



**CHILD CENTRED FAMILY LAW STRATEGY
FORMATIVE EVALUATION
Summary, Recommendations and Management Response**

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**Evaluation Division
Policy Integration and Coordination Section**



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1. INTRODUCTION

1.1. Background

The Department of Justice has a long history of developing policies and supporting programs and services that aim to minimize the negative effects of separation and divorce on Canadian children, and to assist families and the justice system to focus on children's needs. The CCFLS builds on more than twenty-five years of federal, provincial and territorial government action in this area.

In 1996, following a series of federal-provincial-territorial studies and public and inter-governmental consultations, the Government of Canada announced the Child Support Initiative (CSI). Under the CSI the Department of Justice was given a five-year mandate to pursue seven activities, including:

- amending the *Divorce Act* and other legislation to introduce child support guidelines and provide additional enforcement tools to help the provinces and territories;
- amending FOAEAA and GAPDA to provide additional enforcement tools and to strengthen federal assistance to provincial and territorial enforcement programs to ensure family support obligations are respected;
- improving the public's awareness, knowledge and understanding of family support obligations through a general communications campaign;
- implementing a cooperative education program for provincial and territorial justice officials, justice service providers and the public;
- providing financial assistance to the provinces and territories to implement innovative, efficient and cost-effective services to assist parties in obtaining child support orders;

- providing financial assistance to the provinces and territories to enhance their maintenance enforcement programs; and,
- conducting research designed to monitor the impacts of the child support guidelines and new enforcement measures.

The CCFLS is designed to extend the program of financial support for family justice services previously available under the Child Support Initiative, increase the complement of judicial resources available for Unified Family Courts, and introduce legislative reforms dealing with custody and access and matters relating to support and enforcement.

The legislative element of the CCFLS was first tabled as Bill C-22, an *Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Judges Act and to amend other Acts in consequence*. That Bill died on the Order Paper in November 2003 when Parliament prorogued for an election. The Government is still in the process of determining how and when to deal with these reforms in Parliament. The findings of this evaluation reflect the fact that the Bill was not passed.

1.2. Program Overview

The broad policy objective of the CCFLS is to help develop and maintain a child-centered family justice system that:

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

The CCFLS has three core elements: legislative reforms; grants and contributions for family justice programs and services; and Unified Family Courts (UFCs).

Legislative Reforms: The former Bill C-22 received second reading on February 20, 2003. It would have amended the custody and access provisions to the *Divorce Act* to introduce a new model based on parental responsibilities. The proposed amendments would have eliminated the

terms *custody* and *access* for the purposes of the *Divorce Act* and introduced a list of criteria to assist in determining the “best interests” of the child. Where a judge is needed to make a decision – for example where parents cannot agree or in high-conflict or family violence cases – the court would make a *parenting order* allocating parental responsibilities. This approach emphasizes the best interests of the child, and focuses on ensuring that the parenting arrangement arrived upon has been tailored to the individual needs of the child.

The Bill also included provisions to ensure the more efficient administration of the federal support enforcement programs, in particular, the *Family Orders and Agreements Enforcement Assistance Act*. Additionally, the *Garnishment, Attachment and Pension Diversion Act* would have been amended to provide that family support obligations be given priority over other judgement debts.

Services for Families: The federal government does not provide direct services to separated and divorced parents, since that responsibility is vested in the provinces and territories. However, it is committed to assisting and promoting the development and maintenance of family justice services. These services include mediation, parent education and a range of information and support activities to assist parents making decisions about their children's care and help them work out child-focused parenting arrangements. Under the CCFLS, the federal government supports these services through the Child-centred Family Justice Fund (CCFJF).

Unified Family Courts (UFCs): Since 1977, federal and provincial / territorial governments have cooperated in the creation of UFCs as a means of reducing the complexity and expense for the people dealing with family issues in the two-tiered family justice system. The federally appointed judges who preside in the UFCs have authority to deal with all aspects of such cases. The courts also offer families a range of court-annexed and community-based support services. UFCs are currently available in seven provinces, including Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba and Saskatchewan.

