



**THE UNIFIED FAMILY COURT  
SUMMATIVE EVALUATION  
Final Report**

**March 2009**

**Evaluation Division  
Office of Strategic Planning and Performance Management**



## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	i
1. INTRODUCTION .....	1
2. BACKGROUND AND CONTEXT .....	3
2.1. Federal and Provincial Jurisdiction for Family Law and Family Courts.....	3
2.2. The Unified Family Court Model .....	4
3. EVALUATION METHODOLOGY .....	13
3.1. Evaluation Objectives .....	13
3.2. Research Design.....	13
3.3. Scope of Work .....	20
3.4. Challenges and Limitations to the Evaluation .....	22
4. RELEVANCE.....	25
5. SUCCESS .....	31
5.1. Access to Dispute Resolution Mechanisms and Family Justice Services.....	31
5.2. Access to a Specialized Bench.....	36
5.3. Coordination .....	38
5.4. Less Adversarial Resolution of Issues .....	40
5.5. Timely Resolution of Issues.....	41
6. COST-EFFECTIVENESS ISSUES.....	45
6.1. Cost-effectiveness of the UFC Approach .....	45
6.2. Alternative Models.....	47
7. CONCLUSIONS AND LESSONS LEARNED.....	53
7.1. Conclusions.....	53
7.2. Lessons Learned and Recommendations for Further Research.....	55
8. RECOMMENDATIONS AND MANAGEMENT RESPONSE .....	59
8.1. Success.....	59
8.2. Lessons Learned.....	59

## **ACRONYMS**

ADR	Alternative Dispute Resolution
UFCs	Unified Family Courts
FJS	Family Justice Services
FLIC	Family Law Information Centres
RMAF	Results-based Management and Accountability Framework
CCFLS	Child-centred Family Justice Strategy
IRC	Information Referral Coordinator
LAT	Less Adversarial Trial
MDT	Multi-Disciplinary Review Teams
SRL	Self-Represented Litigants

## **EXECUTIVE SUMMARY**

### **1. Introduction**

The concept of the unified family court was first introduced in Canada in 1974 by the Law Reform Commission of Canada. It was designed to enable families to resolve all outstanding legal issues in a single forum, providing "one-stop shopping" for family law services by unifying the jurisdiction of the federal government and the provinces into a single court. Key characteristics of the unified model include employing simplified procedures in a user-friendly environment, having specialist judges, and providing a full range of professional and community support services. It was felt that the combination of these factors could offer a multitude of benefits, such as: speeding up the resolution of family matters, reducing the potential for further conflict, increasing the ability of family members to access the court and obtain other services most appropriate to their needs, and offering better long-term outcomes for children and their families.

Unified Family Courts (UFCs) were piloted in four jurisdictions: Hamilton, Ontario (1977), Saskatoon, Saskatchewan (1978), Fredericton, New Brunswick (1979), and St. John's, Newfoundland (1979). Since then, UFCs have been maintained or expanded within the original four provinces and have been introduced in Prince Edward Island, Manitoba and Nova Scotia. Although the provincial/territorial governments have responsibility for the constitution and administration of the UFCs, UFC judges are appointed and paid by the federal government.

To meet Treasury Board Secretariat requirements, a summative evaluation of the UFC was undertaken. The UFC evaluation relied on multiple lines of evidence, both quantitative and qualitative, including an extensive court file review, key informant interviews as well as a review and analysis of existing data sources, documentation and literature. A quasi-experimental design was used to determine the extent to which the UFC model achieves its intended objectives, using a comparison group of non-unified courts that aligned with a more traditional model (i.e., limited supports, no specialized bench).

## **2. Key Findings - Relevance**

### **2.1. The goals and objectives of the Unified Family Court model are aligned with federal priorities.**

Responsibility for family law and the family justice system is shared between the federal and provincial/territorial governments. Implementation of the UFC model has thus been a collaborative exercise reflective of the goals and objectives of both levels of government.

Members of the judiciary representing all levels of court felt that, conceptually, the goals and objectives of the UFC model align well with federal and provincial/territorial priorities for family justice. However, several felt that in practice, the UFC concept may not be fully implemented at individual sites. Therefore, operationally, the UFC may not fully align with federal and provincial/territorial priorities.

### **2.2. The complex and changing needs of families experiencing separation or divorce continue to be served by the Unified Family Court model.**

The increasing complexity of family law matters in the 1970s was a key impetus behind the development of the UFC conceptual model. Recent publications by Statistics Canada and research on family structure suggest that Canadian families have undergone significant changes over the past several decades, adding to the complexity of issues. These findings are echoed by the justice professionals and other key informants interviewed for the evaluation.

The unification of jurisdiction over family law into a single court was meant to make the system easier for families to navigate, a characteristic that aligns well with serving a population that faces language and cultural barriers. A specialized bench can also help to address issues that are related to cultural differences, as well as the increasing complexity of family structure and conjugal histories. Family justice services (FJS) are designed to help people address and resolve issues through means outside the court. These services also provide support mechanisms to address specific community needs.

Many members of the judiciary and court staff who were interviewed commented on the additional time required to educate or guide self-represented parties through the various procedures required to initiate and continue a case. Well-developed Family Law Information Centres (FLIC) services are supported through the UFC model and can be an important resource

for parties that are self-represented. Some jurisdictions have developed services and programs specifically designed for self-represented litigants (for example, the Self-Represented Litigants Project in Nova Scotia).

### **3. Key Findings – Success**

#### **3.1. Overall, Unified Family Courts enable better access to a specialized bench of judges and on-site dispute resolution and family justice services than non-Unified Family Court sites.**

A specialized bench is much more likely to be in place at UFC locations than non-UFC locations. However, access to a specialized bench at some UFC locations may be decreasing as demand for service has increased while the number of UFC judges has remained constant.

Mediation or conciliation services are more likely to be available at UFCs than at non-UFC locations. According to the inventory information, at least 90% of UFCs have mediation available and 85% have mediation services on-site, at the court registry. In contrast, 41% of non-UFC locations offer some type of mediation services.

Similarly, the type and range of FJS available are greater at UFCs than at non-UFCs. FLICs are available on-site at all of the 39 UFCs and some UFCs maintain a FLIC that is staffed with a trained professional who provides assistance to parties and/or refers them to appropriate services. Staffed FLICs are only available at 16% of non-UFC locations, as compared to 87.2% of UFCs. Parenting information materials are also available at all family court locations across Canada. Participatory sessions are offered at almost all (95%) UFCs. In contrast, parenting information sessions are available at 16% of non-UFC locations.

#### **3.2. A specialized bench was reported to be of primary importance to the overall performance of the Unified Family Courts in meeting objectives.**

According to the UFC Results-based Management and Accountability Framework (RMAF), having judges who are specialized and expert in family law was seen to be increasingly critical, as family law matters have become more complex. The majority of judges interviewed for the evaluation reported the specialized bench to be of primary importance not only to UFCs but to family cases regardless of the type of court. Given the increased complexity of cases and the

increasing numbers of self-represented litigants (SRLs), specialized judges are well equipped to address the issues and arrive at a successful resolution. Several informants noted that complex family law matters often require knowledge in a variety of fields (e.g., psychology, social work, accounting, etc.) as well as the use of innovative approaches to resolve issues, particularly where children are often involved and parties are highly emotional. Overall, most judges interviewed for the evaluation noted that access to a specialized bench is a crucial element that enables the court to provide timely and less adversarial resolution to family cases, thereby contributing to UFC objectives. However, simply providing a specialized bench, out-of-court dispute resolution and FJS does not guarantee their accessibility or utilization.

Utilization of FJS was found to be affected by the presence or absence of a strong referral mechanism, such as intake personnel. Individual preference of justice system personnel can also affect utilization of these services. Some key informants interviewed also noted that sufficient resources, judicial and support (e.g., FJS), are necessary for the UFC model to be effective.

**3.3. Although some of the results are inconclusive due to design issues, there is some evidence to suggest that the Unified Family Court model helps to resolve issues more efficiently.**

Trials are considered to be an adversarial and costly resolution option and most family cases appear to avoid going to trial in all courts. Therefore, resolution of issues by consent is an indication of less adversarial resolution of issues. The average proportion of consent orders per case at all UFC sites taken together is 29.7%, which is almost identical to the average proportion of consent orders per case at non-UFC sites at 29.3%. However, when the UFC sites were examined separately, there were dramatic differences in the proportion of matters resolved through consent/agreement.

Results for the intensity of court usage indicate that UFCs may be more efficient than traditional courts in terms of issue resolution. Intensity of court usage can be considered in terms of the number of court-related activities from the first appearance to the last activity associated with an application and the number of repeat applications within cases. The total number of court activities per application/new filing is lower in the UFCs than in the traditional non-UFC comparison locations. Repeat applications provide an indication of the intensity of court usage, whereby parties need to return to court with unresolved or new issues after first opening their case file. Results reveal little difference in the number of times parties return to court with a new or re-emerging set of issues across the different courts.

## **1. INTRODUCTION**

To meet Treasury Board Secretariat requirements, the Department of Justice is required to undertake a summative evaluation of the Unified Family Court (UFC). The final draft evaluation report was distributed to the provinces that participated in this evaluation and their comments were incorporated in the report.

The following report represents the findings of the Summative Evaluation of the Unified Family Court. Background and contextual information to family law and the UFC model is contained in Section 2. The methodology and scope of work are detailed in Section 3. Relevance and success related to the UFC are presented in Sections 4 and 5, respectively. A discussion of some of the efficiencies realized by the UFCs and some alternative models is contained in Section 6. The conclusions based on key findings are presented throughout the report as lessons learned are summarized in Section 7. The recommendations and management response are provided in Section 8.



## **2. BACKGROUND AND CONTEXT**

This section of the report presents background and context about family law in Canada and provides a detailed description of the UFC model, including its mandate and objectives, history and current status.

### **2.1. Federal and Provincial Jurisdiction for Family Law and Family Courts**

Under the *Constitution Act (1867)*, family law in Canada, like some other areas of law, is an area of shared jurisdiction between the federal and provincial/territorial governments. Two parallel court systems exist: the provincial/territorial superior court, presided by federally appointed judges, and the provincial/territorial (inferior) courts, presided by provincially appointed judges. The federal and provincial/territorial governments each have certain responsibilities for family law matters, including the law itself, the appointment of judges and payment of their salaries, and the structure and processes of the courts that handle family law cases. Further, each court has jurisdiction over specific aspects of family law.

The superior court has exclusive jurisdiction in the area of divorce law and includes corollary matters such as child support, access and custody. Property matters (e.g., division of the matrimonial home) are also exclusively under superior court jurisdiction. The primary federal component of Canada's family law system is the *Divorce Act*. Each provincial/territorial government is responsible for the constitution and administration of its superior courts, including decisions respecting court structure and associated services. However, it is the federal government that appoints and pays the judges of the superior courts.

In contrast, the provincial/territorial governments have full responsibility for their inferior courts, both in terms of structure and administration, as well as the appointment and remuneration of the provincial court judges. Provincial/territorial family law legislation covers all matters related to the separation of unmarried couples as well as child support, access and custody in cases of

married separating couples where no divorce is sought.<sup>1</sup> The provinces/territories also have jurisdiction over matters such as enforcement of child support and other obligations, adoption, child protection, change of name, and matters related to the administration of the courts. Each province/territory enacts its own family law legislation.

The traditional family court model has been one in which most family court actions take place at the provincial or territorial (inferior) court level, but full jurisdiction over family law belongs to the superior court.<sup>2</sup> The territories exhibit use of unique measures to provide access to family law. Due to the remoteness of many communities in the territories, most family law takes place on circuit, and judges of the superior court within one territory are, by virtue of their office, *ex officio* judges of the superior courts of the other territories.

The division of responsibilities between the federal and provincial/territorial jurisdictions is considered by many to be a challenge for Canadian families undergoing separation and divorce.<sup>3</sup> Problems associated with the non-unified approach include stress and confusion experienced by families as a result of the jurisdictional division of responsibilities and parallel court systems. Other challenges were court proceedings for family law matters that were considered to be too adversarial due to the fragmented approach taken to resolve issues and limited access to judges who specialize in family matters.<sup>4</sup> In particular, the approach to issue resolution used in family cases was more aligned with the approach taken in civil law matters resulting in adversarial resolution and additional stress for Canadian families and their children. The two parallel court systems were also thought to contribute to delays in processing cases and higher legal expenses for separating and divorcing families.

## **2.2. The Unified Family Court Model**

In 1974, the Law Reform Commission of Canada recommended the UFC model to address the shortcomings of the traditional approach used in family law. The most basic element of the UFC was the consolidation of jurisdiction over all family law proceedings, the provincial superior

---

<sup>1</sup> If desired, individuals undergoing a divorce can proceed with any corollary family-related matters in provincial court, although typically they proceed through the superior court concurrent to the application for divorce.

