
Mandatory Parenting after Separation Pilot: Final Evaluation Report

OCTOBER 2000



Ministry of Attorney General
Policy, Planning & Legislation Branch
Corporate Planning Division

Table of Contents

EXECUTIVE SUMMARY	I
INTRODUCTION	I
EVALUATION OBJECTIVE	I
METHODOLOGY	II
LIMITATIONS	II
SUMMARY OF EVALUATION FINDINGS.....	III
MAIN REPORT.....	1
1. INTRODUCTION.....	1
2. PROJECT DESCRIPTION	1
3. EVALUATION OBJECTIVE	2
4. METHODOLOGY	2
LIMITATIONS	3
5. DETAILED RESULTS	4
A) FILE REVIEW: ANALYSIS OF CASE FLOW.....	4
<i>Profile of Files Reviewed</i>	<i>4</i>
<i>Case Flows and Outcomes – Old and New Rules</i>	<i>5</i>
<i>General Summary of the File Review</i>	<i>7</i>
B) COURT STAFF INTERVIEW: OBSERVATIONS ON COURT CASE FLOW.....	7
<i>Avoidance</i>	<i>7</i>
<i>Case Flow</i>	<i>7</i>
<i>General Summary of the Court Staff Interviews</i>	<i>8</i>
C) MPAS PARTICIPANTS INTERVIEW: DISPUTE RESOLUTION SUMMARY	8
<i>Influences on Dispute Resolution Choices.....</i>	<i>9</i>
<i>Use of Alternative Dispute Resolution (ADR).....</i>	<i>10</i>
<i>Reasons for Choosing ADR</i>	<i>10</i>
<i>Satisfaction with ADR.....</i>	<i>10</i>
<i>Use of Court.....</i>	<i>11</i>
<i>Reasons for Choosing Court.....</i>	<i>11</i>
<i>Satisfaction with Court</i>	<i>12</i>
<i>General Summary of the Participant Interviews.....</i>	<i>12</i>
6. SUMMARY OF EVALUATION FINDINGS	12
LIST OF TABLES:	
<i>Table 1: Exemptions to MPAS and reasons.....</i>	<i>5</i>
<i>Table 2: Attrition of cases proceeding through courts – Old Rules.....</i>	<i>6</i>
<i>Table 3: Attrition of cases proceeding through courts – New Rules.....</i>	<i>6</i>
<i>Table 4: MPAS participants’ choice of dispute resolution options.....</i>	<i>9</i>

Executive Summary

Introduction

This is the final report presenting the results of the evaluation of the Mandatory Parenting after Separation (MPAS) pilot project.¹ The first report presented findings for two of the three evaluation objectives. This report presents findings for a third evaluation objective, to assess the impact of MPAS on litigation patterns in the pilot jurisdiction. Due to the participatory process used to conduct the evaluation, recommendations were not required and the results are presented in summary form. The participatory process involved collaboration with the pilot sponsors in the design, conduct and reviewing of results all through the evaluation period. The final report provides a documentation of the process and results.

MPAS is a pilot project jointly undertaken by Family Justice Services, Corrections Branch, and the Dispute Resolution Office. The evaluation of the pilot project was undertaken by the Corporate Planning Division (formerly the Management Information and Evaluation Division) in collaboration with representatives from Corrections Branch and the Dispute Resolution Office.

The MPAS pilot commenced in June 1998, in the court locations of Burnaby and New Westminster, requiring parties with disputes about custody, access, guardianship and support orders to attend an MPAS workshop² prior to scheduling their first court appearance.³ The requirement to attend MPAS is ongoing in the pilot locations. Based on the findings presented in the first evaluation report, the MPAS project was expanded to several additional court locations in November 1999, and a further expansion occurred in September 2000.⁴

Evaluation Objective

One goal of the MPAS pilot project was to encourage parties to use means other than court to settle their family justice disputes. Expected outcomes of the project were less use of the courts and more use of alternatives to court by parties at pilot sites. The third objective of the evaluation, *“To determine the impact of MPAS on litigation rates in the pilot jurisdiction compared to the impact of offering Parenting After Separation (PAS) on a voluntary basis.”* will address the above stated goal of the pilot project. Evaluation

¹ The first MPAS evaluation report (August 1999) presented evaluation findings for the first two evaluation objectives: 1) to determine the extent to which mandatory referral to MPAS is accepted or opposed by those family justice clients who are subject to it, and 2) to assess the degree of participant satisfaction with the MPAS workshop. Further information regarding the evaluation of the pilot can be referred to in the MPAS Evaluation Framework (January 1999). The complete technical summary report on the case file analysis is entitled *“Mandatory Parenting After Separation (MPAS) Court File Review Summary Report”* and is available under separate cover.

² The curriculum of the voluntary PAS workshops was altered slightly in the pilot locations. The mandatory (MPAS) workshops are distinguished from the voluntary PAS sessions in this study.

³ A number of exemptions from the requirement to attend MPAS have been defined to allow immediate access to court in urgent cases, and for other circumstances where the requirement to attend is deemed not appropriate or practical. More detail on exemptions is provided in Section 5, footnote 16.

⁴ As of November 15, 1999, separating parents who go to Surrey, Vancouver and Kelowna provincial courts have also been referred to a MPAS session. Prince George, Abbotsford and Victoria began to participate in September 2000.

findings are presented in response to this objective, including a review of changes in court use and an exploration of the use of court and alternatives to court by MPAS participants.