Under former Bill C-22, the intention was to amend the *Judges Act* to increase the available complement of UFC judges by 62. These new judicial resources would allow significant expansion of UFCs within interested jurisdictions. The Minister of Justice would make decisions regarding the allocation of these resources among requesting jurisdictions following consideration of all UFC proposals. Up to 75% of the allocated positions would be filled through the elevation of provincial / territorial family court judges to the UFC, thus freeing up resources

previously required for their salaries. Provinces / territories would be expected to reinvest these savings and benefits into family justice services on an ongoing basis.

In addition to the above mentioned elements, the Department's Family Law Assistance Services Section administers three federal family law-related services, The Family Orders and Agreements Enforcement Assistance (FOAEA); The Garnishment, Attachment and Pension Diversion Act (GAPDA); and The Central Registry of Divorce Proceedings (CRDP Unit).

1.3. Resources

The CCFLS was allocated \$163,025,379 over five years. At least 70% of these resources are dedicated to the support of direct family justice services through transfers to the provinces and territories (42%) and the expansion of Unified Family Courts (28%).

1.4. Reach

The CCFLS is targeting its work for the benefit of children and their families through intermediary groups, many of whom represent the front line of CCFLS activities and who come in contact with families directly. These include:

- provincial-territorial family justice services, including maintenance enforcement programs;
- family court judges, family law lawyers and mediators;
- the professionals and support staff who deliver family justice and related services; and,
- Public Legal Education and Information organizations.

1.5. Evaluation Context

The evaluation was mandated to address issues relating to management and coordination of the Strategy, implementation and early results, and participant assessments of progress to date.

It is expected that the findings will be of interest to the Department of Justice and other federal departments and agencies involved in family law matters, and to provincial and territorial officials who are important partners in the CCFLS.

1.6. Methodology

The evaluation centred on two primary methods: the review of available documents and data on the activities and results of the CCFLS; and, interviews with key informants from the Department of Justice, the Canadian Centre for Justice Statistics at Statistics Canada, and provincial and territorial government departments involved in family justice issues.

The review examined 17 documents, as well as other written information provided by DOJ officials in response to requests. Findings from the document review were analyzed in conjunction with the findings from the key informant interviews.

2. KEY FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

This section of the report presents the findings, derived from the document and data review and key informant interviews, as well as the recommendations and management response.

Issue: Management and Coordination

Management and Coordination

The evaluation examined the adequacy of the financial and human resources available for the CCFLS, and the management and coordination mechanisms in place to implement the strategy both within the Department of Justice and with its partners. In addition, it assessed the extent to which the performance measurement strategy for the CCFLS has been implemented to date.

The CCFLS is managed and coordinated through a close collaboration of the “core” functions associated with the FCY Section, and a looser set of relationships with other components. Management and coordination mechanisms are in place that are enabling the Strategy to move forward effectively, but some benefits may be derived from closer linkages and more regular management and staff contact with the “non-core” components of the Strategy. There are suggestions from some participants that there would be benefits to closer, more regular linkages with the more arms-length components, and that such an arrangement would foster a stronger strategic direction for the CCFLS.

Recommendation 1: The DOJ should seek ways to establish closer, more regular linkages between the Family, Children and Youth Section, which has primary responsibility for the Strategy and the other responsibility centres involved in the Strategy, such as the Judicial Affairs Unit, FLAS and the Canadian Centre for Justice Statistics, in order to provide a stronger strategic direction for the CCFLS.

Management Response:

Agreed. FCY Management was somewhat surprised by this recommendation. Strong linkages already exist between FCY and the various partners to the Strategy. Regular meetings take place to discuss issues of mutual concern, in some cases as often as weekly, and there is a constant flow of e-mail or telephone communication between all units in the Section and colleagues in JAU, FLAS, International Private Law (IPL) and CCJS. These discussions focus on matters of substance and strategic direction.

The Director of FLAS and the Executive Director of CCJS are members of CCSO, and all Strategy partners in Justice are invited to attend the CCSO meetings, as well as those with stakeholders, to participate in discussions or make presentations. Also, Strategy partners from Justice and CCJS are members of the various FPT CCSO-FJ Sub-committees (Enforcement, Inter-jurisdictional and Research), as well as Working Groups on specific issues, which FCY co-chair.

Recognizing that, at some level, there appears to be some concern with respect to reinforcing linkages. Management will schedule quarterly meetings with all partners to the CCFJS.

The CCSO-Family Justice and its sub-committees and working groups are providing an effective mechanism for national collaboration on family justice issues.