<sup>2</sup> Canadian Judicial Council. Canada's Court System. Retrieved on June 10, 2008 from [http://www.cjc-ccm.gc.ca/english/resource\\_en.asp?selMenu=resource\\_courtsystem\\_en.asp](http://www.cjc-ccm.gc.ca/english/resource_en.asp?selMenu=resource_courtsystem_en.asp)

<sup>3</sup> Department of Justice (July 2004). *RMAF for the UFC*.

<sup>4</sup> Mamo, Jaffe & Chiodo (2007). *Recapturing and Renewing the Vision of the Family Court*.

court<sup>5</sup>; that is, it would have jurisdiction over all claims for divorce, support, custody, access, equalization of net family property, and trust claims.<sup>6</sup> In addition, UFCs would provide access to a specialized bench made up of a core group of federally appointed judges with considerable experience in family law. Finally, the conceptual model would enable access to a wide variety of FJS to support early intervention, non-adversarial resolution of cases, and allow for case or issue resolution outside of the court. It was anticipated that a unified model would address the stress and confusion experienced by families as a result of the jurisdictional division of responsibilities and parallel court systems. In general, unified family courts were expected to enhance the resolution of family issues by addressing the fragmentation of jurisdiction, the conflicting philosophies and procedures of the courts, and the lack of auxiliary support services for families.<sup>7</sup>

Given that unification is in the superior court, implementation of the UFC model is necessarily a collaborative exercise between the federal and provincial/territorial governments. It is for each individual jurisdiction to decide whether and how to establish its Family Court, including issues relating to court locations, delivery mechanisms, and the range of services to be offered. At the same time, the federal government's support is required for the appointment of the judges to the UFC.

---

<sup>5</sup> The Law Reform Commission's concept also included jurisdiction over youth criminal justice matters, given the frequent interaction between family breakdown and youth justice. Youth justice matters were originally included in UFC sites in Ontario and Nova Scotia but were ultimately removed in view of the particular issues and rights raised in criminal matters.

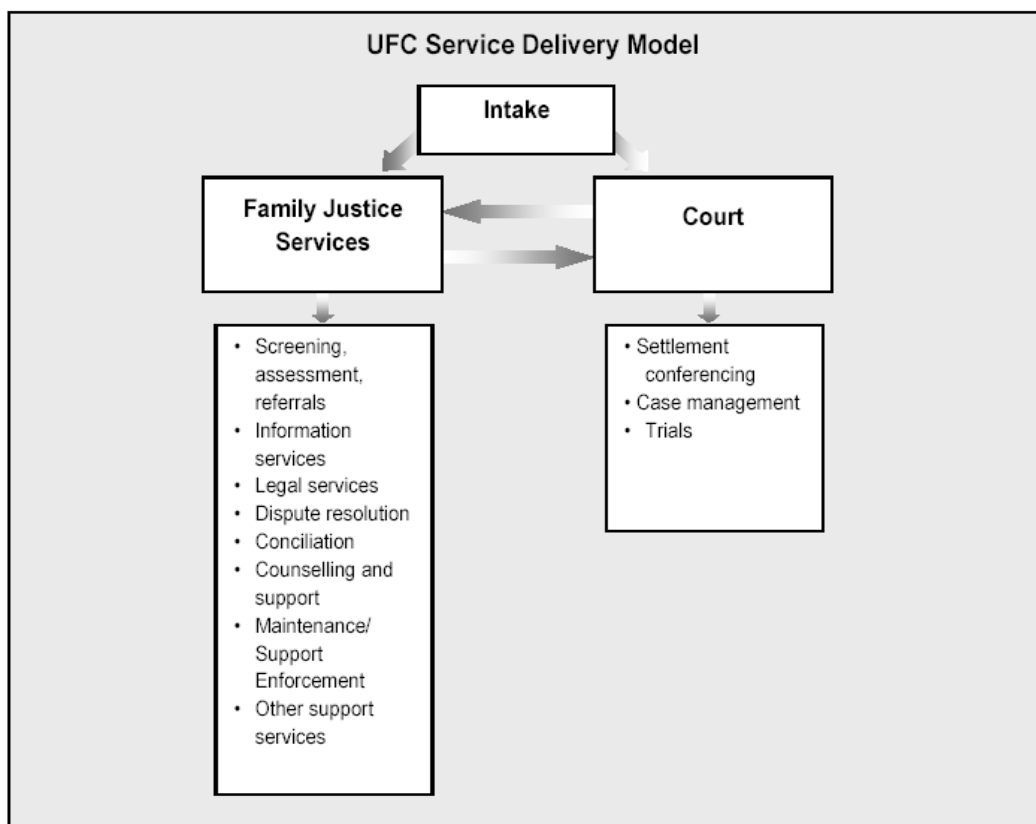
<sup>6</sup> Mamo, Jaffe & Chiodo (2007). *Recapturing and Renewing the Vision of the Family Court*.

<sup>7</sup> Department of Justice (July 2004). *RMAF for the UFC*.

### 2.2.1. Characteristics of the Unified Family Court Model

The scope of the UFC concept is presented in Exhibit 2-2, a graphic depiction of the UFC model and the elements associated with it.

**Exhibit 2-2: UFC Conceptual Model of Service Delivery**



*Source: Justice Canada (2004). Results-based Management and Accountability Framework for the Unified Family Courts, p.8.*

A key element of the service delivery model is the introduction of intake as the first point of access or step for Canadian families dealing with family law matters.<sup>8</sup> Intake is designed to serve as a coordinating link between FJS and the court system. As such, the intake element of the service delivery model facilitates access to FJS and encourages coordination of the court “arm” of the model with the FJS arm.<sup>9</sup> Through intake or other similar services, the most appropriate

<sup>8</sup> *The Family Court, Working Paper No.1 by Law Reform Commission of Canada, 1974. Information Canada, Ottawa.*

<sup>9</sup> Justice Canada (2004). *Results-based Management and Accountability Framework for the Unified Family Courts.*

path to resolution is identified for each case and parties are referred to the appropriate dispute resolution mechanism and/or FJS (these are discussed in greater detail in Section 2.1.2). As illustrated above, intake or referral can lead parties to FJS or to the court. However, note that parties can move between these two parts of the system.

## 2.2.2. Implementation of the Unified Family Court Model

UFCs were piloted in four jurisdictions: Hamilton, Ontario (1977), Saskatoon, Saskatchewan (1978), Fredericton, New Brunswick (1979), and St. John’s, Newfoundland (1979). After each of these pilot projects received favorable evaluation results, the UFCs in these jurisdictions became permanent. Since then, UFCs have been maintained or expanded within the original four provinces and have been introduced in Prince Edward Island, Manitoba and Nova Scotia.

There are currently 39 unified family courts in operation in seven provinces. Table 2-2 lists the UFCs currently in operation by province.

**Table 2-2: Unified Family Courts in Operation by Province<sup>10</sup>**

Province/Territory	# of Sites	UFC Locations
Newfoundland	1	St. John’s
New Brunswick	8	Moncton, Saint John, Bathurst/Tracadie, Edmundston, Fredericton, Miramichi, Woodstock, Campbellton
Nova Scotia	3	Halifax, Sydney, Port Hawkesbury
Prince Edward Island	3	Georgetown, Charlottetown, Summerside
Ontario	17	Barrie, Bracebridge, Brockville, Cobourg, Cornwall, Hamilton, Kingston, L’Orignal, Lindsay, London, Napanee, Newmarket, Oshawa/Whitby, Ottawa, Peterborough, Perth, St. Catharines
Manitoba	4	Winnipeg, Brandon, Dauphin, Portage La Prairie
Saskatchewan	3	Saskatoon, Regina, Prince Albert
<b>Total Sites</b>	<b>39</b>	

While each of the locations has unified jurisdiction over family law matters, there are differences in how the model has been implemented in the various provinces. For example, in New Brunswick and Prince Edward Island, the UFC model services the entire province and hears all family law matters within those jurisdictions. In contrast, in Manitoba and Saskatchewan, the

<sup>10</sup> A full inventory of the court registry locations across Canada that deal with family law issues (exclusively or in combination with other litigation or criminal matters) has been developed, identifying UFC and traditional court sites. Details of the inventory development activities completed as part of the research design are presented in the Research Design Report.

UFC has exclusive jurisdiction over family proceedings in the identified locations. Elsewhere in these provinces, the UFC and the Provincial Court have concurrent jurisdiction. UFC judges travel on circuit to outlying areas but the Provincial Court continues to hear some types of family cases in these areas between circuits. Locations also differ with respect to how the UFC model is implemented and the extent to which the service delivery model conceptualized for the UFC is adopted. For example, some locations offered comprehensive intake services where an appointment is scheduled with an intake clerk before any other activities were undertaken. In other UFCs, only information services are provided.<sup>11</sup> The various types of FJS provided also vary, depending on a number of different factors, including community needs and resources allocated to FJS, which are discussed further in the following section.

### **2.2.3. Unified Family Courts in the Current Canadian Context**

Today, UFCs exist within a structure of federal and provincial/territorial policy and programming activities in family law. Federal family justice priorities are set forth and supported through the programs and initiatives implemented by the Department of Justice. Each province allocates federal as well as provincial funds to programs, services and locations as decided upon by their respective departments responsible for family justice.

Over the last decade, the Department of Justice has launched several initiatives in the area of family law designed to assist and work in collaboration with the provinces/territories in creating and enhancing family law policies and services in their respective jurisdictions. Most recently (from 2003 to 2008), the Child-centred Family Justice Strategy (CCFJS) represented the fifth consecutive federal initiative implemented by the Department of Justice.<sup>12</sup>

As a result of these federal and provincial initiatives, access to out-of-court FJS is not limited to UFCs; hence, many court locations offer something more than just the traditional court processes. In the *Research Design Report* completed prior to the evaluation in 2007, it was noted that the court models used in Canada exist on a continuum of sorts, ranging from the most traditional model to a unified model that fully implements all the service delivery elements conceptualized for the UFC.<sup>13</sup> In the traditional family justice model, only the two parallel court

---

<sup>11</sup> Information services might range from a rack with brochures related to family justice services and options to a person(s) dedicated to providing informational services and/or educational programs.

<sup>12</sup> A sixth initiative, *Supporting Families Experiencing Separation and Divorce*, was introduced in 2008 to be implemented in 2009/10.

<sup>13</sup> Note that the continuum was designed specifically for the evaluation and was not meant to capture all possible family justice system options.

systems are available for issue resolution and cases are formally resolved in the appropriate court through a hearing or trial. At the other end of the continuum is the UFC model that fully encompasses all of the intended elements outlined earlier. However, in the current context, court locations tend to fall at various points along the continuum, depending on the dispute resolution mechanisms available, FJS offered and the degree of coordination of these with the court.

Table 3-1 provides a summary of distinguishing elements of the three types of court models considered for the evaluation. Again, it is important to note that locations included in the evaluation varied in terms of specific FJS offered.

**Table 3-1: Conceptual Differences in Court Models**

<b>Court Model</b>	<b>Available</b>	<b>Not available</b>
UFC	Combined jurisdiction/single court	--
	Specialized bench	--
	Intake services	--
	Full range of FJS <sup>14</sup>	--
	Consolidated/coordinated administrative services	--
Quasi-UFC (Superior and Provincial)	--	Combined jurisdiction/single court
	Specialized bench <sup>15</sup>	--
	Intake services (in some locations)	--
	Full range of FJS	--
	--	Consolidated/coordinated administrative services
Traditional Non-UFC (Superior and Provincial)	--	Combined jurisdiction/single court
	--	Specialized bench
	--	Intake services
	Access to information	Full range of FJS
	--	Access to consolidated/coordinated administrative services

<sup>14</sup> Family Justice Services

<sup>15</sup> While not a specialized bench, per se, quasi-UFCs often have provincial court judges whose case load consists of a high proportion of family law matters. A quasi-UFC could also have a specialized bench in the superior court, although this was not the case for the two superior courts included in the quasi-UFC locations.

#### **2.2.4. Types of Dispute Resolution and Family Justice Services**

The UFC model includes a range of dispute resolution options and other supports for families experiencing separation or divorce. Examples of these mechanisms include:

- *Mediation*: a non-binding process in which a neutral, impartial third party with no decision-making authority attempts to facilitate a settlement between disputing parties;
- *Conciliation*: an approach that is essentially mediation with a third party who is more interventionist, and may shuttle between disputants who are unwilling to meet in person;
- *Facilitation*: the use of techniques to improve the flow of information in a meeting between parties to a dispute, or in a decision-making meeting;
- *Settlement conferences, case conferences and pre-trial conferences*: case management processes that involve an informal dialogue between a member of the judiciary, legal counsel and/or the parties, prior to a hearing or trial. The conferences tend to focus on either settlement or hearing preparation. Objectives can include settlement of issues and/or improving efficiency of the hearing through more thorough preparation; and
- *Trial*: any process in which a judge hears each party's evidence and arguments and renders a decision that is binding on them.