Methodology

The objective of the evaluation was to measure change in litigation patterns that occurred as a result of the requirement for family justice clients to attend MPAS. As there were no quantitative baseline data available to conduct a pre- post-comparison to measure change in the pilot locations, a quasi-experimental approach was taken. A comparison location was established that was known to exhibit similar litigation patterns prior to the pilot, and a review of family case files was conducted at both pilot and comparison sites.

Two additional methods were employed to measure change: interviews with pilot site court staff; and follow-up interviews with MPAS participants. Multiple sources of data were used to enhance validity of the findings as all three methods used were constrained by limitations imposed by time and resource restrictions.

The review of family case files was conducted in October 1999, at the pilot locations (Burnaby and New Westminster) and at a comparison site where the pilot did not operate (North Vancouver). The researcher reviewed every file opened between August 1, 1998 and January 31, 1999, including only files that were eligible for the study.⁵ Elapsed time from the applicant opening a file to the researcher's review ranged from nine to fifteen months. In total, 232 family justice files were reviewed, 132 at the pilot sites and 100 at the comparison site. An analysis of case flows determined the proportion of non-exempted cases that progressed from an application to a first and then subsequent court appearances.

Interviews with five pilot site court registry staff were conducted in March 1999, after the pilot had been in operation for about ten months. The results presented in this report focus on interview questions that addressed perceptions of change in litigation patterns in the pilot location.

Follow-up interviews with twenty-two self-selected MPAS participants were conducted in March 1999 about six months after the participants had attended the course. The results presented in this report focus on those interview questions that addressed the participants' plans or attempts to resolve their disputes by any means, including court and alternatives to court.

Limitations

All factors that may have influenced case flow and the outcome of the pilot throughout the period of study were not documented due to resource limitations. These factors include, for example, the influence of other justice reform initiatives and avoidance of the mandate (MPAS) by family justice clients. Some of these issues were explored in the court staff interviews.

⁵ Ineligible files included those under the *Child Family Community Services Act* (CFCSA) or under the *Family Maintenance Enforcement Act* (FMEA) enforcement action, or no children involved, etc. The term "opened" refers to new files opened during the period, as well as existing files where a new application or an application to vary an existing order had been filed during the period.

One significant change that occurred during the MPAS pilot evaluation period was the implementation of new provincial court (family) rules on December 1, 1998.⁶ To isolate any potential effects on litigation patterns at the pilot and comparison locations, the researcher separately examined files for the periods under which old rules applied and under the new rules.

The results of the case file review should be viewed with some caution as the number of files reviewed was relatively small. Further, files opened in the latter part of the study period had not had as much time to evolve through the various possible stages of a case flow as cases that were initiated earlier in the pilot period. The results for these cases in particular should be viewed with caution.

The results of the interviews with MPAS participants and court staff are not representative of their respective populations, hence they may be considered as exploratory only.

Summary of Evaluation Findings

The results from each of the three methods used to measure change in litigation patterns in the pilot locations are presented here in a brief summary.

Results of the file review indicate that MPAS may have resulted in a reduction in the number of cases going to trial in the pilot jurisdictions. For those cases that did go to court, it appears that fewer were likely to go to a second, third or subsequent appearances in the pilot locations. Cases at the comparison site were more likely to proceed to a first, second, third or more appearances than at the pilot sites.

For cases under the old provincial court rules, the impact of MPAS on court usage appears to be a reduced number of first appearances in particular, and in somewhat fewer second and third appearances. For example, 96 percent of cases begun at the comparison site before December 1, 1998 proceeded from a filed application to a first appearance, compared to 66 percent of cases at the pilot sites.

The observed reduction is more pronounced for cases begun after the new rules were implemented on December 1, 1998. For cases under the new rules, it appears that the impact of MPAS on court usage is being felt in a reduced number of appearances from the first appearance onwards. Though based on a smaller sample, data for cases in this period indicate that only four percent of cases proceeded to more than three court appearances at the pilot sites, compared to 23 percent at the comparison site.

The file review results also indicate that the new provincial court rules appear to be reducing the number of cases that proceed to a first appearance at all three sites. At North Vancouver, for example, only 77 percent of cases under the new rules proceeded to a first appearance, compared to 96 percent under the old rules. The impact of the new

⁶ Among other changes to the provincial court (family) rules, the new rules introduce an obligation of the respondent to reply within 30 days of being served notice of application to the court. If the respondent replies in the form of a counterclaim, the applicant then has an obligation to reply to the counterclaim within 30 days. The potential for a delay in proceeding to court of up to 60 days may have affected litigation patterns in both the comparison and pilot locations. Under the new rules it has been possible for a case to proceed to first appearance even if no one has filed a certificate of attendance at PAS.

rules on the likelihood of cases proceeding to second, third or more appearances was more pronounced at the pilot locations than in the comparison site.

Observations by court staff supported findings from the file review data. Case flow appears to have been improved as a result of MPAS in two ways. First, court staff observed that during the pilot, there was an initial reduction in the number of cases that went to first appearance, and second, processing of files was streamlined with a reduction in the number of applications per file. Staff observed that after implementation of the new provincial court rules, there was a reduction in the number of cases going to trial, but that processing of cases was delayed and more complicated than with the old rules.