The CCSO Research Sub-committee, however, has lacked focus thus far and has had difficulty arriving at an agenda for research at the national level. There is a recognized urgent need for better research and evaluation data, but commitments to date have been limited. The Research Sub-committee is addressing this issue through a strategic planning exercise that is nearing completion

Recommendation 2: It is recommended that the CCSO Research Sub-committee work collaboratively to implement the strategic plan to address the need for a more focused national research agenda to be brought forward and approved by CCSO-FJ. It is recommended that this Sub-committee create working groups to address research priorities including the evaluation of FJS.

Management Response:

Agreed. The CCSO-FJ Research Sub-committee has already implemented both recommendations. At its recent in-person in June 2005, three working groups were created to deal with the priority issues identified in the 2004/2005 Strategic Plan of the Sub-committee. These are “Evaluation of Recalculation Services”; “Research on Access Enforcement” and “Spousal Support”. At that same meeting, the Sub-committee agreed to draft a Work Plan for approval at CCSO-FJ next in-person meeting. The Work Plan has been drafted and is being prepared for presentation at the December 2005 meeting in Vancouver of CCSO-FJ.

It should also be noted that some of the barriers for collaborating on research between the various jurisdictions still exist, especially financial. It is very difficult to jointly fund projects given the restrictions for spending and/or contributing money to collaborative research activities.

One solution may be to have specific funding envelope for research and/or evaluation activities to which the provinces and territories could apply to that encourages two or more jurisdictions combine their efforts.

Performance Measurement

The performance measurement strategy for the CCFLS is supported in principle, and performance measures appear to be clear, well-understood and pertinent to the activities being undertaken and the outcomes being sought.

It is too early to assess the quality of reporting data, however there is concern that the performance measurement process is not receiving sufficient attention from senior management, and that capacity and workload constraints may result in a poor quality of information/data on results unless there is a re-commitment to the process and closer monitoring of progress.

Recommendation 3: It is recommended that the FCY Section, in collaboration with the Evaluation Division, conduct a detailed review of the performance measurement strategy to determine the quality of information collected and whether it will support a summative evaluation. This should include an analysis of the indicators outlined in the performance

measurement strategy section of RMAF that are intended to be used to report longer-term results and identify best practices across jurisdictions.

Management Response:

Agreed. Because the Divorce Act reforms have not passed and the expansion of UFCs has not yet been confirmed, the Strategy section of the RMAF should be re-visited. That examination will examine direct and intermediate outcomes, outputs, and their respective performance measure indicators. At the same time, coordinators and managers of the Strategy will verify that the organization and methods for collection or retrieval of their data and information will enable them to report efficiently on the outcomes and outputs from their activities in order to support a summative evaluation.

Issue: Implementation and Early Results of the Strategy

A major portion of the overall CCFLS budget is allocated to funding support for provincial/territorial programs and services. Restrictions in the available funding mechanisms including an inability to fund multi-year agreements that has resulted from an annual \$4 million frozen allotment in Gs and Cs funding for years 3 to 5 of the Strategy, a lack of longer-term predictability of funding and frequent delays in funding decisions, together present a significant barrier to the achievement of CCFLS objectives because they preclude longer-term planning and the development of more stable multi-year programs and services that would further those objectives.

With respect to the expansion of the UFCs, four provinces have already submitted proposals for new or expanded UFCs, however implementation of UFCs cannot proceed prior to passage of the necessary legislative amendment to the *Judges Act*. While this lack of necessary legislative amendment has been the primary barrier to progress in this area, some jurisdictions are not interested in establishing UFCs at this point because they are directing their attention and resources to other family law areas such as court-based programs and services, and believe that for the present they can realize many of the benefits of UFCs without incurring the implementation costs associated with introducing the new court structure.