FJS may entail a greater range of options, the most basic of which are information services. One service that has recently been implemented on a large scale is the provision of family law information through Family Law Information Centres (FLICs). Literature regarding family law practices and proceedings is available online and in brochure or pamphlet form at all sites serving family law clients. In some instances, in-person information services and referrals are provided, depending on the model adopted by each court location. A key benefit from providing these services is that self-represented individuals are given information about court processes, legal topics, court programs and other court services to assist them in navigating the family justice system.

*Parent information and education programs* are designed to help parents understand the needs of their children during separation or divorce and provide tools/advice. These programs may simply make information available to parents who choose to access it, or they may require that parents attend participatory sessions which may or may not be mandatory and/or may be ordered by a judge.



*Maintenance enforcement programs* are in place in all provinces/territories. These are usually administered separately from the court, although in some cases the courts may be involved, especially when variations to child support are required. All provinces/territories also have in place programs that deal with inter-jurisdictional support matters.

*Intake, review and/or referral services* employ trained staff to help parties understand their issues and needs and identify the most appropriate resources and paths for each case and are typically accessed early in the process.

There are many other types of services such as *legal advice lawyers, supervised access programs* and other programs that target specific groups. The types of services developed and implemented are specific to the province/territory and are selected to meet community needs.

### **3. EVALUATION METHODOLOGY**

This section of the report summarizes the evaluation objectives, methodological approach and research activities undertaken to complete the Summative Evaluation of the Unified Family Court.

#### **3.1. Evaluation Objectives**

The summative evaluation was designed to measure the impact of the UFC model by determining the outcomes and effects associated with UFCs. Specifically, the evaluation addressed the following issues and related outcomes:

1. Relevance: The continued relevance of the UFC concept and objectives.
2. Success: The extent to which the UFC model has achieved its planned results (i.e., intermediate and longer-term outcomes).

In addition to the two issues cited above, issues related to cost-effectiveness and alternative models were also examined, although not in depth.

#### **3.2. Research Design**

A quasi-experimental design was used to determine the extent to which the UFC model achieves its intended objectives. To this end, a comparison group of courts that operated according to the more traditional model was identified and the results compared to those of selected UFCs. The evaluation was based on the feasibility and research design completed in 2007.<sup>16</sup>

In this evaluation, the main issue to be addressed is the extent to which the UFC model is effective in achieving its intended outcomes. The hypothesis is that cases processed through a UFC would have better outcomes with respect to a less adversarial and more coordinated

---

<sup>16</sup> 2007. *Unified Family Court Evaluation: Research Design Report*. Prepared by R.A. Malatest & Associates Ltd. on behalf of DOJ.

approach to case resolution than would cases processed through a traditional court model that did not have the same supportive elements in place as in the UFC model.

### **3.2.1. Selection of UFC and Comparison Locations**

The quasi-experimental design relied on the development of a comparison sample. In particular, court locations in each group (i.e., UFC and traditional) had to be clearly distinguishable with respect to the characteristics that define the UFC models and the more traditional court model. At the same time, other possible influencing factors had to be controlled such as the demographic characteristics of the population served in the selected locations, case volumes and/or any idiosyncratic business procedures/practices in place at the court registry or in the court.

All of the comparison sites in the evaluation provide access to some FJS. The difference in the range of FJS provided for both UFCs and traditional courts presented significant challenges with respect to measuring the performance of the UFCs overall. These challenges are described in more detail at the end of this section.

An inventory of court locations by province/territory was established, documenting key attributes (e.g., population size and characteristics, FJS available, dispute resolution mechanisms available, relevant family law rules/procedures). From this inventory, four UFC locations and four traditional court locations were selected for the evaluation. The site selection was based on a number of criteria, including population density and characteristics of the population served by the court to ensure that the sample of cases reviewed for the evaluation would be more likely to resemble the sample of cases selected from the UFC sites.

Implementation of the research design in the summative evaluation was dependent on the provinces/territories agreeing to participate. The proposed court locations were subject to the approval of their respective jurisdictions. After consulting with the provinces and territories, some of the original locations were approved, while alternative locations were proposed in both the UFC and comparison groups.

It should be noted that some of the alternative locations did not meet the selection criteria identified in the research design. For example, some of the UFC sites included in the evaluation were struggling with static judicial resources in a period of rapid population growth and increasing case loads, making it difficult to rely solely on the specialized bench (i.e., generalist judges were cycled into help with family cases). At other UFC sites, the full conceptual UFC model was not implemented (e.g., there were limited or no intake services). The degree to which

the population demographics of the UFC locations matched the traditional court locations was also affected. Ultimately, these differences had a significant effect on the ability of the evaluation to detect impacts.<sup>17</sup> A more detailed discussion of the challenges encountered as a result of the site selection can be found at the end of this section (Section 3.4) and in Section 6.

The following locations were approved by the participating provinces for the evaluation:

- Unified Family Court sites
  - Halifax, Nova Scotia
  - Hamilton, Ontario
  - Oshawa, Ontario
  - Saskatoon, Saskatchewan
- Traditional Non-UFC court sites
  - Sarnia, Ontario (provincial and superior)
  - Sudbury, Ontario (provincial and superior)
  - Pictou, Nova Scotia (provincial and superior)
  - Truro, Nova Scotia (provincial and superior)

### **3.2.2. Quasi-Unified Family Court Locations**

As noted in Section 2, a continuum of court models was identified and was used to help identify court locations that would be appropriate for the UFC and comparison groups. From the continuum, “quasi-UFC” locations were also identified as possible alternatives to the UFC model. Like UFCs, these sites offer non-court dispute resolution alternatives and a range of FJS, both of which can be coordinated with the court and/or the court registry, although clients do not have to be involved in the court process to access the services. The key difference between these locations and the UFC model is that the quasi-UFC model maintains the federal and provincial jurisdictional division of family law.

---

<sup>17</sup> Participating provinces were also assured that individual comparisons of UFCs would not be reported. However, there are a few instances where it is necessary to compare results for individual sites with the comparison group. Where this occurs, the specific location is not identified, rather the sites are identified as Site A, B, C or D.

One component of the evaluation was to establish the extent to which the UFC model achieved its objectives relative to outcomes found for alternative models identified in Canada. Therefore, quasi-UFC locations were examined as an alternative model to the UFC.

The potential court locations were identified by the researchers and the respective provincial representatives agreed to participate in the study by providing access to information on court usage. The following locations were identified in consultation with the provinces for the purpose of comparison:

- Vancouver – Robson Square (provincial)
- Vancouver - Smithe (superior)
- Toronto – University (superior)
- Toronto – Sheppard (provincial)
- Toronto – Jarvis (provincial)

### **3.2.3. Case File Sample Frame**

Parameters used to define the case file sample included the type of case (i.e., divorce or non-divorce) and the reference period (i.e., new files opened within a certain period of time). Matters of family law are often dealing with multiple issues, and parties can return to the family justice system multiple times to address new issues that emerge or old issues that re-emerge. Theoretically, family law cases remain open indefinitely. Therefore, the length of time since the case file was opened was an important consideration, to allow sufficient time to have passed to resolve the matters at issue in the original application. In addition, some of the impact measures included in the evaluation framework are time sensitive (e.g., repeat applications, compliance). The reference period, therefore, had to be of sufficient duration to allow enough time for applications to have a conclusion and permit the estimation of the time-sensitive indicators.

Given the various time considerations, the sample consisted of new cases opened during the 12-month period from January 1, 2004 to December 31, 2004. Data collection took place from October 2007 to January 2008. Therefore, the amount of time that could have passed from the time a case file was opened to the time of review was from 36 to 45 months.

Cases included in the sample were those covered under the *Divorce Act* and the *Maintenance and Custody Act* in Nova Scotia, the *Family Law Act* and *Children's Law Reform Act* in Ontario,

the *Children’s Law Act* in Saskatchewan, as well as the *Family Relations Act* and the *Family Maintenance Enforcement Act* in British Columbia. For the protection of privacy, child protection cases were excluded from the sample.

Cases were selected based on stratified random sampling to ensure statistical representativeness of the sample and account for differences in size between the selected sites. Table 3-1 presents a summary of the number of court files and the individual filing activities reviewed at each site. A filing activity is defined as the initial filing activity (i.e., the initiating document) or an application, an application to vary or a notice of motion that initiates a “new” series of activities to address new or recurrent issues after previous issues had been dealt with. It should be noted that the final sample sizes were above those required as indicated in a power analysis completed for the feasibility study.<sup>18</sup> Therefore, significant effects or differences between the UFCs and traditional courts could have been detected given the sample sizes.

**Table 3-1: Case File Review Summary**

<b>Court Location</b>	<b>Files Reviewed</b>	<b>Filing Activities Tracked</b>
<b>UFC Locations</b>		
Hamilton, ON	109	156
Oshawa, ON	134	177
Halifax, NS	109	135
Saskatoon, SK	100	156
<b>Total UFC Locations</b>	<b>452</b>	<b>624</b>
<b>Traditional Non-UFC Court Locations</b>		
Sarnia, ON (provincial)	36	59
Sarnia, ON (superior)	44	51
Sudbury, ON (provincial)	103	169
Sudbury, ON (superior)	92	99
Pictou, NS (provincial)	25	38
Pictou, NS (superior)	10	12
Truro, NS (provincial)	17	35
Truro, NS (superior)	9	15
<b>Total Traditional Non-UFC Court Locations</b>	<b>336</b>	<b>479</b>
<b>Quasi-UFC Locations</b>		

<sup>18</sup> The minimum sample size required in order to detect a statistically significant effect was calculated using the program *G\*Power* V2.0 (Faul, F & Erdefelder, E. (1992). *GPOWER: A prior, post-hoc and compromise power analyses for MS-DOS (Computer Program)*. Bonn, FRG: Bonn University, Dept. of Psychology). It was determined that a total sample of 1,000 case files would have sufficient power (.9259) to detect a small effect (i.e., .02, as defined by Cohen) at an alpha level of .05.

<b>Court Location</b>	<b>Files Reviewed</b>	<b>Filing Activities Tracked</b>
Vancouver (provincial)	100	143
Vancouver (superior)	122	141
Toronto -University	193	197
Toronto -Sheppard	134	246
Toronto - Jarvis	98	143
<b>Total Quasi-UFC Locations</b>	<b>647</b>	<b>871</b>
<b>Total Sample</b>	<b>1,435</b>	<b>1,973</b>

### 3.2.4. Case Characteristics of the Unified Family Court and Comparison Samples

The information captured in case files of parties who had accessed the family justice system at each of the locations selected for the evaluation represented a key source of data. The following provides an overview of the characteristics of those cases included in the analysis for the current evaluation to provide information about the general case complexity. Data are presented in the tables below for the UFC, traditional non-UFC and quasi-UFC samples.

As summarized in Table 3-2, cases reviewed for the evaluation most frequently dealt with issues related to child support and custody, with slight differences occurring between the UFC and traditional non-UFC samples in terms of proportion of cases with these issues. The quasi-UFC sample had a larger proportion of applications dealing with child support issues and a similar proportion of cases dealing with custody. The proportion of cases that involved access issues in the UFC and traditional samples was similar, while there was a lower proportion in the quasi-UFC locations. The UFC sample (39.9%) had more divorce cases than the traditional sample (26.9%) and the quasi-UFC sample (34.7%). Similarly, the UFC locations were more likely than either traditional non-UFC or quasi-UFC locations to have cases with issues dealing with other issues that are only under the jurisdiction of the superior court (i.e., property). Some family justice cases still required that provincial child protection services representatives be involved although the case was no longer considered a child protection case, per se. Only a small percentage of cases at the three types of courts involved children protection services representatives<sup>19</sup> while quasi-UFC locations were more likely to deal with matters that warranted an application for a restraining order or non-removal of the child/children. These latter two types of issues are typically dealt with in court, by a judge.

---

<sup>19</sup> These were not child protection cases, as access to this type of case was not permitted due to protection of privacy legislation. Rather, these were cases that, for various reasons, required that provincial departments/ministries responsible for child protection be involved.

