are that the forms are repetitious and complicated. As a result, they are time-consuming to complete and cause frustration for both litigants and lawyers. Many litigants apparently find the forms overwhelming and are uncertain if they are completing them properly. Several private lawyers also believe the forms present an invasion of privacy in that they request information on criminal records. However, DJAG is apparently aware of these concerns and is proactively taking steps to review the forms.

Evaluation Question 12:

For those cases going to court, is this mainly for those involving one or more of the following:

- **complex financial situations cases**
- **undue hardship**
- **lack of agreement**
- **high conflict (e.g., violence, mental health, addictions)?**

The evaluation could only address this question through key informant observations, with most, but not all, interviewed stakeholders believing that court time before a judge is now being reserved for more complicated and high-conflict cases or issues. Matters are either resolved or find interim relief at the case conference, freeing up the judge to deal with the more substantive issues.

Evaluation Question 13:

Is the Pilot operating at a reasonable cost?

Assessing the reasonableness of the Pilot costs is difficult without the ability to assess any savings to the justice system as a result of court efficiencies gained due to the Pilot. In order to conclude that costs are reasonable, annual savings achieved as a result of increased court efficiencies would have to exceed Pilot costs, which were \$393,610 in 2011–12. The costs of the additional FLIC support staff, which was not available to the evaluation, would have to be added to this total.

Evaluation Question 14:

Are other target groups besides clients satisfied with the services? Are there any suggestions for improving services?

Based on key informant interviews, most of these stakeholders are mainly satisfied with the services and components of the Pilot. Interviewees believe the help provided by the Pilot assists primarily unrepresented clients in preparing for court and allows for better use of court time. Litigants are getting into court and having their issues resolved more quickly, and this, as well as the availability of the CMM, is relieving pressures on court hearings with judges. Everyone is viewed as benefiting — including families, litigants’ lawyers, and the courts. The service is viewed as needed in Saint John, which has a high number of low-income residents who would not have the financial means to access private lawyers or private mediation services.

Stakeholders provided a variety of suggestions for improving the Pilot components with these mainly focussed around logistical or capacity changes that would increase the effectiveness of the appearance before the CMM; expansion of the services provided by the FAL; or increased communication efforts for promoting the Pilot services.

6.3.1 Recommendations for impact on the New Brunswick court system

As a result of these findings, several recommendations for the DJAG’s consideration with respect to the evaluation issue impact on the New Brunswick court system are provided below.

Recommendation 7: As an extension of Recommendation 0, the DJAG should determine how the new NOTA system could be used to assess the impact of the Pilot on the court system itself. This could include looking at, on an individual case basis, the length of time that cases are in the system, whether they are resolved at appearance before the CMM or a judge, the number of appearance parties make before the CMM or judge, the number of adjournments made by judges and why, and the total court time required. Comparisons could be made between Saint John and other parts of New Brunswick, as well as between case types.

Recommendation 8: The DJAG should reassess the role of the FAL in the Pilot and whether litigants are obtaining the best use of this resource. If the intent is to only provide legal information and guidance on the forms, this is a service that could effectively be completed by the FLIC or perhaps a paralegal position. Other ways in which the FAL could be utilized is through the provision of specific legal advice on clients’ cases, or, as suggested by some key informants, provision of duty counsel services at appearances before the CMM.

Recommendation 9: The DJAG is to be commended on the proactive step of reviewing the forms in acknowledgement of widespread concern. The DJAG should consider consulting with the various members of the justice system that use the forms for input on how best to revise the forms to meet the needs of all stakeholders. Specific concerns with the forms of interviewed stakeholders are documented in the evaluation.

Recommendation 10: The Pilot components are providing positive benefits, particularly to unrepresented litigants who cannot afford the services of a private lawyer. However, no litigants should accrue additional costs as a result of the Pilot components. Specifically, DJAG should

look at ways of reducing wait times on triage day to reduce costs to litigants for wage-related losses or lawyer fees. This could be achieved through some type of appointment scheduling. DJAG could also look for other ways to achieve efficiencies as well, such as by reducing the need for all parties to attend follow-up case conferences that are mainly intended to ensure one of the parties has met the procedural orders.

Recommendation 11: The evaluation found that appearances before the CMM usually have no dedicated security provisions. It is recommended that the DJAG put in place sufficient security to ensure to the safety of all those participating in case conferences before the CMM.