Court staff observed that there was a minimal amount of avoidance of the mandate to attend MPAS. A few family justice clients commented to court staff that they would take their case to either Port Coquitlam or Surrey. Court staff thought that other clients either did not file an application or saw a Family Justice Counsellor to come to consent in an effort to avoid the extra step in the court process. No clients mentioned to staff any intention to take their case to the Supreme Court in order to avoid the requirement.

Responses from MPAS interview participants indicate that their reasons for using courts and/or alternatives to court reflect an exploration of the full range of appropriate dispute resolution options available to them, as presented in the MPAS course.⁷ Overall, the majority of the MPAS participants interviewed used or planned to use alternatives to court (ADR), and about two-thirds of the interview participants used or planned to use court to resolve their disputes. About half used or planned to use a combination of both the courts and alternatives to court. About one-third used ADR exclusively, and a much smaller proportion used court exclusively to attempt to resolve their dispute.

Interview participants' reasons for choosing alternatives to court reflected concepts delivered by the MPAS course. Interview participants explained that the course helped them to maintain a focus on their child(ren) and become more aware of how the process of separation was affecting their child(ren). Cost was also a factor in choosing alternatives to court, as well as a preference for ADR over court for various reasons.

Interview participants were satisfied with ADR when they felt that the services they received from the Family Justice Counsellor were very effective, and/or when they achieved closure or resolution on all issues in dispute. Interview participants were dissatisfied with ADR when: they felt they had not completely resolved their issues or not achieved closure on their case; met with resistance, lack of cooperation or abusive behaviour from the other party; and/or felt that the Family Justice Counsellor(s) were not effective in their case.

Interview participants who went to court or planned to go to court did so for appropriate reasons, including because: they had previously tried mediation or the services of a Family Justice Counsellor and found it unsuccessful; the other party was abusive, unresponsive, difficult to deal with, substance dependent or violent; they were the respondent; and/or the case involved a no-contact or restraining order.

⁷ The modified course curriculum included a precaution that alternatives to court were not appropriate in all cases, for example, in cases that involved a history of family violence.

Interview participants were satisfied with court when they achieved a sense of closure in their case. Factors that contributed to interview participants' dissatisfaction with their court experience included a perception of incompetence with some aspect of the justice system, and the perception of bias in the family justice system. Participants were also dissatisfied with the outcome, in that the other party was viewed as the victor, and themselves, the loser. Others were dissatisfied because their issues were unresolved.

Overall, the results of the evaluation suggest that positive changes have occurred as a result of MPAS. Those changes are a reduced and improved flow of cases in family court in the pilot locations, and an awareness in participating family justice clients of the full range of appropriate dispute resolution options available to them, and of how the separation process and their dispute resolution choices affect their children.

Main Report

1. Introduction

This is the final report presenting the results of the evaluation of the Mandatory Parenting after Separation (MPAS) pilot project.⁸ The first report presented findings for two of the three evaluation objectives. This report presents findings for the third evaluation objective, to assess the impact of MPAS on litigation patterns in the pilot jurisdiction. Due to the participatory process used to conduct the evaluation, recommendations were not required and the results are presented in summary form. The participatory process involved collaboration with the pilot sponsors in the design, conduct and reviewing of results all through the evaluation period. The final report provides a documentation of the process and results. The report is organized as follows:

- Section Two provides an overview of the MPAS pilot project;
- Section Three identifies the evaluation objective addressed in this report;
- Section Four describes the methodology and limitations of the sources of data;
- Section Five presents more detailed results based on each of the three sources of data;
- Section Six presents the findings in relation to the evaluation objective in summary.

2. Project Description

MPAS is a pilot project jointly undertaken by Family Justice Services, Corrections Branch, and the Dispute Resolution Office. The evaluation of the pilot project was undertaken by the Corporate Planning Division (formerly the Management Information and Evaluation Division) in collaboration with representatives from Corrections Branch and the Dispute Resolution Office.

The MPAS workshop is a three-hour session designed to inform parents/guardians about:

- The separation and divorce process and its stages;
- The impact of separation and divorce on children and how best to help children through this difficult time;
- How the court decides child support issues; and,
- The full range of options available to parents to resolve issues in dispute.

The MPAS pilot commenced in June 1998, in the court locations of Burnaby and New Westminster, requiring parties with disputes about custody, access, guardianship and support orders to attend an MPAS workshop⁹ prior to scheduling their first court

⁸ The first MPAS evaluation report (August 1999) presented evaluation findings for the first two evaluation objectives: 1) to determine the extent to which mandatory referral to MPAS is accepted or opposed by those family justice clients who are subject to it, and 2) to assess the degree of participant satisfaction with the MPAS workshop. Further information regarding the evaluation of the pilot can be referred to in the MPAS Evaluation Framework (January 1999). The complete technical summary report on the case file analysis is entitled "*Mandatory Parenting After Separation (MPAS) Court File Review Summary Report*" and is available under separate cover.

⁹ The curriculum of the voluntary PAS workshops was altered slightly in the pilot locations. The mandatory (MPAS) workshops are distinguished from the voluntary PAS sessions in this study.

appearance.¹⁰ The requirement to attend MPAS is ongoing in the pilot locations. Based on the findings presented in the first evaluation report, the MPAS project was expanded to several additional court locations in November 1999, and a further expansion occurred in September 2000.¹¹

3. Evaluation Objective

One goal of the MPAS pilot project was to encourage parties to use means other than court to settle their family justice disputes. Expected outcomes of the project were less use of the courts and more use of alternatives to court by parties at pilot sites. The third objective of the evaluation, “*To determine the impact of MPAS on litigation rates in the pilot jurisdiction compared to the impact of offering Parenting After Separation (PAS) on a voluntary basis.*” will address the above stated goal of the pilot project. Evaluation findings are presented in response to this objective, including a review of changes in court use and an exploration of the use of court and alternatives to court by MPAS participants.