**Table 3-2: Issues by Type of Court (% filings)**

Issues	UFCs (n=624)	Traditional Non-UFC* Provincial (n=301)	Traditional Non-UFC Superior (n=178)	Traditional Non-UFC Average (n=479)	Quasi- UFC Provincial (n=533)	Quasi- UFC Superior (n=337)	Quasi- UFC Average (n=870)
Child Support	51.0%	59.5%	30.3%	48.6%	59.1%	17.5%	57.0%
Custody	47.4%	67.8%	28.1%	53.0%	63.8%	21.1%	47.2%
Divorce	39.9%	N/A	72.5%	26.9%	NA	89.6%	34.7%
Access	34.8%	44.9%	22.5%	36.5%	33.2%	15.1%	26.2%
Property	24.8%	2.3%	37.6%	15.4%	0.4%	9.8%	4.0%
Spousal support	20.4%	7.3%	27.5%	14.8%	15.6%	8.6%	12.9%
Restraining Order/Non- removal protection	10.1%	11.3%	6.2%	9.4%	27.2%	5.6%	18.9%
Involvement of Children's Aid Services	2.6%	4.0%	0.6%	2.7%	3.6%	0.0%	2.2%

Source: Case file review

With respect to overall case characteristics, cases in UFC locations had a higher average number of issues per application (2.35) than the average number of issues per application in traditional non-UFC locations (2.14) and quasi-UFC locations (2.00).<sup>20</sup>

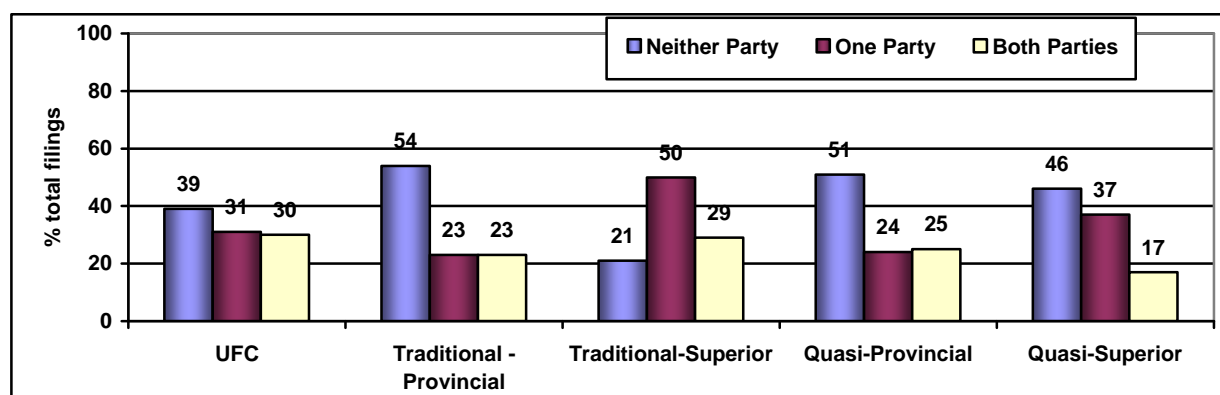
Not all parties in family law matters have a lawyer representing them. The analysis of the legal representation in the cases reviewed reveals that in close to half (44.1%) of the cases, neither party had legal representation and in 30.6%, only one party had representation (see Chart 3-1). Parties in UFCs were more likely to have legal representation than in comparison locations.<sup>21</sup>

<sup>20</sup> The differences are statistically significant (p=.001).

<sup>21</sup> There was a statistically significant relationship between type of court and legal representation (p<.001).



**Chart 3-1: Legal Representation of Parties**



Source: Case file review

The differences in the characteristics of the sample required that these differences be controlled for in the analysis of outcomes, as type and number of issue per application could influence outcomes. Furthermore, it was found that legal representation also has an effect on resolution. Variables that were found to have an influence on case outcomes in terms of time to resolution and less adversarial resolution were controlled for through regression techniques.

### 3.3. Scope of Work

The Summative Evaluation of the UFC relies on multiple lines of evidence, including qualitative and quantitative data. The scope of work completed for the evaluation is briefly described in the remainder of this section.<sup>22</sup>

#### 3.3.1. Document and Literature Review

Documentation was reviewed to obtain contextual and background information on the UFC and its impact. In addition to documents detailing the UFC itself, such as the UFC RMAF, documentation pertaining to each of the locations selected for the evaluation was reviewed. Research reports and literature were reviewed to identify issues facing separating/divorcing families, recent trends in Canadian families, and approaches to family justice in other jurisdictions.

<sup>22</sup> It should be noted that a client survey was originally proposed as part of the evaluation. However, provincial and federal protection of privacy requirements precluded the development of a survey sample for the evaluation.

### 3.3.2. Inventory Development

An inventory of available services and site characteristics was developed for all family court locations in Canada using available secondary sources (e.g., the Department of Justice inventory Website, provincial/territorial Websites) as well as telephone interviews with provincial/territorial representatives and individuals from each site. This inventory was then utilized in the selection of the court sites that were originally proposed for the evaluation.

### 3.3.3. Court Case File Review

The court file review was completed using a tracking sheet designed to collect information on various outcomes, to identify issue resolution patterns and to estimate net impacts. A total of 1435 file reviews was conducted manually, on-site at participating court location. Each filing activity that initiated a new set of events was tracked separately (n=1,973) including motions, applications to vary and new applications that initiated a new set of issues that were not part of the original application and response.

### 3.3.4. Key Informant Interviews

Key informant interviews were used to identify perspectives and opinions regarding the unified family court concept, operations/procedures in place, and challenges experienced at specific locations that could influence the results of the case file review and evaluation.

The breakdown of the key informant interviews completed for the evaluation is summarized in the table below.

**Table 3-3: Key Informant Interviews**

Key Informant Group	# Interviews
Federal Officials	2
Provincial/Territorial Officials	9
Members of the Judiciary	30*
Family Justice Representatives <ul style="list-style-type: none"> <li>• Court Registry</li> <li>• Family Justice Services</li> <li>• Other</li> </ul>	12
<b>TOTAL</b>	<b>53</b>

\* Includes two instances where more than one judge participated in the interview at the same time.

In addition to the interviews noted above, a number of unstructured/informal discussions were completed with provincial/territorial officials throughout the evaluation, as the study was completely reliant on the participation and cooperation of the provinces/territories.

### **3.4. Challenges and Limitations to the Evaluation**

Several challenges were encountered in this evaluation and discussed below.

#### **3.4.1. Site selection and variability in Unified Family Court implementation**

The final sites selected for study in the evaluation differed from those that had been proposed in the original evaluation design; not all of them met the site selection criteria that had been set out in the design report. This has had an impact on the fidelity of the evaluation design, on the ability to test the research hypothesis, and has introduced unanticipated intervening variables into the design that could affect outcome measures for the sites. Therefore, when analyzing and presenting outcomes at an aggregate level for the UFC sample to assess the success of the UFC model overall, site specific issues may have attenuated any potential net impacts and the results for the UFC model (on an aggregate level) may not look substantially different from the results for the traditional model. To better understand the potential effects of the intervening variables on the overall results, site descriptions of all UFC sites included in the analysis were prepared and the results for each site were compared to the results; comparisons between the specific UFC sites were not made, as was agreed with the participating provinces.

Overall, the variability with respect to the implementation of the UFC model at individual sites has resulted in substantial challenges with respect to estimating the net impact and success of the UFC model in meeting its original objectives.

#### **3.4.2. Difficulty isolating impacts**

As outlined in Section 2, the UFC now operates in a context of various existing family justice initiatives supported through federal and provincial/territorial initiatives in all court locations. In the context of these other strategies, the development and support of FJS, therefore, are only conceptually linked to the UFC but are not unique to UFC locations. While UFCs are expected to provide a minimum level of service that might not all be available or as comprehensive at other courts, access to some services is provided across all locations regardless of the court model in

place. Therefore, it was not possible to attribute outcomes that are associated with access to FJS and dispute resolution mechanisms as identified in the logic model to the court model.

### **3.4.3. Inability to cross-reference court file information with Family Justice Services files**

Ideally, the full range of dispute resolution mechanisms and supports accessed by the parties could be tracked through the court case file. Court-related alternative dispute mechanisms (i.e., case conferencing) were tracked in the court files at all locations. However, as determined in the feasibility study and confirmed in the evaluation, records of family justice services activity are maintained by family justice service providers and are completely separate from the court registry (i.e., there is no cross-reference between file numbers), making it very difficult to reliably cross-reference between court-based and non-court activities on a case-by-case basis. In only one location included in this evaluation were intake services and referrals to other FJS made in the case files housed in the court registry. At this court, intake and referrals were tracked in a case file regardless of whether the parties ever went to court or saw a judge. The lack of connection between the court and non-court FJS records is itself a finding of the current evaluation that will be discussed in more detail in Section 4 of the report.

Apart from one location, the extent to which the utilization of these services was tracked in the reviewed registry files was very limited and reflected registry practices rather than actual utilization. As a result, evaluation questions pertaining to the utilization of FJS and out-of-court dispute resolution mechanisms could not be addressed through the court file review.

### **3.4.4. Time measures and time tracking**

Other measurement challenges encountered in the evaluation affected the ability to address evaluation questions on time to resolution. In most locations, case tracking or management systems are generally not designed to track time in court, meaning that the length of time parties spend in court at hearings, trials, or other court activities is not recorded. Therefore, it was not possible to determine whether the UFC model has had an impact on the amount of time Canadian families spend in court when facing separation and divorce. As such, net impacts of the UFC model on the amount of time spent in court could not be determined.

## 4. RELEVANCE

Relevance was addressed through three questions in the evaluation framework:

- Does the UFC model reflect federal, provincial and territorial priorities related to family justice?
- Does the UFC model reflect the needs of the families served? Is there a need for UFCs among other Canadian populations/communities?
- Is there a legitimate and necessary role of the federal government in maintaining/supporting the UFC model?

The remainder of this section presents the key findings with regard to the above three evaluation questions.

**The goals and objectives of the Unified Family Court model are aligned with federal priorities.**

Federal priorities for law in Canada are set by the Department of Justice Canada. The strategic outcome presented in the *2006-2007 Report on Plans and Priorities* for the Department of Justice was to provide Canadians with a fair, relevant and accessible justice system that reflects Canadian values. Two priorities identified to achieve the strategic objectives in the report were:

- improving efficiencies in the justice system and the efficient delivery of legal services to government; and
- improving access to justice.

A key objective of the UFC model is to improve access to justice through a specialized bench and ancillary services available at UFC locations. In addition, the combined jurisdiction of the two courts eliminates the need for two court registries to deal with family law matters, thereby, decreasing duplication in infrastructure and administration. Finally, the intake component identified in the UFC model could serve to streamline processes and improve case management for parties accessing the family justice system, which is aligned with the first objective of

improving efficiencies in the justice system. As such, the UFC model is aligned with federal goals and objectives as stated in documentation.

As described in Section 2 of this report, responsibility for family law and the family justice system is shared between the federal and provincial/territorial governments. While the federal government appoints and pays the judges of the provincial superior courts, including UFCs, it is the responsibility of the provinces and territories to determine the particular structure of these courts. Implementation of the UFC model has thus been a collaborative exercise reflective of the goals and objectives of both levels of government.

Members of the judiciary representing all levels of court reported that, conceptually, the goals and objectives of the UFC model align well with federal and provincial/territorial priorities for family justice. However, several said that in practice, the UFC concept may not be fully implemented. Therefore, operationally, the UFC may not fully align with federal and provincial/territorial priorities.

The difference between the UFC model as originally conceived and the UFCs in operation was felt to be attributable, in part, to differences in the accessibility of FJS across sites and the availability of a specialized bench. The majority of judges interviewed stressed the importance of having sufficient resources to adequately support the UFC concept, particularly in terms of judicial resources and resources for FJS. This same issue was stressed in reviews completed by British Columbia and Alberta in the decision not to adopt the UFC model in those provinces. However, recent federal initiatives to expand UFCs have not gone ahead.<sup>23</sup>

### **The complex and changing needs of families experiencing separation or divorce continue to be served by the Unified Family Court model.**

As outlined in the Mamo et al. (2007) report, the increased complexity of family law matters in the 1970s was a key impetus behind the development of the UFC conceptual model. Recent publications by Statistics Canada and research on family structure suggest that Canadian families have undergone significant changes over the past several decades, adding to the complexity of issues.

Available data and reports point to a number of characteristics that indicate a social shift away from long-term marriages and traditional nuclear families to more fluid and complex

---

<sup>23</sup> Two successive bills that would have amended the Judges Act to provide for UFC expansion died on the order paper (former Bill C-22, introduced in December 2002, and former Bill C-51, introduced in May 2005).

relationships and families. As conjugal histories become more complex, blended families are becoming more common.<sup>24</sup> In addition to the changes in family structure, the cultural mosaic of Canada creates new or more complex family issues facing the family justice system. The total number of immigrants to Canada has increased by more than 150% over the past 20 years. The 2006 Census reveals that immigration currently is the key driver of population growth in Canada.<sup>25</sup> Immigration is particularly high in certain parts of the country, such as Ontario, Quebec and British Columbia, suggesting that these provinces (or cities therein) are experiencing significant population growth.

As noted by several members of the judiciary and court registry staff interviewed for the evaluation, family law disputes increasingly involve multinational families as well as litigants with language barriers and different cultural backgrounds. Several administrative court staff reported that they are now serving a more culturally diverse population, which entails specific challenges for family court cases and proceedings ranging from language barriers to the need for international cooperation with respect to child custody, access and support issues. Ontario Superior Court judges in both UFC and non-UFC courts noted that because of the socio-demographic makeup of certain regions in Ontario, such as Toronto, cultural and language issues are a constant consideration.

The unification of jurisdiction over family law in a single court was meant to make the system easier for families to navigate, a characteristic that aligns well with serving a population that faces language and cultural barriers. A specialized bench can also help to address issues that are related to cultural differences, as well as the increasing complexity of family structure and conjugal histories. Access to judges specialized in family law matters was intended to help address increasing case complexity and less adversarial resolution of cases. FJS were to provide a range of services to help people address and resolve issues through means outside the court. These services also provide support mechanisms that can be developed to address specific community needs.