Recommendation 12: Similarly, for the protection of all those involved in case conferencing and decisions made, it is recommended that DJAG audio record all appearances before the CMM.

Recommendation 13: Administrative tasks, while a necessary aspect of any function, can also be time-consuming. It is recommended that DJAG provide administrative support to the CMM to maximize the efficient use of this position.

Recommendation 14: While there were some suggestions by key informants for expanded authority of the CMM to make more effective use of this position, the evaluation was not able to accumulate sufficient evidence that this is warranted. A recommendation is for DJAG to further consider the role and authorities of the CMM, any legislative requirements for expanding the authority of the CMM, and how this might further improve the effectiveness of the Pilot.

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Appendix A – Logic model for the Saint John Family Law Pilot

SAINT JOHN FAMILY LAW PILOT LOGIC MODEL

HOW?	WHO / WHERE?	WHAT do we want? WHY?		
Justice NB / Justice Canada	Reach	Results		
Activities / Outputs	Target Groups	Direct Outcomes	Intermediate Outcomes	Final Outcomes
<p>Research and define new service model and select location of Pilot / scope and location</p> <p>Develop costing strategy / cost</p> <p>Prepare and present briefing material / approval</p> <p>Develop and proclaim new “Rules of the Court” / amended legislation</p> <p>Secure office space and purchase equipment and supplies / start-up</p> <p>Develop and implement new policies and procedures / policies and procedures</p> <p>Define and recruit new roles and responsibilities / resources</p> <p>Develop and implement training plan / training and orientation</p> <p>Develop communication strategy and provide information to target groups / communication</p> <p>Provide the new enhanced access to family justice services in the Saint John region / enhanced services</p> <p>Measure, monitor and evaluate performance / performance, evaluation and statistics</p>	<p>Parents and spouses</p> <p>Other family members including children</p> <p>Judges</p> <p>Lawyers</p> <p>Court Staff</p> <p>Mediators</p> <p>Legal Aid</p> <p>Other community referral agencies and professionals</p> <p>MEP Staff</p> <p>Child Welfare Agencies</p> <p>Social Assistance Agencies</p> <p>Concerned members of the Public</p>	<p>Awareness of FLIC services by clients</p> <p>Access to FLIC services:</p> <ul style="list-style-type: none"> - Information - Referrals - Assistance with documents or court process <p>Access to Triage services:</p> <ul style="list-style-type: none"> - Information - Referrals - Documents are reviewed for completeness and accuracy - Case conferences are scheduled - Court hearings are scheduled <p>Access to Case Management services:</p> <ul style="list-style-type: none"> - Case conferences are held - Full or partial resolution - Interim and consent orders are made - High conflict cases are identified and directed to the court - Continuation of an alternate child support variation service (equal or better results than CSVS) - Legal assistance provided to mediators 	<p>Increased understanding of family law matters, services and processes by clients</p> <p>New services meet the needs of clients:</p> <ul style="list-style-type: none"> - Helpful - Useful <p>Increased awareness of issues for people going through separation and divorce</p> <p>Both represented and self-represented litigants are more prepared when appearing either at a case conference or in court along with their “court-ready” documentation</p> <p>Ensures efficient flow of cases through the judicial system</p> <p>Courts are reserved for cases involving:</p> <ul style="list-style-type: none"> • Complex financial situations • Undue hardship • Lack of agreement • High conflict (i.e. violence) <p>Parents have continued efficient access to child support variations in Saint John</p> <p>Quality of mediation services enhanced</p>	<p>More timely access to Justice in resolving family law disputes</p> <p>Expanded use of alternatives to family courts to resolve family law issues</p> <p>Increase compliance with parents who have parenting arrangements and/or support obligations through the new service</p> <p>Increased access to legal information and legal assistance in family law matters</p> <p>Parents are better able to make decisions that are tailored to the individual needs of the children</p>

SAINT JOHN FAMILY LAW PILOT LOGIC MODEL

HOW?		WHO / WHERE?			WHAT do we want? WHY?	
Justice NB / Justice Canada	Reach	Results				
Activities / Outputs	Target Groups	Direct Outcomes	Intermediate Outcomes		Final Outcomes	
		Access to Mediation services: <ul style="list-style-type: none"> - Appointments are made - Initial assessment meetings held - Clients participate in mediation - Agreements are reached or mediation is terminated by mediators due to power imbalance, violence or voluntary withdrawal Access to Family Advice Lawyers: <ul style="list-style-type: none"> - Clients access service provided by Legal Aid out of the FLIC - Family advice lawyers appear at triage events and scheduled appointments 	Mediation services assist participants and lawyers in: <ul style="list-style-type: none"> - Clarifying issues - Resolving issues 		Reduce financial and emotional stress on separated and divorced families	