4. Methodology

The objective of the evaluation was to measure change in litigation patterns that occurred as a result of the requirement for family justice clients to attend MPAS. As there were no quantitative baseline data available to conduct a pre- post-comparison to measure change in the pilot locations, a quasi-experimental approach was taken. A comparison location was established that was known to exhibit similar litigation patterns prior to the pilot, and a review of family case files was conducted at both pilot and comparison sites.

Two additional methods were employed to measure change: interviews with pilot site court staff; and follow-up interviews with MPAS participants. Multiple sources of data were used to enhance validity of the findings as all three methods used were constrained by limitations imposed by time and resource restrictions. Convergence of the findings from all three sources confirms the findings of each source and thereby enhances the overall validity of the study. While the file review results provide a quantitative view of the influence of MPAS on courts, the qualitative results of interviews with participants and court staff explore the factors that may have influenced the decisions of individuals in their methods of settlement.

The review of family case files was conducted in October 1999, at the pilot locations (Burnaby and New Westminster) and at one comparison site where the pilot did not operate (North Vancouver). The researcher reviewed every file opened between August 1, 1998 and January 31, 1999, including only files that were eligible for the study.¹²

¹⁰ A number of exemptions from the requirement to attend MPAS have been defined to allow immediate access to court in urgent cases, and for other circumstances where the requirement to attend is deemed not appropriate or practical. More detail on exemptions is provided in Section 5, footnote 16.

¹¹ As of November 15, 1999, separating parents who go to Surrey, Vancouver and Kelowna provincial courts have also been referred to a MPAS session. Prince George, Abbotsford and Victoria began to participate in September 2000.

¹² Ineligible files included those under the *Child Family Community Services Act* (CFCSA) or under the *Family Maintenance Enforcement Act* (FMEA) enforcement action, or no children involved, etc. The term “opened” refers to new files opened during the period, as well as existing files where a new application or an application to vary an existing order had been filed during the period.

Elapsed time from the applicant opening a file to the researcher's review ranged from nine to fifteen months. In total, 232 family justice files were reviewed, 132 at the pilot sites and 100 at the comparison site. An analysis of case flows determined the proportion of non-exempted cases that progressed from an application to a first and then subsequent court appearances.

Interviews with five pilot site court registry staff were conducted in March 1999, after the pilot had been in operation for about ten months. The results presented in this report focus on interview questions that addressed perceptions of change in litigation patterns in the pilot location.

Follow-up interviews with twenty-two self-selected MPAS participants were conducted in March 1999 about six months after the participants had attended the course. The MPAS participants selected for interviews were drawn from respondents to a post-session survey who had volunteered to participate in a follow-up interview.¹³ The results presented in this report focus on those interview questions that addressed the participants' plans or attempts to resolve their disputes by any means, including court and alternatives to court.

Limitations

All factors that may have influenced case flow and the outcome of the pilot throughout the period of study were not documented due to resource limitations. These factors include the influence of other justice reform initiatives, variance in registry procedures, occurrences such as staff changeovers, implementation startup problems, and avoidance of the mandate (MPAS) by family justice clients. Some of these issues were explored in the court staff interviews.

One significant change that occurred during the MPAS pilot evaluation period, that was documented in the file review and explored in the staff interviews, was the implementation of new provincial court (family) rules on December 1, 1998.¹⁴ To isolate any potential effects on litigation patterns at the pilot and comparison locations, the researcher separately examined files for the periods under which old rules applied and under the new rules. The main difference in registry procedure was that under the new rules a court date could be set without the applicant filing a "certificate of attendance", as the filing of a reply by the respondent could also trigger the setting of a court date.

The results of the case file review should be viewed with some caution as the number of files reviewed was relatively small. Also, cases that appear to be closed or inactive can continue again after a long hiatus. For this reason, the results for the cases reviewed should be viewed as "snapshots" in time, with some historical information captured,

¹³ The post-session survey was conducted in the last 15 minutes of every MPAS session during the six-month period of August 1998 through January 1999, and yielded a response rate of 80 percent. Twelve percent of post-session survey respondents participated in follow-up interviews. Only those participants who attended MPAS through the mandatory referral were interviewed (see Section 5, footnote 23 for more detail on selection).

¹⁴ Among other changes to the provincial court (family) rules, the new rules introduce an obligation of the respondent to reply within 30 days of being served notice of application to the court. If the respondent replies in the form of a counterclaim, the applicant then has an obligation to reply to the counterclaim within 30 days. The potential for a delay in proceeding to court of up to 60 days may have affected litigation patterns in both the comparison and pilot locations. Under the new rules it has been possible for a case to proceed to first appearance even if no one has filed a certificate of attendance at PAS.

rather than as definitive outcomes of these cases. Further, files opened in the latter part of the study period had not had as much time to evolve through the various possible stages of a case flow as cases that were initiated earlier in the pilot period. The results for these cases in particular should be viewed with caution.

The results of the interviews with MPAS participants and court staff are not representative of their respective populations, hence they may be considered as exploratory only.