Trends in family justice issues reported by members of the judiciary varied depending on various factors and characteristics of the regions. For example, child support (re)calculation was noted as

---

<sup>24</sup> 2006 General Social Survey (Cycle 20); Statistics Canada (2007). *Navigating Family Transitions: Evidence from the General Social Survey (Cycle 20)*; Statistics Canada (2002). *Changing Conjugal Life in Canada (General Social Survey – Cycle 15)*.

<sup>25</sup> Statistics Canada (2008). *Census Snapshot – Immigration in Canada: A Portrait of the Foreign-Born Population, Census 2006*. retrieved May 27, 2008 from <http://www.statcan.ca/english/freepub/11-008-XIE/2008001/article/10556-en.htm>

being high in regions experiencing economic downturn. In areas with high immigrant populations, families were seen to struggle to understand family law and the family justice system in Canada and to access services due to cultural and language barriers. Therefore, the needs of separating/divorcing families vary depending on the characteristics of and circumstances in the community. All UFC judges were positive about expanding UFCs to other populations and communities and most members of the judiciary who were interviewed considered a specialized bench and access to a range of dispute resolution and FJS to be key factors in helping families resolve their issues.

**Services available at Unified Family Court locations help to assuage the additional burden that self-representation adds to the family justice system.**

In addition to the increasing complexity of family law issues and the constantly changing needs of separating or divorcing families, there is an increasing trend for self-representation in family law cases. There is a substantial amount of systematically gathered evidence based on the experience of justice professionals that there has been an increasing trend in the number of litigants attempting to negotiate criminal and non-criminal justice systems without legal representation. However, it is important to note that there are very few reliable statistics concerning self-represented litigants (SRLs).<sup>26</sup> Nonetheless, research literature and qualitative information gathered in the current evaluation suggest that family courts in Canada are increasingly dealing with SRLs and the challenges associated with assisting these individuals through the court process. As summarized previously in Table 3-3 (see Section 3), in almost 75% of the total sample, at least one party did not have legal representation. These numbers indicate that self-representation is an issue in the majority of family law cases, requiring judges and court clerks to spend considerable time explaining court rules, processes, and procedures before being able to devote time to issue resolution.

Many members of the judiciary and court staff commented on the additional time required to educate or guide self-represented parties through the various procedures required to initiate and continue a case. Well-developed family law information services that are supported through the UFC model can be an important resource for self-represented parties. For example, a legal advice lawyer can provide information to parties about the procedures and rules that have to be followed. An intake coordinator can help with the completion of forms and inform parties of alternative options for resolving issues or support services available. In fact, some jurisdictions

---

<sup>26</sup> Canadian Forum on Civil Justice (January 12, 2007). *Alberta Self-Represented Litigants Mapping Project Final Report*.



have developed services and programs specifically designed for SRLs (for example the Self-Represented Litigants Project in Nova Scotia).

**There are some who feel that the role of the federal government in supporting the Unified Family Court model could be expanded.**

Aside from appointing and providing the salaries for the UFC judges, the federal government has had little input regarding the implementation of the UFC, as this is the responsibility of the provinces/territories. The variability in implementation of the model across UFC sites reflects provincial/territorial preferences and needs. These additional resources are provided through federal grants and contributions programs, as well as through provincial/territorial funding initiatives. As found in the current evaluation, the variation in the implementation of the other elements of the UFC affects the degree to which UFC objectives are attained.

Some members of the judiciary felt that the federal government could have an increased role in monitoring the UFCs to encourage adherence to the conceptual model as well as to monitor the adequacy of resources in supporting the model.

## 5. SUCCESS

The following evaluation questions are addressed in this section of the report:

- How has the UFC model affected access to dispute resolution mechanisms?
- How has the UFC model affected access to FJS?
- In what ways has access to a specialized bench in UFCs affected the resolution of family issues?
- To what extent has coordination between the court and FJS been realized? Are there ways in which coordination could be improved?
- To what extent are family law issues resolved in a less adversarial way as a result of the UFC model?
- To what extent are family law issues resolved in a timely manner as a result of the UFC model?

### 5.1. Access to Dispute Resolution Mechanisms and Family Justice Services

One of the objectives of the UFC is to provide non-adversarial resolution of family disputes and to assist in achieving earlier resolution of issues. To support this commitment, the UFC model includes dispute resolution mechanisms, such as case conferencing and mediation. In addition to dispute resolution options, the UFC model includes a minimum of FJS and supports, such as information, intake, conciliation, and education programs.

**Although court-related dispute resolution options are similar for all courts, Unified Family Courts are more likely to offer out-of-court dispute resolution options than are most non-unified courts.**

The inventory of court and FJS revealed that some types of dispute resolution mechanisms are used in the non-UFC groups. For example, judicial case conferencing is a common practice in many provincial and superior courts, and is often mandatory prior to trial. Ontario Rule 17 of the

*Family Law Rules* requires that a case conference be held with a judge in cases where an answer is filed<sup>27</sup> in order to explore the chances of settling the case, identify the issues that are in dispute/not in dispute, explore ways to resolve issues in dispute, organize/hold a settlement conference (if appropriate), and/or deal with items related to hearings/trials. In Ontario, case settlement conferences are practiced by both provincial and superior courts.

The *Family Court Act* in Nova Scotia allows provincial court judges to conduct pre-hearing conferences during which parties may narrow or come to agreement about the issues in dispute. In the UFC, the Superior Court – Family Division, settlement conferences are conducted with a judge at the discretion of the court or at the request of the parties. In Manitoba, case conferences with the judges are part of the courts’ judicial case management program. All family law proceedings are subject to case management and are designed to explore options for case resolution either to eliminate the need for a trial or to prepare the parties for further steps by narrowing the issues.<sup>28</sup>

In British Columbia, *Provincial Court (Family) Rules* set forth that in family law matters where custody, access or guardianship are contested, a judge may order a family case conference to explore options of resolving or narrowing down issues in the case conference or via referral to mediation or other service. The *Supreme Court rules of Court* in British Columbia prescribe that a judicial case conference must be held in most cases before a contested application can be made in a family law matter. Family case conferences are conducted in provincial court and judicial case conferences (which apply to family and other civil cases) are conducted in the superior court. Judicial dispute resolution offered in Alberta serves a similar purpose, where parties and their lawyers meet with a judge to determine whether a case can be settled prior to taking any additional steps in court.

In contrast to case conferencing, mediation or conciliation services are more likely to be available at UFCs than all other types of court locations.<sup>29</sup> Forty-one percent of non-UFC locations offer some type of mediation services. In contrast, at least 90% of UFCs have

---

<sup>27</sup> With the exception of child protection cases, unless deemed acceptable in a particular case.

<sup>28</sup> 2005. Manitoba Justice. *Family Law in Manitoba*. Retrieved on June 11, 2008 from <http://www.gov.mb.ca/justice/family/englishbooklet/chapter2.html#10>

<sup>29</sup> Quasi-UFC locations were selected on the basis of their similarity to UFCs. Therefore, by design, the range of dispute resolution options and family justice services available at quasi-UFC locations resemble those available at UFCs.

mediation available and 85% have mediation services on-site at the court registry.<sup>30</sup> In Ontario, all 17 of the UFC locations have both on-site and off-site mediation services available.

At the Halifax UFC, conciliation services (which do not provide formal mediation) are available on-site to all cases prior to entering the court system after an intake review is conducted. Mediation is also available in Halifax through court referral or it can be accessed privately. Mediation services in Saskatoon are provided at the same location as the court registry and can be used at the discretion of the parties or upon referral by a judge.

UFC judges reported that the UFC model facilitates access to out-of-court dispute resolution mechanisms. All judges reported that families served by a UFC had better access to dispute resolution than those served in many jurisdictions without a UFC.

**The type and range of family justice services available is greater at Unified Family Courts than at non-Unified Family Courts, overall.**

The UFC model specifies that a minimum set of FJS be available. In contrast, the range of services offered in other court locations varies substantially by province and by site. Some locations offer very few, if any, in-person services, providing information materials instead. However, it is important to note that there is also considerable variation in the number and type of FJS at UFC locations.

Family law information is available on-site at all of the 39 UFCs, some of which maintain a FLIC that is staffed with a trained professional. This individual provides assistance to parties and/or refers them to appropriate services, such the Information Referral Coordinator in Ontario. However, the hours that FLIC staff is available varies across locations. For example, an Information Referral Coordinator is available every day during court registry hours in the Oshawa UFC, while FLIC staff is only available on certain days and times at other UFC locations. In Saskatoon, the FLIC is part of a pilot project that incorporates support variation services. The pilot project operates in Regina, with a smaller satellite office in Saskatoon located in the same building as the family court during court registry hours. During the reference period for the case file review, Saskatoon only offered information materials on-site.

---

<sup>30</sup> It should be noted that these percentages could be underestimates as information regarding mediation services offered in a province was not always available; however, the service was indicated as being available at the provincial/territorial level.

Outside of the UFC locations, family law information services range from online and printed literature or other materials regarding family law matters to full-service FLICS such as those described above (for example, in Calgary and Edmonton). Staffed FLICs are only available at 16% of non-UFC locations, as compared to 87.2% of UFCs. Therefore, access to FLICs and full-service FLICs is greater at UFC sites compared to non-UFC sites. As noted by several members of the judiciary, this type of assistance helps to alleviate pressure on the court system as judges spend less time educating self-represented parties about court procedures and other requirements, and spend more time on helping families to resolve their family law issues. In Ontario, it is estimated that the FLICs serve approximately 400,000 clients, which is much higher return for information services more than once.

Parenting information materials are also available at all family court locations across Canada. However, there is a clear difference between UFCs and non-UFCs with respect to participatory parenting information sessions (i.e., where the parties attend the sessions in person). Participatory sessions are offered at almost all (95%) UFC sites. However, where these sessions are not offered, the two sites are connected to other larger UFCs in the same region that offer them. There are some differences as to whether participation in these sessions is mandatory. Participatory parenting information sessions are available at 16% of non-UFC locations, but based on the information provided by court registry employees at non-UFC locations, these may be offered through the community. In locations that do not provide participatory sessions, parenting information/education materials are provided.

Other services have been developed and are offered at limited locations across the country. Supervised access programs are offered at locations in Manitoba, Saskatchewan, Ontario, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. In Ontario, this service is available at all court locations, while in the other provinces programs are usually associated with UFC locations.<sup>31</sup> Child support (re)calculation services are relatively new and available in only a few locations (e.g., in Saskatoon, as a pilot project, and in Kelowna). The provision of legal advice lawyers as part of the FLIC also varies by province and by location.<sup>32</sup> While both services are also available in provinces that have not adopted the UFC model, these services are more often found at UFC locations.

---

<sup>31</sup> See Inventory of Government Based Family Justice Services at <http://canada.justice.gc.ca/eng/pi/pad-rpad/res/fjis-rsgjf/brows-fure.asp?setlang=en>

<sup>32</sup> These lawyers are typically provided through the province's legal aid program.

**Simply having a range of dispute resolution mechanisms and family justice services available at the Unified Family Courts does not guarantee access or utilization.**

As pointed out by a few of the key informants, having non-court dispute resolution options such as mediation in place does not guarantee accessibility. For example, waiting lists resulting from insufficient resources can interfere with access. In one location, FJS staff indicated that, due to staff shortages, the average wait time for an intake interview can be six to eight weeks. Another barrier to access can be the quality of service. A few of the judges noted that there must be a certain level of confidence in the service providers; otherwise referrals will be low and parties may not be receiving appropriate assistance. These services cannot be effective if they are not adequate in terms of quality and resources.

In addition, members of the judiciary interviewed at the UFC locations indicated that, generally, they assume that when the parties reach the court, they have exhausted other alternatives to dispute resolution and accessed the appropriate FJS. However, since this information is not provided in the case files at many court registries, the extent to which this assumption is accurate is unknown.

A key concern of the judiciary is the general lack of judicial and other resources available to adequately support a fully implemented UFC model and meet the needs of growing communities in existing UFC locations. Judges from all three courts (i.e., unified, superior and provincial) stressed the importance of having sufficient resources to adequately support family needs, particularly in terms of judicial resources and FJS. Several members of the judiciary noted that, due to rapid population growth in some communities, there has been a greater demand for family court services and that a growing proportion of families may not be accessing the family justice system and/or that the time to resolution is longer than necessary, due to capacity issues associated with the larger case volumes. Separate reports produced by the Ontario, Alberta and British Columbia governments also point to the need for adequate resources to properly support the UFC concept.<sup>33</sup> In British Columbia, the need for adequate resources to properly implement and support the UFC model was a key consideration in the decision of whether to implement the model.

---

<sup>33</sup> Mamo, A. A., Jaffe, T. G. & Chiodo, D. G. (2007). *Recapturing and Renewing the Vision of the Family Court*; BC Justice Review Task Force (August 2003). *Unified Family Court Background and Discussion Paper #2: Status Update*; Minister of Justice and Attorney General, Government of Alberta (December 2000). *Report of the Unified Family Court Task Force*.