Appendix B – Evaluation matrix

Evaluation matrix for the Evaluation of the Saint John Family Law Pilot		
Evaluation issues and questions	Indicators	Data sources
Access/use of services		
1. Are clients aware of the FLIC?	<ul style="list-style-type: none"> ▶ Number of clients accessing the FLIC and change in use over time ▶ Stakeholder opinion 	<ul style="list-style-type: none"> ▶ FLIC monthly reporting forms data ▶ Interviews ▶ Client survey
2. Do litigants have access to the services, and are they using the services? <ul style="list-style-type: none"> • FLIC • Triage • Case management • Mediation • Family Advice Lawyers 	<ul style="list-style-type: none"> ▶ Number and types of information pieces provided to FLIC users ▶ Number of referrals made to Advice Lawyer and Mediation Services from FLIC and change over time ▶ Assistance provided with documents and court processes 	<ul style="list-style-type: none"> ▶ Sample by Dept Justice and Attorney General (DJAG) ▶ FLIC monthly reporting forms data
	<ul style="list-style-type: none"> ▶ Number of parties triaged and change over time ▶ On day of triage, number of same day referrals to mediation and case conference and change over time ▶ Number of case conferences scheduled and change over time ▶ Number of court hearings scheduled and change over time 	<ul style="list-style-type: none"> ▶ Rule 81 Statistical Reporting Form data
	<ul style="list-style-type: none"> ▶ Number of case conferences held and change over time ▶ Number of resolutions (full and partial) and change over time ▶ Number of interim and consent orders made and change over time ▶ Number of conciliation hearings either remains the same or increases compared to the former CSVS program 	<ul style="list-style-type: none"> ▶ Rule 81 Statistical Reporting Form data
	<ul style="list-style-type: none"> ▶ Number of clients participating in mediation and change over time ▶ Number of agreements (full and partial) reached and change over time 	<ul style="list-style-type: none"> ▶ Family mediator reporting forms data
	<ul style="list-style-type: none"> ▶ Number of clients accessing family advice lawyers at triage and change over time ▶ Number of clients accessing family advice lawyers through appointment and change over time 	<ul style="list-style-type: none"> ▶ FLIC monthly reporting forms data ▶ Rule 81 Statistical Reporting Form data
	<ul style="list-style-type: none"> ▶ Stakeholder opinion 	<ul style="list-style-type: none"> ▶ Interviews ▶ Client survey
3. Are the services meeting the needs of clients? (e.g. Are they helpful and useful? Are clients satisfied with the services? Are the available resources sufficient to meet demand?)	<ul style="list-style-type: none"> ▶ Stakeholder opinion on helpfulness and levels of satisfaction 	<ul style="list-style-type: none"> ▶ Interviews ▶ Client survey
	<ul style="list-style-type: none"> ▶ Number of litigants seeking assistance that receive service and wait times for services (triage, mediation, case conference); and change over time 	<ul style="list-style-type: none"> ▶ FLIC monthly reporting forms data ▶ Data provided by DJAG
Impact on litigants		
4. Have the services resulted in an increased understanding of family law matters by litigants?	<ul style="list-style-type: none"> ▶ Stakeholder opinion 	<ul style="list-style-type: none"> ▶ Interviews ▶ Client survey