5. Detailed Results

This section presents more detailed results from each of the three individual research methods: a) case file review; b) pilot site court staff interviews; and c) MPAS participants' follow-up interviews.

a) **File Review: Analysis of Case Flow**

The technical file review report entitled “*Mandatory Parenting After Separation (MPAS) Court File Review Summary Report*” includes a discussion of the methodology, data source documents, the research population and sample, and a summary of results from the file review. The results include a discussion of the profile of family case files and case flows and outcomes under both old and new rules. Following are the highlights of the technical file review summary report.

Profile of Files Reviewed

The purpose of the case file review was to determine the impact of the MPAS pilot on the flow of individual cases into and within the court system. The researcher looked at every file opened between August 1, 1998 and January 31, 1999, including only those family court files that were eligible for the study.¹⁵ Ineligible files included those under the Child Family Community Services Act (CFCSA) or under the Family Maintenance Enforcement Act (FMEA) enforcement action, or did not involve children.

A typical case flow for a family court case begins with the filing of an application for an order, followed by the setting of a date for a first appearance in court. Subsequent appearances can be scheduled to hear evidence as the case requires. Cases may conclude when a judge issues an order, when the parties arrive at a consent order, or when the case is withdrawn or deemed inactive. At the MPAS sites, a date for a first appearance in court was not set until the applicant had filed a MPAS “certificate of attendance” or had been exempted from the requirement to attend.¹⁶

¹⁵ The term “opened” refers to new files opened during the period, as well as existing files where a new application or an application to vary an existing order had been filed during the period.

¹⁶ Exemptions were made at the registry if: 1) the applicant was filing a consent order; 2) one of the parties was a Director under the *Child Family Community Services Act* (CFCSA); 3) the applicant had assigned rights of maintenance to the Crown under the *BC Benefits Act* (BCBA); 4) the applicant was a party to an application under the Reciprocal Enforcement of Maintenance Order (REMO) Provisions (Part 8) of the *Family Relations Act* (FRA); 5) if a party was applying for an order under section 37 or 38 of the FRA; or, 6) the party established that he or she had attended a PAS session within the previous two years. Exemptions were applied for in writing to the Program Administrator (PA) if: 1) the party was not fluent in the language in which the program was offered; 2) the party resided permanently in a community where the Program was not offered; 3) the party was incapable of attending due to

The incidence of cases at the pilot sites where both parties attended MPAS *and* filed their certificates was relatively low. Applicants were more likely to file a certificate than were respondents. However, in about 30 percent of non-exempted cases neither party filed a certificate.¹⁷ In eight cases the judge ordered one or both parties to attend MPAS.

Exemptions to the mandatory requirement to attend the MPAS session were granted by the court registry at the filing of the application by a party or on written request to the Program Administrator and were counted for the two pilot sites. For the comparison site, a judgement was made regarding whether a registry type exemption would have been granted.

Results from the file review indicate that in total there were 39 cases exempted at the registry or by the Program Administrator, as shown in Table 1. The pilot sites had more registry-type exemptions than would have been the case in North Vancouver.

Table 1: Exemptions to MPAS and reasons.

	<i>Pilot Sites: New Westminster and Burnaby</i>	<i>Comparison Site: North Vancouver</i>
<i>Reasons for registry exemptions:</i>		
Restraining Order sought	8	13
Risk of loss of contact with children	3	4
Risk of harm to children	8	4
Already attended PAS	4	0
Filing a consent order	1	1
Rights to maintenance assigned (BCBA)	1	0
Director a party (CFCSA)	7	1
Other (respondent out of province)	6	0
<i>Program Administrator exemptions:¹⁸</i>		
Applicant only	3	na
Respondent only	4	na
Both parties	1	na
<i>Total files with at least one party exempt¹⁹</i>	39	19
<i>Percent of files reviewed²⁰</i>	29.5	14.4

Case Flows and Outcomes – Old and New Rules

As shown in the following tables, results indicate that cases at the comparison site were much more likely to proceed to a first appearance, and more likely to proceed to a third or

a serious health issue; or 4) any other reason. During the pilot, the PA had authority to approve or reject applications for exemption.

¹⁷ The number of cases with filed certificates should be viewed as an indicator of the minimum number of parties who complied with the requirement to attend. Respondents were permitted to bring their certificate to court rather than file it. Also, many people may have attended MPAS and then decided against further court action, and so did not bother to file their certificates. The proportion of cases that did not attend MPAS and those who did not go to court after initially attending MPAS is unknown.

¹⁸ Over the period of the pilot (June 1998 - January 1999), the Program Administrator (PA) reviewed 46 requests for exemption. Twenty-seven requests were granted, eight of which were actually registry-type exemptions. Nineteen requests were not granted. Of the 27 PA granted exemptions, only the above 8 appeared in the case file review sample.

¹⁹ May not equal the sum of the above, as an application may have more than one type of exemption.

²⁰ The number of files reviewed does not encompass the total population of family justice clients who were referred to MPAS during the pilot. See footnote 17 regarding filed certificates of attendance.

subsequent appearance than at the pilot sites. For example, 96 percent of cases begun at the comparison site under the old rules proceeded from a filed application to a first appearance, compared to 66 percent of cases at the pilot sites, as shown in Table 2.

Table 2: Attrition of cases proceeding through courts – Old Rules.