## **5.2. Access to a Specialized Bench**

**A specialized bench was reported to be of primary importance to the overall performance of the Unified Family Courts in meeting objectives.**

Appointing judges based on their experience in, commitment to and knowledge of family law is one of the key elements in the design of the UFC and, therefore, a direct linkage to the expected outcomes. The assumption is that case resolution will be less adversarial, more tailored to the needs of children, and generally more efficient as compared to a non-specialized bench. The specialized bench can provide benefit to the ongoing development of family law due to the extensive knowledge and experience of the judiciary in dealing with family law matters. Another advantage noted by members of the judiciary was that a specialized bench provides ongoing opportunities for judges who are experts in family law issues to consult among themselves and with other specialized judges and family justice professionals involved in family law. According to the UFC RMAF, having judges who are specialized and experts in family law was seen to be increasingly critical, given the challenging nature of family law matters.

In most non-unified courts, particularly at the superior level, members of the judiciary are generalists and hear all types of cases, including divorce and matrimonial property cases; any ancillary issues are also heard. Provincial courts are more likely to have judges who spend a substantial amount of time dealing with family law cases, although in these locations there is not necessarily a designated family court, per se. On the other hand, in locations such as the provincial courts at the quasi-UFC sites identified for the current evaluation, a specialized bench has been developed as part of the provincial family court.

The majority of judges reported the specialized bench to be of primary importance to family cases regardless of the type of court. It was stressed that given the increased complexity of cases and the increasing numbers of SRLs, specialized judges are better equipped to address the issues and arrive at a successful resolution. Several informants noted that family law matters routinely require knowledge in a range of fields beyond the law (e.g., psychology, social work, accounting, etc.) and the use of innovative approaches to resolve issues, particularly when children are often involved and parties are highly emotional. Overall, most judges noted that access to a specialized bench is a crucial element that enables the court to provide timely and less adversarial resolution to family cases, thereby contributing to UFC objectives.

A few judges favored a more generalist approach whereby judges hear the full range of cases that go through the court to ensure that a minimum level of expertise is developed in all areas of law.

However, it was not clear whether they felt this would lead to better resolution of family matters or if this was simply a preference. Finally, judges did not note any issues with respect to burn-out.

**A specialized bench is more common at Unified Family Courts compared to non-unified family courts.**

All UFC locations have a corps of judiciary who has significant experience in the area of family law. UFC judges interviewed at the four locations included in the evaluation reported that 80 to 100% of the cases they hear are family law cases. In fact, all but one judge interviewed heard 95% or more family cases. In some locations, specialist judges are supported by superior court judges who are rotated into the UFC on a scheduled and/or as-needed basis (e.g., to conduct a trial). In addition, many UFC judges go on circuit to smaller communities where they hear all types of cases.

At courts where there is not a specialized bench, many judges spend *some* time on family law with some reporting that they spend more than 50% of their time on family cases. In Toronto superior, for example, of the 90 judges, 20 have exposure to family law cases although to varying degrees. Of these 20 judges, it is estimated that 5 spend less than 25% of time on family law cases, 5 spend 25-30% of time and 5 spend more than 50% of time. No information was available on the work of the remaining judges.

Comparative information with respect to how much time is spent on family law was difficult to collect for non-UFC sites. Most of those interviewed could not provide information as to the percentage of judicial time spent on family cases or the percentage of the caseload that pertained to family law. As such, assessing the extent to which a judge “specializes” in family law is not possible for most traditional court sites. However, based on the information available through the interviews, it can be assumed that access to a specialized bench is greater at UFC sites than at non-UFC sites. It should be noted, however, that at courts serving smaller communities, the number of judicial resources is limited; therefore, some judges hear close to 100% of the family cases in that community, as well as other types of cases.



**Access to a specialized bench at some Unified Family Court locations may be declining as the population increases while the number of Unified Family Court judges remains the same.**

As discussed previously, several of the UFC sites included in the current evaluation are facing challenges with respect to increasing caseload of the specialized judges at the site. Significant population growth along with increasingly complicated family arrangements have resulted in increased demand for family court involvement in some regions in Canada. The number of UFC judges has remained unchanged since the most recent expansion occurred in Ontario in 1999 (expansion occurred in other provinces prior to that year). In interviews, judges and other court staff at some locations stressed that increased caseload has undermined the positive effects of having access to a specialized bench. For some sites it was noted that, due to the increased caseload, it can take several months before a first case conference with a judge can be scheduled.

### **5.3. Coordination**

**If implemented as intended, the Unified Family Court model can facilitate coordination between the courts and family justice services.**

As noted throughout this report, UFC locations differ according to the extent to which FJS and dispute resolution mechanisms are offered and coordinated with each other and with the court. Some UFCs have implemented an explicit intake or referral mechanism as outlined in the original UFC model, while others do not have formal intake or other components that provide a coordination function between the court and out-of-court services. At one of the UFC sites, a case file is opened in the court registry at the time intake services are accessed, and all case-related activities are noted in the file. The file is maintained in the court registry regardless of whether or not the parties ever file an application or petition, or go to court. This was the only site in the evaluation where utilization of out-of-court services could be reliably tracked through the court files.

The coordination function in this one location (Site C) was clearly documented and results suggest that this location was more efficient and/or effective than the traditional court locations in resolving family issues. As summarized in Table 5-1, there are significantly<sup>34</sup> fewer court activities at this UFC than in traditional non-UFC courts and quasi-UFCs.

---

<sup>34</sup> p<.001

**Table 5-1: Number of Court Activities per Application/Filing**

Location/Group	Statistic	Total Court Activities
Quasi-UFC Sample	Mean	1.5248
	Median	2.0000
Traditional Non-UFC Comparison Sample	Mean	2.7741
	Median	2.0000
UFC Site	Mean	.9101
	Median	.0000

*Source: Case file review; basket divorce cases excluded*

The need for fewer court activities in this UFC Site to resolve issues could be a reflection of the high use of intake and conciliation services in that location. These services can help decrease the amount of court activity by helping parties to narrow or focus issues and to meet procedural requirements prior to going to court, thus saving the judge time in explaining court procedures or dealing with issues that can be more easily resolved.

There is other evidence to suggest that a staffed FLIC with a referral or coordination function can enhance utilization of non-court dispute resolution and/or FJS. For example, in the study conducted by Mamo et al. (2007), Oshawa had the highest rate of referrals to mediation from the Information Referral Coordinator (IRC). Of the four locations included in their study, Oshawa was the only one to have an IRC available every day during court registry hours. Similarly, the observations and anecdotal evidence collected during the current evaluation suggest that FLIC staff serve as intake coordinators, although a recommendation was made in favor of a properly funded, full-time information and referral coordinator with clearly defined roles and responsibilities.

Not only must coordination mechanisms be present, the referral mechanisms must also be in operation in order for families to utilize FJS. Mamo et al. (2007) found that the rate of referral can vary by location in terms of who is making the referrals. For example, the researchers found that in Oshawa, approximately half of referrals were made by the IRC, whereas in Barrie, 45% were made by lawyers. In Oshawa, judges referred parties to mediation in 18% of cases while in the other three locations, it was not apparent that judges had referred any parties. Clearly, circumstances in each location created a distinct referral mechanism or relationship. Therefore, factors other than accessibility and coordination influence utilization of services. Reasons for low referrals by different groups of law professionals at different locations cannot be determined conclusively from this study. However, results of interviews with members of the judiciary across all sites covered in the current evaluation suggest that one reason may be a lack of confidence in or the (perceived) quality of the services/service providers. Other factors noted in

interviews suggest that the relationship between the referring party and the service provider can influence referral patterns.

In the absence of intake or family law information services staff, court registry employees often serve as the point of entry into the family justice system and are key to coordination between the court and FJS. The current evaluation found substantial differences among the court sites with respect to coordination by court registry staff. For example, at one of the UFC locations, registry employees have adopted an informal model of intake and referral, which they feel has been possible because they only deal with family law issues and have had the opportunity to develop some expertise in dealing with them. At this location, court registry staff also have ready access to the UFC judges should they require advice. However, while these referrals may have had some impact on the overall performance of the UFC at that site compared to those with no referral services, the informal nature of the referral mechanism made it impossible to track and establish to what extent referrals may have contributed to case outcomes at the site.

It is important to acknowledge that FJS are also well coordinated at some locations with non-unified courts although this is generally the exception and not the rule.

#### **5.4. Less Adversarial Resolution of Issues**

Another evaluation issue outlined in the RMAF is the UFCs' approach to less adversarial resolution of family law matters. Proxy measures for the adversarial nature of issue or case resolution in this evaluation include whether or not cases went to trial and the extent to which issues within a case were resolved by consent.

Overall, the number of cases that went to trial is very small across all locations included in the case file review (2.4%, 47 applications); it is too small to yield meaningful results for a breakdown by court type.

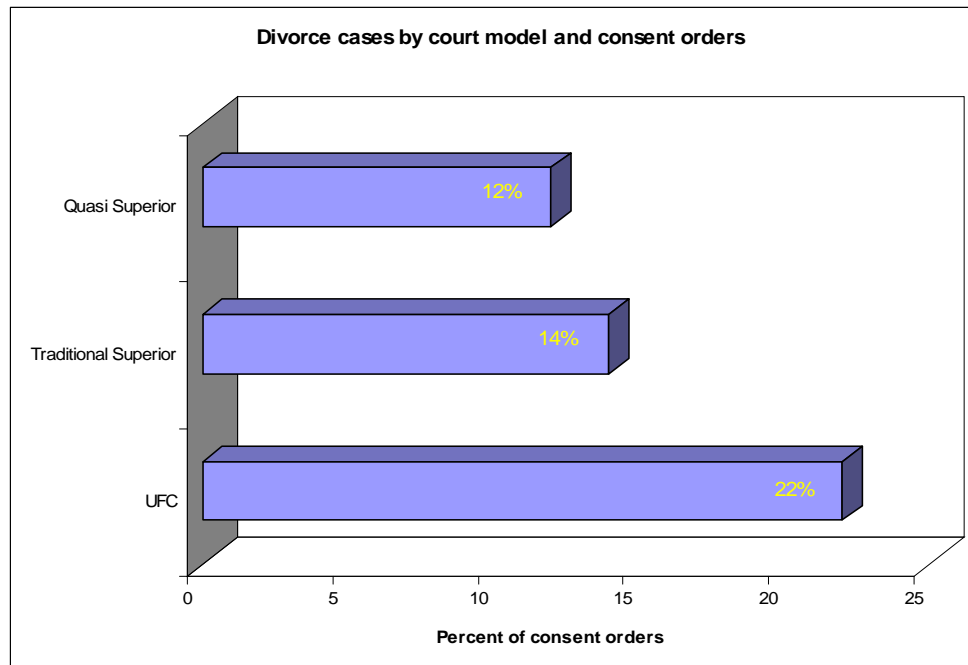
#### **Aggregate results comparing Unified Family Courts and traditional courts are inconclusive with respect to capacity and ability to arrive at less adversarial resolution of cases.**

When the results for all UFC sites are aggregated, the average proportion of consent orders per case at all UFCs is 29.7%, which is almost identical to the average proportion of consent orders per case at traditional non-UFC sites at 29.3%.<sup>35</sup> However, the individual sites demonstrate

---

<sup>35</sup> Quasi-UFCs were excluded from this analysis.

dramatic differences in the number of consents/agreements, with the proportion of consent orders per case ranging from an average of 8% at one UFC site to 69% at another. Some UFC sites (i.e., those that have implemented the model as originally intended) achieve a higher proportion of consent orders/agreements than do traditional court sites, while those UFCs that are less similar to the model achieve a similar or lower proportion of consent orders.



*Note: Quasi- and traditional provincial courts do not have jurisdiction over divorce.*

## 5.5. Timely Resolution of Issues

Timely resolution was explored in terms of time from first court activity to last activity noted for a specific filing (as mentioned before, the family case file remains open indefinitely as people can return and file new applications as issues arise). Time spent in court with a judge typically was not tracked in the court files and therefore could not be used as a measure. Perceived timeliness could only be assessed through key informant interviews as a survey of court clients was not part of the evaluation methodology.

**Results suggest that cases that go through a Unified Family Court take longer to resolve than do cases that go through a non-Unified Family Court.**

Overall, when compared to the traditional model, UFCs appear to need more time to resolve cases. As evident in Table 5-2, the amount of time between the first court activity to the last file activity is substantially higher, on average in UFCs (179 days) than in traditional non-UFC locations (130.5 days) and from the overall average (154 days).<sup>36</sup>

**Table 5-2: Time (in days) from First Court Activity to Last Recorded Activity (per Filing)**

Court Group	Mean	Median	Minimum	Maximum
UFC Sample	151.49	76.00	0	1,277
Traditional Non-UFC Comparison Sample	116.82	56.00	0	1,261
Overall Average (including Quasi-UFCs)	153.79	77.00	0	1,277

*Source: Case File Review*

The difference could be a reflection of various intervening factors including caseload, process issues (with formal referral steps, cases are anticipated to be active slightly longer as it takes extra time for the intake/referral step), or whether or not parties arrive prepared for the case or need to be sent back to provide required documentation.