Bill C-51(introduced May 20, 2005) which includes an amendment to permit the appointment of twenty-seven additional UFC judges has been introduced for Parliament's consideration in the Fall 2005 session

Despite Bill C-22 not passing, the Strategy has made considerable progress in all areas, and has produced the intended outputs in all areas that were not dependent on the passage of the legislation. For example:

- Legislative reforms continue to be developed, particularly in the support enforcement area both domestically and in relation to international agreements and other international conventions and family justice issues.
- Family Law Policy has also started to move ahead with the development of PLEI and other information and training initiatives associated with the principles embodied in Bill C-22.
- The Family Law Assistance Services Unit has made advances in enhancing federal tracing and garnishment services.
- The Program Development Unit has moved ahead with its support of provincial/territorial family justice programs and services, and has funded projects in keeping with CCFLS targets and priorities.
- The Research Unit is undertaking several of its own studies in the family justice area and is actively supporting the coordination of provincial/territorial research and evaluation and the development of a national family justice research agenda. CCJS has moved ahead on schedule with its two national surveys, the Survey of Maintenance Enforcement Programs and the Civil Court Survey. However, federal funding mechanisms and decision-making processes have caused delays in grants and contributions funding through the CCFJF, and reportedly restrict the kinds of projects that provinces and territories could develop, contrary to the objectives of the Strategy. The unpredictability of funding over the long-term, and even year-to-year, means that projects tend to be smaller in scope and more risk-averse than they would be if funding was more predictable.
- The CCSO Research Sub-Committee is viewed by some observers as not progressing as well as hoped in developing a national research agenda and in collaborating in joint research or evaluation projects on family justice issues. Funding mechanisms may be contributing by restricting the ways that the Department itself can fund joint research. However, the main barrier appears to be the lack of resources and a resulting reluctance on the part of the

provinces and territories to commit large amounts of time and resources to the research and evaluation function.

Issue: Program Development

From a program development perspective, the evaluation found that the Primary Areas of Activity (PAAs) are in keeping with both federal and provincial/territorial areas of priority, and have resulted in projects being funded through the Child-centered Family Justice Fund that align with those priorities. It also suggested that the weightings associated with the PAAs were in keeping with CCFLS objectives, and have been followed, for the most part, with the exception of the research and evaluation element. Research and evaluation expenditures are expected to meet targets over the life of the Strategy as these activities take on greater importance in the later years of the Strategy.

Reporting on progress by the provinces and territories, on the other hand, was found initially to be lacking in sufficient detail and not to be employing sufficiently common terms and measures. The Department of Justice undertook a needs assessment to determine what information the jurisdictions required to improve reporting quality, and from that study a Performance Measurement Handbook has been developed for use by the jurisdictions to provide guidance.

Recommendation 4: It is recommended that the Program Development Unit continue to monitor and produce progress reports by province and territory in order to provide more substantial information on the outcomes of the projects in terms of benefits being derived by children and parents.

Management Response:

Agreed. Building on the first Needs Assessment that was submitted to Treasury Board Secretariat in January 2005 and the “Summary of Child-centred Family Justice Fund Activities 2003-2005” that has recently been completed, the Program Development Unit will produce an informal annual report outlining the progress that is being made on services funded through the Child-centred Family Justice Fund, by province and territory. Progress will be determined based on reporting on performance indicators that are set out in the federal RMAF as well as the Performance Measurement and Evaluation Strategies that have been submitted by the provinces and territories.

Issue: Assessment of Progress to Date

The general approach reflected in the former Bill C-22 remains a suitable approach with which to pursue CCFLS objectives. No apparent gaps or problems having emerged in the two years since its introduction.

As a result of the legislation not passing, and because of the time required to implement the Strategy, to undertake research and collect performance information, it was premature at this point to make an assessment of the impacts of the Strategy, intended or unintended, and to take note of lessons learned in relation to impacts. While there is considerable overall satisfaction with the Strategy to date, and a belief that elements of the Strategy are moving forward well, there are concerns that effective reporting mechanisms, necessary to assess medium and longer-term outcomes are not in place.

The fact that the *Divorce Act* Reform Bill has not passed has been the single most important barrier to progress on the CCFLS, but despite this, the Strategy as a whole has moved forward significantly in many areas.

All intended activities and associated outputs are in place other than those made impossible by the Bill not passing, and the immediate outcomes that were possible to pursue have been achieved according to what was intended.

3. CONCLUSION

This interim evaluation of the Child-centred Family Law Strategy examined the implementation of the CCFLS, assessed progress to date in meeting the Strategy's objectives, identified potential barriers to the achievement of those objectives, and assessed the status of the Strategy's efforts to monitor performance in all component areas of the Strategy. Conclusions, recommendations and management response along with a plan of action are outlined in the appended table.