<i>Cases Started Under Old Rules</i> <i>(August 1, 1998 – November 30, 1998)</i>	<i>Pilot Sites: New Westminster & Burnaby</i>		<i>Comparison Site: North Vancouver</i>	
	<i>Number of Cases</i>	<i>Percent of total potential court cases</i>	<i>Number of Cases</i>	<i>Percent of total potential court cases</i>
<i>Potential court cases</i>	74	100%	68	100%
<i>Proceeding to 1st appearance</i>	49	66%	65	96%
<i>Proceeding to 2nd appearance</i>	35	47%	37	54%
<i>Proceeding to 3rd appearance</i>	24	32%	27	40%
<i>Proceeding to additional appearances</i>	15	20%	15	22%

In general, there was a large attrition of cases between the first and second appearances at the comparison site. The likelihood of a case not progressing to a first or subsequent appearance was more pronounced at the pilot sites than at the comparison site, and was most pronounced in Burnaby.

The observation is more pronounced for cases begun under the new rules. Though based on a smaller sample, data for cases started in this period indicate that only 4 percent of cases proceeded to more than three court appearances at the pilot sites, compared to 23 percent at the comparison site, as shown in Table 3.

Table 3: Attrition of cases proceeding through courts – New Rules.

<i>Cases Started Under New Rules</i> <i>(December 1, 1998 – January 31, 1999)</i>	<i>Pilot Sites: New Westminster & Burnaby</i>		<i>Comparison Site: North Vancouver</i>	
	<i>Number of Cases</i>	<i>Percent of total potential court cases</i>	<i>Number of Cases</i>	<i>Percent of total potential court cases</i>
<i>Potential court cases</i>	24	100%	13	100%
<i>Proceeding to 1st appearance</i>	12	50%	10	77%
<i>Proceeding to 2nd appearance</i>	7	29%	8	62%
<i>Proceeding to 3rd appearance</i>	3	13%	5	38%
<i>Proceeding to additional appearances</i>	1	4%	3	23%

Because few cases had been started under the new rules during the pilot period, the results for this time period should be viewed with caution. Nonetheless, two effects are observable. First, the new rules appear to be reducing the number of cases that proceed

to a first appearance at all three sites. At North Vancouver, for example, only 77 percent of cases under the new rules proceeded to a first appearance, compared to 96 percent under the old rules. Second, the impact of the new rules on the likelihood of cases proceeding to a first, second, third or more appearances was more pronounced at the pilot locations than in the comparison site.

General Summary of the File Review

For cases under the old provincial court rules, the impact of MPAS on court usage appears to be a reduced number of first appearances in particular, and in somewhat fewer second and third appearances. For cases under the new rules, it appears that the impact of MPAS on court usage is being felt in a reduced number of appearances from the first appearance onwards.

b) Court Staff Interview: Observations on Court Case Flow

Five court staff from the two pilot locations were interviewed after the pilot had been in operation for about ten months, including three staff from the New Westminster registry and two from the Burnaby location.

Avoidance

Avoidance of the mandate to attend a MPAS session by clients appears to have been minimal, based on the observations reported by court staff.

Court staff were asked to comment on any other ways that the program processes could be handled to make the processes better for family justice clients. One staff noted that often in the first phase of implementation, legal counsel would file an application by courier in an attempt to bypass the MPAS requirement. A letter had to be sent to these counsel advising them of the requirement.²¹ Hence, these attempts were not successful.

Court staff were also asked if family justice clients said anything to them about any intention to avoid the requirement to attend MPAS. The three staff from New Westminster all said “yes”, and the two staff from Burnaby both said “no”. The New Westminster staff all estimated approximately three or four clients said something to them over the period of the pilot. The New Westminster staff said clients had told them they would take their case to either Surrey or Port Coquitlam.

Case Flow

Case flow appears to have been improved as a result of MPAS in New Westminster in two ways. First, court staff observed that during the pilot, there was an initial reduction in the number of cases that went to first appearance, and second, processing of files was streamlined with a reduction in the number of applications per file. In Burnaby, after implementation of the new provincial court rules, a reduction in the number of cases going to trial was perceived, but that processing of cases was delayed and more complicated than with the old rules.

²¹ Staff indicated that the bar had been notified of the mandate prior to the implementation of the pilot.

Court staff were asked to comment on any improvement in efficiency of work load or case flow in the court registry. Three staff (from New Westminster) all had made observations that there was a positive effect on court case flow as a result of the pilot. One staff argued that efficiency was largely improved, since, in his/her view, the process of referring clients to the mandated program eliminated less serious cases. Another staff observed that clients had perceived the course as one extra step in the process, and to avoid the step would either not file an application, or seek assistance from a Family Justice Counsellor to come to consent. Staff observed that this avoidance resulted in fewer first appearances, hence affecting the flow of cases through their registry when MPAS was first implemented.

The third staff from New Westminster observed a very improved case flow, with fewer applications per file because he/she observed that once he/she mentioned the benefits of taking the course, clients were more amenable to taking it, and there was less time spent by staff processing the file.²²

While the two court staff from Burnaby did not observe any improvement in case flow during the MPAS pilot, both did observe possible effects of the new family court rules on case flow. One reported, *“The rules have also changed now and the courts and the lawyers, because of the new rules, are also working towards trying to have the matters mediated and come to consent rather than having to go directly to trial. ...I think there’s probably been a reduction in the amount of trials.”* The other staff felt that the new rules created a further delay in the processing of cases, and complicated the processes. He/she felt that processes that included MPAS were more streamlined prior to the new rules.