Based on the materials and underlying assumptions built into the UFC model, it is anticipated that at UFCs, only the most complex and difficult cases go to court and that many other cases can be referred to and resolved through out-of-court resolution mechanisms. As such, cases recorded in the registry files at the courts would tend to represent the more complex cases at UFCs, which could take longer to resolve. At traditional court locations, where access to out-of-court services is more limited, it can be assumed that cases recorded in the court registries represent a full range of cases, from less to more complex. However, due to the fact that case complexity can depend on the attitudes of the parties more than on what type of issue is at stake, it is difficult to fully capture and control for case complexity when it comes to time to resolution. These caveats need to be taken into account for the interpretation of the findings related to time to resolution.

Interpretation of the timeliness of resolution measure is further complicated by the fact that “timely resolution” could mean different things to different people, depending on the issues at hand and other circumstances. It was stated by several judges in key informant interviews that the time to resolution often depends on how complex a case is, how well parties get along with

<sup>36</sup> The differences are statistically significant ( $p < .05$ ).

each other, to what extent they cooperate with court orders and many other intervening factors that cannot be reliably tracked through a large-scale file review. Therefore, parties to a case might consider the resolution timely despite the fact that it took over a year to resolve the issues, whereas other parties might not consider resolution to have been achieved in a timely manner even though the case was closed after four months. A few judges pointed out that not all cases are ready to move through the system at the same rate and parties moving through the resolution process before they are ready can be detrimental in the long run (i.e., these parties are more likely to return to court with the same or additional issues).

## 6. COST-EFFECTIVENESS ISSUES

This section of the report responds to two sets of evaluation questions:

- Is the UFC model a cost-effective approach to achieving the federal government's goals and objectives as they pertain to family law?
- Are there any alternative ways to achieving the UFC objectives?

### 6.1. Cost-effectiveness of the UFC Approach

At the time of the last UFC expansion in 1998, it was agreed that any provincial judicial salary and benefits savings incurred by provincial/territorial governments as a result of elevations from the provincial court out to the UFC would be re-invested in FJS. While it is anticipated that provincial governments did in fact make this re-investment, it is not possible to specifically track those funds. Also, these savings could be re-invested in a number of ways, not necessarily at UFC sites.

**Court administrative resources are streamlined as only one court registry is required for all cases/issues and frontline staff develop specialized knowledge dealing with the procedures and the families experiencing separation and divorce.**

Judges generally felt that two levels of court addressing family justice matters can be costly and not in the best interests of those being served.<sup>37</sup> There is some evidence to suggest that the UFC model enables a unique approach to service delivery in family law. Through intake appointments with specialized staff, families experiencing separation and divorce can be assisted in navigating the litigation process more easily, ensuring that time spent with a judge is reserved for issue resolution rather than procedural aspects of a case. In addition, as outlined in Section 5 of this report, the UFC model has contributed to increased access to family justice information services such as FLICs and intake services. As a resource to enable clients to navigate the court process

---

<sup>37</sup> Some of the provincial judiciary interviewed questioned whether the superior court was the most effective level at which to unify jurisdiction, despite the fact that divorce and division of matrimonial property cannot be dealt with at the provincial level under the current application/interpretation of the *Constitution Act*.

with more ease and inform them about opportunities for resolution outside of court, FLICs and intake can also assist in streamlining the litigation process.

These types of services are particularly relevant in the context of increasing numbers of SRLs. Judges reported that time is spent on leading SRLs through the procedures of the court.

**Results for the intensity of court usage indicate that Unified Family Courts may be more efficient than traditional non-unified courts in terms of issue resolution.**

Intensity of court usage can be considered in terms of the number of court-related activities from the first appearance to the last activity associated with an application. As can be seen in Table 5-3, the total number of court activities per application/new filing is lower in the UFCs than in the non-UFC comparison locations.<sup>38</sup>

**Table 5-3: Average and Median Court Activities and Applications by Type of Court**

Characteristics	Mean	Median	Minimum	Maximum
<b>UFC Sample</b>				
Total Number of Court Activities per Application	1.77	1.00	0	24
Total Number of Applications/Filings per Case	1.85	1.00	1	8
<b>Traditional Non-UFC Comparison Sample</b>				
Total Number of Court Activities	2.77	1.00	0	17
Total Number of Applications/Filings per Case	2.18	1.00	1	5
<b>Total Cases Reviewed (including Quasi-UFCs)</b>				
Total Number of Court Activities	1.79	1.00	0	24
Total Number of Applications/Filings per Case	1.84	1.00	1	9

Another possible way to assess UFC performance is to examine the number of repeat applications within cases. Repeat applications provide an indication of the intensity of court usage. They indicate that parties need to return to court with unresolved or new issues after first opening their case file. Results presented in Table 5-3 reveal little difference in the number of times parties return to court with a new or re-emerging set of issues across the different courts.

<sup>38</sup> This result is statistically significant ( $p < .05$ ).



## 6.2. Alternative Models

### 6.2.1. Canadian Alternatives

Dispute resolution mechanisms and FJS are supported and developed by the provinces/territories independently of the UFC. As a result, these services are not unique to UFC sites but can be found to varying extents in many provincial and superior court sites that follow the traditional (non-unified) court model. Quasi-UFC locations identified for the evaluation were selected because they closely resemble the UFC model in many respects. In essence, the key difference between the UFC and quasi-UFC is the lack of a unified jurisdiction in the latter; therefore, the hypothesis is that UFCs will perform at least as well as quasi-UFC locations. The results support this hypothesis.

As highlighted in Table 6-1, a higher proportion of cases at UFC locations (29.7%) accessed some type of dispute resolution mechanism than at the quasi locations, taken in aggregate (23.3%). It appears that the lower rate of FJS usage in the quasi-UFCs is the result of low utilization in the superior court, as the highest rate of utilization was recorded for the provincial quasi-UFC sites (33.1%).

**Table 6-1: Use of Dispute Resolution Mechanisms by Site Type**

Site Type	Dispute Resolution Mechanisms Accessed	
	N	%
<b>UFC (n=640)</b>	<b>190</b>	<b>29.7</b>
Provincial – quasi (n=532)	176	33.1
Superior – quasi (n=337)	26	7.7
<b>Total Quasi-UFC (n=869)</b>	<b>202</b>	<b>23.3</b>
<b>Total (n=1509)</b>	<b>392</b>	<b>26.0</b>

The case file review revealed that UFCs performed better in terms of utilization of FJS (Table 6-2). Twice as many cases in UFC locations recorded FJS utilization in the court registry files (21.3%) as compared to quasi-UFCs when provincial and superior locations were combined (10.7%). Again, this is a function of the low rate of utilization of FJS recorded in superior quasi-UFCs files. Overall, however, these should be interpreted with caution as information on utilization was not consistently recorded in case files and the results might be a reflection of registry procedures rather than actual utilization.

**Table 6-2: Evidence of Recorded FJS Utilization by Site Type**

Site Type	FJS Utilization Recorded in Application	
	N	%
<b>UFC (n=640)</b>	<b>136</b>	<b>21.3</b>
Provincial – quasi (n=532)	78	14.7
Superior – quasi (n=337)	15	4.5
<b>Total Quasi-UFC (n=869)</b>	<b>93</b>	<b>10.7</b>

As summarized in Table 6-3 below, provincial quasi-UFCs recorded the highest proportion of applications going to trial (3.2%). These findings suggest that factors other than the court model and access to dispute resolution mechanisms determine whether a case proceeds to trial or not.

**Table 6-3: Applications Proceeding to Trial by Site Type**

Site Type	Applications that went to Trial	
	N	%
<b>UFC (n=640)</b>	<b>11</b>	<b>1.7</b>
Provincial – quasi (n=532)	22	4.1
Superior – quasi (n=337)	6	1.8
<b>Total Quasi-UFC (n=869)</b>	<b>28</b>	<b>3.2</b>

Other Canadian alternatives to the UFC model (that were not included in the file review for the current evaluation) include family law proceedings under the revised *Family Law Act* that came into effect in Alberta in 2005. The Act aims to create a simplified, integrated family justice model by streamlining family law procedures. Under the new Act, most applications can be made to both the provincial and superior courts. Applications for divorce and the division of family property still have to be made to the superior court only. All other matters can be handled by the court at which the application is filed. The *Family Law Act* replaces the *Domestic Relations Act*, the *Maintenance Order Act*, the *Parentage and Maintenance Act*, and parts of the *Provincial Court Act* and the *Child, Youth and Family Enhancement Act*. In addition to integrating some of the responsibilities of the two levels of court, the Act is designed to increase access to and encourage the utilization of alternative dispute resolution and FJS.

### 6.2.2. International Examples

Many countries have adopted family justice strategies and introduced family court initiatives designed to achieve objectives similar to those which the UFC is trying to achieve. Key features of models for the delivery of family justice in the United States, Australia and Germany will be

highlighted here. These models were selected because of their alignment to federal goals and objectives for family justice in Canada.<sup>39</sup>

## United States

The concept of a unified family court has been explored by and implemented by several states in the US, although it differs from the Canadian concept, in that it focuses on unifying jurisdiction over all matters involving domestic relations or family dispute (e.g., dissolution, paternity, custody, visitation, domestic violence, etc.) with juvenile cases (e.g., dependency, delinquency, status offenses, juvenile traffic matters, adoption, abuse and neglect, etc.).<sup>40</sup>

Examples of unified family court initiatives that have been implemented in several states include:

- The Unified Family Court Pilot Project in Colorado (launched in 2000): Cases with dependency and neglect filings were randomly assigned to the new Family Court Division or traditional court processing.<sup>41</sup> Cases assigned to the Family Division were managed by a single judge/magistrate and the Family Court Facilitator, and reviewed by two Multi-Disciplinary Review Teams (MDTs) after an initial status conference. The purpose of the MDTs was to offer recommendations about additional or different services that the families might need.<sup>42</sup>
- Three Unified Family Court Pilot Projects in Indiana (launched in 2000): Each pilot project followed a slightly different design. The Monroe County pilot project included a marital court that assumed jurisdiction over complex separation and divorce matters to provide monitoring and supervision as required. Complex cases were defined by criteria such as (1) one or both parties without legal representation, (2) a family history of low compliance with court orders or negotiated agreements, and (3) case issues that are inappropriate for, or have not been settled by, alternative dispute resolution services. It also included a one family, one judge court to process other multi-case families.<sup>43</sup>

---

<sup>39</sup> It should be noted that the research on the initiatives profiled here shared a number of methodological challenges, similar to those described in this document (American Institutes for Research. 2002. Unified Family Court Evaluation Literature Review).

<sup>40</sup> American Institutes for Research. 2002. Unified Family Court Evaluation Literature Review.

<sup>41</sup> American Institutes for Research. 2002. Unified Family Court Evaluation Literature Review.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

- Family Court Pilot Projects (Kentucky, 1991): In 14 pilot sites, a unified family court was established, using a one family, one judge model. Implementation revealed the need for additional administrative support to meet the needs of both the judiciary and litigants. Each pilot is headed by a chief judge, supported by a Family Court Administrator who organizes and manages all non-judicial affairs. The administrator assists in case flow management while acting as a general liaison between court officials, the public, and community agencies.<sup>44</sup>
- The Unified Courts for Families Program in California (launched in 2002): A key component of the program was the establishment of six "mentor courts" that implemented various strategies for coordination and unification of family and juvenile proceedings, including those matters involving members of the same family with cases on multiple court calendars.<sup>45</sup>

Overall, the findings revealed that the pilot projects have been successful at increasing access to support services for families and increasing client satisfaction with court proceedings and support services, including alternative dispute resolution mechanisms.

## **Australia**

Both the Family Court of Australia and the Federal Magistrates Court of Australia have jurisdiction over family matters in all states and territories, with the exception of Western Australia which has its own Family Court. Although Australia does not have a combined jurisdiction, it has processes and goals similar to UFCs in Canada.

The two levels of court are independent but cooperate to provide streamlined access to the federal family law system. Like the UFCs in Canada, the family courts in Australia aim to provide a simplified path through the family law system, access to services for the resolution of family disputes, and a single point of filing. In 2004, the Combined Registry Program was introduced. The program entails 16 different projects that fall into two groups: projects designed to have a direct impact on parties and legal practitioners and projects designed to improve court internal processes. The Combined Registry Program aims to provide simplified access to the two family law courts by harmonizing the rules of the courts, providing common points of access to

---

<sup>44</sup> Ibid.