Evaluation matrix for the Evaluation of the Saint John Family Law Pilot		
Evaluation issues and questions	Indicators	Data sources
5. Have litigants experienced more timely access to Justice in resolving their family law disputes?	<ul style="list-style-type: none"> ▶ Average wait times between filing date and triage day and change over time ▶ Average wait times between filing and case conference and change over time ▶ Average wait times between filing and mediation and change over time ▶ Average wait times between filing and court and change over time; comparisons of wait times pre- and post-Pilot and between Saint John versus Moncton 	<ul style="list-style-type: none"> ▶ Rule 81 Statistical Reporting Form data ▶ Data provided by DJAG
	<ul style="list-style-type: none"> ▶ Comparison of time between entering the new service and reaching resolution for pre- and post-Pilot; comparison between jurisdictions (Saint John and Moncton) 	<ul style="list-style-type: none"> ▶ Data provided by DJAG
	<ul style="list-style-type: none"> ▶ Stakeholder opinion 	<ul style="list-style-type: none"> ▶ Interviews ▶ Client survey
6. Do parents have continued efficient access to child support variations?	<ul style="list-style-type: none"> ▶ Wait times between filing and hearing of motion either stays the same or decreases compared to the former CSVS program ▶ Frequency of adjournments due to failures to appear for pre-Pilot versus post-Pilot ▶ Number of times a case goes through the process to resolution ▶ Number of outcomes settled prior to court ▶ Comparisons between Saint John and Moncton, as feasible 	<ul style="list-style-type: none"> ▶ Data provided by DJAG
7. Have the services helped litigants in their decision-making and reduced families' financial and emotional stress?	<ul style="list-style-type: none"> ▶ Number of resolutions reached after case conferencing, mediation, settlement conference, and change over time ▶ Comparison between number of cases going to court pre- and post-Pilot; between Saint John and Moncton 	<ul style="list-style-type: none"> ▶ Rule 81 Statistical Reporting Form data ▶ Data provided by DJAG
	<ul style="list-style-type: none"> ▶ Litigant reporting on impact on emotional stress and costs 	<ul style="list-style-type: none"> ▶ Client survey
8. Is there increased compliance with parenting arrangements and/or support obligations?	<ul style="list-style-type: none"> ▶ Stakeholder opinion on any differences in compliance with parenting arrangements and/or support obligations 	<ul style="list-style-type: none"> ▶ Interviews ▶ Client survey

Evaluation matrix for the Evaluation of the Saint John Family Law Pilot		
Evaluation issues and questions	Indicators	Data sources
Impact on the New Brunswick Court System		
9. Are litigants making greater use of alternatives to court to resolve their family law issues?	▶ Number of litigants using mediation pre- and post-Pilot; Saint John versus Moncton where available	▶ Data provided by DJAG
	▶ Number of cases resolved at mediation, or case conferencing, or settlement conferencing.	▶ Mediator's reports ▶ Rule 81 Statistical Reporting Form data ▶ Data provided by DJAG on settlement conferences
	▶ Stakeholder opinion	▶ Interviews
10. Are litigants better prepared at case conferences or court?	▶ Extent that litigants appear at case conferences or court with properly prepared documents ▶ Extent that litigants appear at case conferences or court with an understanding of the process	▶ Interviews ▶ Client survey
	▶ Stakeholder opinion of differences between pre- and post-Pilot and between Saint John and other New Brunswick jurisdictions	▶ Interviews
11. Have the services and any related policy/procedural changes (e.g. Rule 81) resulted in a more efficient flow of cases through the judicial system?	▶ Number and volume of forms required pre- and post-Pilot; Saint John versus Moncton ▶ Average times between filing and resolution; comparisons between pre- and post-Pilot and between Saint John and Moncton ▶ Number of appearances required to resolve a case; comparisons between pre- and post-Pilot and between Saint John and Moncton ▶ Stakeholder opinion	▶ Data provided by DJAG ▶ Interviews ▶ Document review
12. For those cases going to court, is this mainly for those involving one or more of the following: <ul style="list-style-type: none"> • complex financial situations cases • undue hardship • lack of agreement • high conflict (e.g., violence, mental health, addictions, etc.)? 	▶ Number of cases resolved at mediation, or case conferencing, or settlement conferencing compared to those going to court.	▶ Mediator's reports ▶ Rule 81 Statistical Reporting Form data ▶ Data provided by DJAG on settlement conferences
	▶ Number and percentage of cases that involve and do not involve these issues pre- and post-Pilot; Saint John versus Moncton	▶ Data provided by DJAG
	▶ Judges' and other stakeholders' opinion on appropriateness of cases going to court; comparisons between pre- and post-Pilot and between Saint John and Moncton	▶ Interviews
13. Is the Pilot operating at a reasonable cost?	▶ Dollars spent versus budgeted amounts ▶ Staffing by service type ▶ Cost comparisons pre- and post-Pilot	▶ Data provided by DJAG
14. Are other target groups besides clients satisfied with the services? Are there any suggestions for improving services?	▶ Stakeholder opinion ▶ Best practices identified through the document/literature review	▶ Interviews ▶ Document/literature review