One staff heard from several clients upon their return to the registry to file their MPAS certificate of attendance (most often from clients who hadn’t been through the court process before) that attending the course was very beneficial to them.

General Summary of the Court Staff Interviews

Based on perceptions of court staff, case flow appears to have been improved as a result of MPAS in New Westminster in two ways. First, court staff observed that during the pilot, there was an initial reduction in the number of cases that went to first appearance, and second, processing of files was streamlined with a reduction in the number of applications per file.

In Burnaby, after implementation of the new provincial court rules, a reduction in the number of cases going to trial was perceived, but that processing of cases was delayed and more complicated than with the old rules.

c) MPAS Participants Interview: Dispute Resolution Summary

This section presents the results of in-depth interviews with twenty-two MPAS participants. The results allow for an exploration of some of the issues that may affect

²² As reported in the first evaluation report, court staff observed that while many clients seemed frustrated by the mandate initially, most accepted that they had to take the course once they had the purpose of the course explained to them.

family justice clients' choices regarding methods of dispute resolution. While the quantities presented in the next paragraph and in Table 4, below, cannot be generalized to the entire population of MPAS participants, it is important that within this select group almost all interview participants had used ADR and a large portion of the group had used court to attempt to resolve their disputes.²³ This breadth of experience with each dispute resolution option among interview participants enriches the quality of their opinion.

Overall, eighteen of the twenty-two participants interviewed used or planned to use alternatives to court, and fifteen participants used or planned to use court to resolve their disputes. Eleven participants used or planned to use a combination of both the courts and alternatives to court. Seven used ADR exclusively, and four used court exclusively to attempt to resolve their dispute.

Table 4: MPAS participants' choice of dispute resolution options.

<i>Number of participants who...</i>						
	<i>...tried:</i>	<i>...were planning to try:</i>	<i>...were in the process of trying:</i>	<i>Sub-total</i>	<i>...had not tried or were not planning to try:</i>	<i>Total</i>
ADR	15	3	0	n=18	4	n=22
Court	11	3	1	n=15	7	n=22

Interview participants were asked in a series of open- and closed-ended questions about why they chose the dispute resolution options they used. The participants' reasons for and satisfaction with their choices are presented in the following sections of the report, in terms of which dispute resolution options were attempted:

- responses from all twenty-two participants to questions about the influences on their choice of dispute resolution method;
- responses from those participants who attempted to resolve their dispute through alternatives to court, or ADR; and
- responses from those participants who attempted resolution through court.

Influences on Dispute Resolution Choices

All twenty-two MPAS interview participants were asked if they thought the cost of alternatives to court influenced whether or not they used them. Also, they were asked if they were willing to pay for ADR. The main reason for choosing ADR over court with respect to costs was that participants couldn't afford to pay for the expenses associated with court, but most stated that they would pay for ADR if they could. For those who were not willing to pay for ADR, dissatisfaction with alternative services was a key factor.

²³ To capture a range and balance of views, a stratified sample of participants were selected from those who volunteered to be interviewed. Characteristics reported on the post-session survey that were considered in the selection included gender, whether an applicant or a respondent to the case, whether in agreement or disagreement with the requirement to attend the MPAS course before going to court and general satisfaction with the MPAS course.

All twenty-two interview participants were asked if they thought all people with issues in dispute involving child custody, access, or support should have to try to resolve their issues through an alternative to court before going to court. The main reason for some interview participants thinking that all people should have to try ADR before court was the perception that the court experience would have a potentially negative affect on their children.

Some participants did not think that all people with issues in dispute involving child custody, access, or support should have to try to resolve their issues through an alternative to court before going to court. Interview participants' reasons focused primarily on the belief that an individual's right to choose court based on their own situation should be preserved, particularly in cases where family violence was a factor.

Use of Alternative Dispute Resolution (ADR)

Eighteen of the 22 participants interviewed used or planned to use ADR to attempt to resolve their dispute. Fifteen of those had attempted dispute resolution through ADR, and three were planning to use ADR.

The most prevalent ADR method chosen by interview participants was the services offered by Family Justice Counsellors. Other methods included private mediators, lawyers, family members and Ministry of Human Resources.²⁴ Some participants used a combination of methods, some for discrete issues, and others for separate attempts at resolving the same issues after a previously unsuccessful attempt.

At the time of the interview, only a few interview participants were able to resolve some or all of their issues through ADR. For those interview participants who were not able to resolve any of their issues: some planned to use the courts to resolve outstanding issues in dispute; some planned to consult a lawyer; some planned to do nothing; and some didn't know what to do next.

Reasons for Choosing ADR

Interview participants chose ADR because:

- they preferred non-court alternatives for various reasons, including: that they wanted to do it on their own; courts and/or lawyers were intimidating, adversarial or hadn't worked for them in the past; ADR was faster than court; and some did not want to have a judge (stranger) making personal decisions for them;
- costs of a lawyer and going to court were too high; and/or
- they thought they had to attempt ADR before they could go to court.

Satisfaction with ADR

Factors that contributed to interview participants' satisfaction with their experience using ADR to resolve their disputes included the perception that the services they received

²⁴ Interview participant(s) referred to the Ministry of Social Development and Economic Security as the Ministry of Human Resources in their response(s).

from the Family Justice Counsellor were very effective and having achieved closure or resolution on all issues in dispute.

Factors that contributed to interview participants' dissatisfaction with their experience using ADR to resolve their disputes included: not having completely resolved their issues or not having achieved closure on their case; resistance, lack of cooperation or abusive behaviour from the other party; and the perception that the Family Justice Counsellor(s) were not effective in their case.