<sup>45</sup> Judicial Council of California Website. Retrieved on June 4, 2008 from <http://www.courtinfo.ca.gov/programs/cfcc/programs/description/unified.html>

both courts, improving case transfers, establishing a combined case tracking system and providing extensive information and support to parties navigating the family courts.<sup>46</sup>

In addition, changes to Australia's Family Law Act in 2006 support a less adversarial approach to hearing family cases. The Less Adversarial Trial (LAT) Model's Trial has been the subject of extensive evaluation. One evaluation specifically explored the impact of the program on parenting capacity and child well-being by comparing data from parents participating in LAT with similar data from parents in a control group whose cases were going through the standard process. The evaluation found that the LAT group reported more satisfaction with post-court access and custody arrangements, significantly less damage to the parent-child relationship, and greater contentment and emotional stability in children after court. The overall evaluation report completed as part of this study found that the less adversarial and more child-focused process of LAT helped parents to parent more cooperatively. A follow-up evaluation in 2007 found similar results.

## **Germany**

Family law in Germany is a matter of shared jurisdiction in terms of policy-making/decision-making, but is implemented solely at the provincial (Laender) or local level. Implementation of all aspects of family law is the responsibility of local district courts (Amtsgerichte). Family law cases are handled by specialized separate departments, including a specialized bench, of the local district courts. If the overall value of a claim is high or the matter is more complex, cases will be handled at a provincial court (Landgericht).

There is little information available regarding the performance of specialized family courts in Germany. However, the aspect of self-representation is worth noting in this context as it is a key feature of family law cases in Germany that is closely tied to having one specialized court for family disputes. Legal representation is mandatory in divorce cases in Germany. This has been criticized as creating a barrier for low-conflict or consent divorces where costs of legal representation are often seen as an unnecessary burden to litigants. In addition, involving lawyers can add a potential for conflict where no conflict exists between the parties themselves. To avoid this as much as possible, family lawyers generally undergo specific training that focuses on minimizing conflict. In addition, if both parties agree, the defendant party can opt out of legal

---

<sup>46</sup> Richard Foster and John Mathieson. 2006. The Combined Registry Initiative. 12th National Family Law Conference, Perth, 22 – 26 October 2006. Retrieved on June 4, 2008 from <http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Publications/The+Family+Law+Courts/The+combined+registry+initiative>

representation. In this case, only the initiating party needs a lawyer, which serves to reduce costs (although they still average 1,500-2,000 Euros in consent divorces) and the potential for “artificial” conflict.

Other family law matters can, in theory, be handled without legal representation, if they are handled at the local district court. Lawyers are mandatory for all issues in the regional/provincial court. Since legal representation is mandatory for divorce issues at both levels of court and for all issues in regional/provincial court, self-representation can be assumed to be rare in family law cases in Germany. Mandatory legal representation is often understood to be linked to the family court per se, rather than the case matter at hand. Therefore, ensuring that all family law matters are heard in specialized courts is associated with mandatory legal representation at these courts.<sup>47</sup>

## **Summary**

In Canada, the quasi-UFC model is an alternative to the UFC. The key difference between the UFC and quasi-UFC is the lack of a unified jurisdiction. Internationally, the concept of a unified family court in the US differs from the Canadian UFC concept because it focuses on unifying jurisdiction over all matters such as domestic relations or family dispute with juvenile cases. Australia does not have a combined jurisdiction but it has processes and goals similar to Canadian UFC model. In Germany, family law is a matter of shared jurisdiction in terms of policy-making/decision-making, but is implemented solely at the provincial level. Family law cases are handled by specialized separate departments, including a specialized bench. In addition, legal representation is mandatory in divorce cases.

---

<sup>47</sup> Almanac of Family Law Proceedings in Germany. Retrieved on April 7, 2008 from <http://www.juraforum.de/lexikon/Anwaltsprozess>

## 7. CONCLUSIONS AND LESSONS LEARNED

This section of the report presents the conclusions of the findings presented in the preceding sections and outlines recommendations for further research based on the lessons learned during the current evaluation.

### 7.1. Conclusions

**The goals and objectives of the Unified Family Court model are aligned with federal priorities.**

Responsibility for family law and the family justice system is shared between the federal and provincial/territorial governments. Implementation of the UFC model has thus been a collaborative exercise reflective of the goals and objectives of both levels of government.

Conceptually, the goals and objectives of the UFC model align well with federal and provincial/territorial priorities for family justice. However, the UFC concept may not be fully implemented at individual sites. Therefore, operationally, the UFC may not fully align with federal and provincial/territorial priorities.

**The complex and changing needs of families experiencing separation or divorce continue to be served by the Unified Family Court model.**

The increasing complexity of family law matters in the 1970s was a key impetus behind the development of the UFC conceptual model. Recent publications and findings from this evaluation suggest that Canadian families have undergone significant changes over the past several decades, adding to this complexity.

The unification of jurisdiction over family law in a single court was meant to make the system easier for families to navigate, a characteristic that aligns well with serving a population that faces many challenges such as language and cultural barriers. A specialized bench can also help to address issues that are related to cultural differences, as well as the increasing complexity of

family structure and conjugal histories. FJS were to provide a range of services to help people address and resolve issues through means outside the court. These services also provide support mechanisms that can be developed to address specific community needs.

Judicial and court staff required additional time to educate or guide self-represented parties through the various procedures required to initiate and continue a case. Well-developed FLIC services that are supported through the UFC model can be an important resource for parties that are self-represented. Some jurisdictions have developed services and programs specifically designed for self-represented litigants (for example, the Self-Represented Litigants Project in Nova Scotia).

**Overall, Unified Family Courts enable better access to a specialized bench of judges, on-site dispute resolution and family justice services than non-Unified Family Court sites.**

The evaluation findings demonstrated that UFCs enable better access to both the specialized bench and out-of-court services. While some out-of-court dispute resolution and FJS are also available at traditional court sites, the overall range and accessibility to these services were greater at UFC sites. While it was somewhat challenging to quantify reliably the extent to which some non-UFC sites might offer access to specialized judges, it appears that UFCs consistently rely on experienced, specialized judges resulting in a network of expertise in family law matters that is not available at traditional court sites. Access to a specialized bench was viewed as one of the key criteria of the UFC with respect to meeting the UFCs' stated objectives.

**Although some of the results are inconclusive due to design issues, there is some evidence to suggest that the Unified Family Court model helps to resolve issues more efficiently.**

Taken in aggregate, some of the results do not show there were any differences in the outcomes associated with the UFC model and with a more traditional non-UFC model. However, there was some evidence to suggest that the UFCs operate more efficiently in terms of use of judicial resources/court time. Specifically, the total number of activities per case to resolve issues was lower in the UFC group than in the non-UFC comparison group.

Furthermore, it appears that where the UFC closely resembles the intended model (i.e., includes all of the key elements identified in the conceptual model), there is evidence that the UFC model performs better than the more non-UFC sites. This was true for indicators such as time to resolution, less adversarial resolution of cases and decreased intensity of court utilization. The results suggest that a formal intake mechanism might be a key contributor to better performance



of the model with respect to indicators such as less adversarial resolution of issues (more consent orders within a case, fewer trials), a more timely resolution of cases and decreased intensity of court usage as well as fewer repeat applications when compared to the same performance indicators at non-UFC locations. It may be that the presence or absence of formal intake/referral services can affect performance. This is an area that could be explored through further research.

**Simply providing a specialized bench, out-of-court dispute resolution and family justice services does not guarantee their accessibility or utilization.**

Utilization of FJS was found to be affected by the presence of or absence of a strong referral mechanism, such as intake personnel. Individual preference of justice system personnel can also affect utilization of these services. Specifically, in the location where intake was the point of entry and mandatory for all parties, outcomes revealed high levels of consent, few court activities and shorter time to resolution. Where intake has been implemented as part of the process (i.e., mandatory intake), the service becomes the main point of entry.

## **7.2. Lessons Learned and Recommendations for Further Research**

**Assessing the impact of the Unified Family Courts against a more traditional model is challenging with respect to research design and implementation.**

Evaluation design in an historic perspective is always challenging, but in the current case, historic developments across all court sites combined with a set of other challenges, exaggerated the difficulties in assessing the impact of an initiative that was launched over 30 years ago. Since then, there have been various initiatives by the federal and provincial governments designed to change and improve family law and the approach to resolution in family law in Canada.

Many of the elements identified in the UFC conceptual model can be (and have been) implemented without unifying the jurisdiction of the superior and provincial courts. As a result, it is difficult to assess the impact of the UFC via a quasi-experimental design to assess the difference between the UFC group and a comparison group. As outlined in the evaluation design, it was necessary to select the sites based on specific criteria to ensure that the UFCs selected for the evaluation would resemble the UFC model as much as possible, whereas the control group needed to be as different from the UFC model as possible. Throughout the evaluation, it became increasingly apparent that traditional courts in Canada have, through various initiatives over time, adopted some of the approaches and provide some of the services that were initially only found at the UFC. In addition, site selection issues resulted in a scenario where the selected UFC sites

did not all resemble the UFC model as closely as possible. Both aspects combined, along with the challenges associated with intervening variables discussed above, created a situation where aggregate results were of limited value and often did not yield any meaningful findings. The site descriptions provide evidence for successes of some of the individual UFCs when compared to the traditional courts. Conclusions at the aggregate level with respect to the performance of the UFC model compared to non-UFC courts could only be drawn for some of the performance indicators, such as access to a specialized bench and the various out-of-court services.

**Client surveys associated with justice programs and that span across different jurisdictions require substantial planning prior to implementing an evaluation.**

Key challenges of a survey approach to getting the clients' perspectives are concerns over confidentiality and accessing contact information. These considerations were taken into account when designing the current evaluation, where a file review was deemed more feasible than a survey. However, it is recommended that options be explored to conduct a survey to complement the information collected and presented in the current report. For example, options for a survey could include a general population survey that does not rely on contact information from court files to contact court clients.

**Timely resolution of issues is a problematic indicator that is influenced by a range of intervening factors that could not be sufficiently controlled for in the analysis.**

It is possible that time to resolution might not be a reliable indicator with respect to measuring the performance of the UFCs or other justice initiatives, for that matter. Time measures in research involving cases that proceed through the justice system (i.e., court and out-of-court services) are problematic for various reasons. One difficulty associated with this indicator is that it can be interpreted many different ways and is generally poorly defined or logically linked with all activities in the program theory. For example, more timely resolution could refer to the actual time parties spend in court with a judge – a measure that is not tracked in the majority of court files – or it could refer to time to resolution measured in days between the initial application and the final resolution of a case. In addition, timely resolution of cases could also be interpreted as the extent to which the parties to a case feel that the amount of time taken to resolve issues was appropriate for them. Overall, the assumption that cases at UFCs can be resolved in a more timely manner and that this can be measured needs to be revisited in future attempts to assess the impacts on court performance.

**The complete disconnect between case files maintained by family justice service providers and the court registry files makes it very difficult to identify how parties proceed through the family justice system.**

A number of performance indicators could not be measured due to the inability to identify utilization of FJS or out-of-court dispute resolution activities through the court file review. Similarly, if family justice files had been reviewed, it would have been very difficult to cross-reference these files with court registry files in order to determine court usage patterns.

Case management/filing methods that permit the tracking of parties through the family justice system, in its entirety, would be important to similar evaluations or other research related to the family justice system.

## **8. RECOMMENDATIONS AND MANAGEMENT RESPONSE**

### **8.1. Success**

There is some evidence to suggest that the Unified Family Court (UFC) model helps to resolve issues more efficiently; and it enables better access to a specialized bench of judges and family justice services.

**Recommendation 1: It is recommended that the Department of Justice Canada disseminate the findings of this evaluation report and explore with stakeholders how the UFC model may better serve the complex and changing needs of the families experiencing separation or divorce.**

#### **Management Response:**

We agree with the conclusion and the recommendation. The Judicial Affairs Unit will share the evaluation report with other units within the Department, as well as with the provinces and territories and explore with stakeholders how the UFC model may better serve the complex and changing needs of the families experiencing separation or divorce.

### **8.2. Lessons Learned**

Client surveys associated with justice programs and that involve federal-provincial/territorial relations require substantial planning prior to implementing an evaluation.

The complete disconnect between case files maintained by family justice service providers and the court registry files makes it very difficult to identify how parties proceed through the family justice system.

Timely resolution of issues and case complexity are problematic indicators that are influenced by a range of intervening factors that could not be sufficiently controlled for in the analysis.

**Recommendation 2: It is recommended that the Department of Justice Canada work with the provinces and territories to collect data in a consistent manner so that a linkage can be made between family justice services and court files and the development of a client survey for the unified courts across Canada.**

**Management Response:**

We agree with the conclusion and the recommendation. The Judicial Affairs Unit will work with the Department's Research Divisions, Family Children and Youth Section and Committees in order to improve data collection, both in terms of creating linkages between the court files and family justice services and in relation to the development of a client satisfaction survey.

**Recommendation 3: It is also recommended that the Department of Justice revise performance indicators related to case resolution times and case complexity in order to improve measurement capability.**

**Management Response:**

We agree with the recommendation. The Judicial Affairs Unit will work with colleagues in the Evaluation Division to review and revise as appropriate the performance indicators in the UFC RMAF.