Use of Court

Fifteen of the 22 participants interviewed used or planned to use court to attempt to resolve their dispute. Of the fifteen: eleven had used court; one was in the process of using court; and three were planning to use court to resolve their dispute.

At the time of the interview, only a few interview participants had been able to successfully resolve some or all of their issues in court. For those who were not able to resolve any issues at the time of their interview, some had also tried alternatives to court and had been unable to resolve their issues by that method. Of those who had also tried ADR, some planned to go back to court, some planned to do nothing, and some didn't know what they were going to do.

Reasons for Choosing Court

Interview participants chose court because:

- of specific issues in dispute, including one or more of the following factors: their case involved either a no-contact or restraining order; participants felt court was the only recourse to obtain child support; nothing else worked; and/or the other party had a substance addiction;
- of the level of conflict between themselves and the other party, including one or more of the following factors: the other party was too verbally abusive, unresponsive or difficult to deal with; participants had experienced violence in their relationship with the other party; the other party was alcohol dependent; and/or parties were experiencing difficulty with their children;
- they had tried mediation or the services of a Family Justice Counsellor and found it unsuccessful (in some of these cases the other party was either too abusive or unresponsive or difficult to deal with);
- they had no choice as they were the respondent; and/or
- they planned to go to court only if the other party was not forthcoming with financial statements.

For those interview participants who thought the information that they learned at the MPAS course did help or would help them to resolve issues in court, they found the information helpful in understanding the whole process and in filling out paperwork, keeping the kids in focus and knowing how the separation process was affecting their child(ren).

For those interview participants who thought the information that they learned at the MPAS course did not help or would not help them resolve their issues in court, their reasons included one or more of the following: the content wasn't advanced or specific enough or was too patronizing, or there wasn't enough information on how to deal with difficult people or about abuse issues.

Satisfaction with Court

The factor that contributed to interview participants' satisfaction with their court experience was a sense of having achieved closure in the case.

Factors that contributed to participants' dissatisfaction with their court experience included a perception of incompetence with some aspect of the justice system, including a judge, a legal aid attorney, Ministry lawyers and the perception of bias in the family justice system. Interview participants were also dissatisfied with the outcome, in that the other party was viewed as the victor, and themselves, the loser. Others were dissatisfied because their issues were unresolved.

General Summary of the Participant Interviews

Responses from MPAS interview participants indicate that their reasons for using courts and/or alternatives to court reflect an exploration of the full range of appropriate dispute resolution options available to them, as presented in the MPAS course.²⁵ Interview participants demonstrated an awareness of the adverse affect court could potentially have on children, reflecting one of the foci of the course.

Those interview participants who used alternatives to court were influenced by the following factors in their choice of dispute resolution options: they preferred alternatives to court for several reasons; they were influenced by the high cost of court; or, they thought they had to try alternatives to court before they could go to court.

Those interview participants who used courts to resolve their dispute were influenced by the following factors in their decision to use court: they were influenced by specific issues in dispute and/or the level of conflict or problems experienced with the other party; or, they had tried mediation or the services of a Family Justice Counsellor and found it unsuccessful.

6. Summary of Evaluation Findings

The results from each of the three methods used to measure change in litigation patterns in the pilot locations are presented here in a brief summary.

Results of the file review indicate that MPAS may have resulted in a reduction in the number of cases going to trial in the pilot jurisdictions. For those cases that did go to court, it appears that fewer were likely to go to a second, third or subsequent appearances in the pilot locations. Cases at the comparison site were more likely to proceed to a first, second, third or more appearances than at the pilot sites.

²⁵ The modified course curriculum included a precaution that alternatives to court were not appropriate in all cases, for example, in cases that involved a history of family violence.

For cases under the old provincial court rules, the impact of MPAS on court usage appears to be a reduced number of first appearances in particular, and in somewhat fewer second and third appearances. For example, 96 percent of cases begun at the comparison site before December 1, 1998 proceeded from a filed application to a first appearance, compared to 66 percent of cases at the pilot sites.

The observed reduction is more pronounced for cases begun after the new rules were implemented on December 1, 1998. For cases under the new rules, it appears that the impact of MPAS on court usage is being felt in a reduced number of appearances from the first appearance onwards. Though based on a smaller sample, data for cases in this period indicate that only four percent of cases proceeded to more than three court appearances at the pilot sites, compared to 23 percent at the comparison site.

Observations by court staff supported the file review data, with a perceived reduction in the number of cases that went to first appearance, fewer applications per file, and an improvement in case flow in the pilot locations. Court staff observed a minimal amount of avoidance of the mandate by family justice clients.

Responses from MPAS interview participants indicate that their reasons for using courts and/or alternatives to court reflect an exploration of the full range of appropriate dispute resolution options available to them, as presented in the MPAS course.²⁶ In addition, the belief that court experience could adversely affect their children was mentioned by interview participants, reflecting one of the foci of the MPAS course.

Overall, the results of the evaluation suggest that positive changes have occurred as a result of MPAS. Those changes are a reduced and improved flow of cases in family court in the pilot locations, and an awareness in participating family justice clients of the full range of appropriate dispute resolution options available to them, and of how the separation process and their dispute resolution choices affect their children.

²⁶ The modified course curriculum included a precaution that mediation was not appropriate in all cases, for example, in cases that involved a history of family violence.