



Ministry of Attorney General

Family Justice Reform Working Group Report

A New Justice System for Families and Children

Status of Recommendations

September 2006

I. Introduction

The Family Justice Reform Working Group Report – *A New Justice System for Families and Children* – (the “Report”) was released by the Justice Review Task Force (“JRTF”) in June 2005. It made 37 recommendations for changes to the B.C. family justice system.¹ This paper describes the work that has been done to date in response to these recommendations.

In a letter to the JRTF in October 2005 the Attorney General outlined his strong support for the underlying themes contained in the Report,² particularly the need for a more fundamentally non-adversarial approach to the management and resolution of conflict arising from family breakdown.

Noting that the Report’s recommendations are extensive, the Attorney General suggested a need for further research and consultation to better understand the consequences of implementing the recommendations. Two matters were singled out for particular attention: Family Justice Information Hubs (“Hubs”) and Mandatory Consensual Dispute Resolution.

Since the release of the Report the Ministry of Attorney General has focused on carrying out a number of consultation activities on behalf of JRTF, and conducting preliminary research into some of the recommendations made in the Report.

II. Consultations

To date, the focus of consultations has been to ensure that stakeholders are familiar with the Report and to collect preliminary responses to the Report. The public is able to comment through a dedicated email address.³ Presentations have been made to most Canadian Bar Association ADR and family law Sections in the province, to several groups within the federal Department of Justice, to municipal officials in the lower mainland and to the broader legal community through Continuing Legal Education Society conferences and similar forums. Articles about the Report have appeared in BarTalk, the Advocate, and the Association of Family and Conciliation Courts Newsletter.

Generally, the feedback on the Report has been very positive. One CBA family law Section has expressed concerns about some of the recommendations, but the balance of the feedback from lawyers, judges, interest groups and lay people has been very supportive.

The Ministry has stated it will consult on family justice reform initiatives it may consider implementing.

III. Research and Studies

Justice Services Branch of the Ministry of Attorney General undertook a number of research projects in order to better understand how some of the recommendations might actually play out if implemented:

¹ See <http://www.ag.gov.bc.ca/justice-services/publications/fjsd/jrtf/letter.pdf>

² See <http://www.ag.gov.bc.ca/justice-services/publications/fjsd/jrtf/letter.pdf>

³ familyjustice@bcjusticereview.org

- a) **Family Justice Information Hub Pilot.** (Recommendations 1 - 5) The Report recommended creation of highly accessible family justice information Hubs to be established throughout British Columbia as the front door to the family justice system.

Research was undertaken to build on the Report's description of the Hub. This research looked at location, structure, target audiences, scope of services provided, service levels, linkages with community services, and governance or operational responsibilities. Particular attention was paid to considering the tools and skills required to provide safe and effective assessment and referral services. A background paper summarizing this research and analysis will soon be published on the Ministry and JRTF websites.

The result of this research is that Justice Services Branch, in collaboration with the Legal Services Society and others in the justice system, hopes to pilot a Family Justice Information Hub in one location, starting some time late in this fiscal year. The pilot Hub will focus exclusively on family law matters and will provide a broader range of services than is presently available through the Self-Help Information Center in Vancouver. Testing an assessment and referral service will be a critical component of the pilot project. Assessment staff will refer clients to legal counsel, to mediation and collaborative law and to key community-based social and health care services. Information, orientation and assistance will be available for those needing to use the court system.

- b) **Family Justice Information Portal** (Recommendation 2) A family justice information portal is a single point of entry linking to and organizing all of the relevant family law information on the Web. It is an "electronic gateway" making it much simpler for citizens to find information about family law and services. The portal would support the Hub, but would also be used by anyone with a family law question anywhere in the province. The portal could also support interactive application forms. A feasibility study with respect to establishing an internet information portal was commissioned. Certain technological and organizational challenges have been identified and the target audience described.

The study has concluded that it is clear that a family justice information portal is viable. The Ministry intends to proceed with this project and will work to do so in some manner with other public legal education providers in BC. Next steps include creating a small working group to take responsibility for steering the initiative.

A companion study was undertaken to learn more about how an electronic database of all legal and social services for families in the justice system would be established and maintained. It was concluded however that creation of such a database would be problematic. Start up and maintenance costs are very high. Also, we are concerned about duplication given that the provincial government is exploring a

"BC 211 Service Initiative" - a project intended to create a comprehensive, accessible, province-wide database of community and government resources within the next two years. The Ministry of Attorney General will be participating actively in the BC 211 Initiative to determine to what extent it can support our Family Justice Information Portal, particularly with respect to our database requirements.

- c) **Mandatory Consensual Dispute Resolution.** (Recommendations 6 - 11) The Report recommended that all parties be required, unless exempted, to attend a "consensual dispute resolution" (CDR) session – mediation or collaborative law - before they're allowed to take a first contested step in the court process. Research into this recommendation has examined issues such as criteria for referral to mandatory CDR and dealing with power imbalance and family violence. Preliminary research is complete and a background paper summarizing our findings and analysis will be published on the Ministry and JRTF websites in the near future.

The research to date has been encouraging and the Ministry will continue to explore CDR. Ongoing research will continue to flesh out issues relating to policy and to project design, perhaps aimed at developing and implementing a pilot project at some point. However, because of the complexity of the issues involved (including costing such a program), more research and consultation is required before getting to that stage. The Ministry is giving thought to expanding the Notice to Mediate to family matters as an interim measure which would meet the spirit of the Report's recommendation and allow us to work through significant policy and operational issues.

- d) **Measuring Family Breakdown.** (Recommendation 37) The Report points out the relative lack of management data in a family justice system. We know how many cases come into the system and we know how many go to trial but we have very little understanding of what happens in between. Accordingly we have undertaken research which will ultimately develop on three fronts:

- the "metrics" or demographics of family breakdown. How many families separate, which families separate, when do they separate, how many children are involved? etc.
- what happens to families once they enter the justice system? When and how do the 97% of cases that do not go to trial resolve? In fact, do these cases resolve - how many are simply abandoned? How long does it take to get through the system? How often do these cases use the courts?
- what impact do separating families have on the rest of the social system? How does separation impact health services, mental health services, police services, the education system and the workforce? Is there a link between the level of conflict parties experience within the justice system and their use of these other social resources?

The Ministry's preliminary research into the metrics of separation in B.C. is now complete, and will soon be published on the Ministry and JRTF websites. This research provides a foundation for a more detailed future investigation into the other areas identified. The justice system needs this research to better inform policy development and decision-making.

- e) **A More Accessible Court System.** (Recommendations 12 - 15) The Report recommended a single set of rules (i.e., one set of rules and forms that could be used in both courts), streamlined rules and forms, and a simple and informal hearing model. As well, it recommended that wherever possible a single judge should deal with all matters arising for each family. Accordingly, the Ministry has

begun research into each of these recommendations. Papers will eventually be published once this research has been further developed.

- f) **Legal Culture.** (Recommendations 30, 35 and 36) The Report observes that “changes to systems and procedures alone will not be sufficient” and that “the biggest challenge...ahead is the need for a continuing evolution of the culture of the family justice system.” The Report also clearly refers to the fact that family law culture has already changed much over the last 15 years. In support of this general trend, work has been carried out in the following areas
- **Foundation Articles:** articles have been written articulating two concepts integral to the evolution of the family justice system: the “problem solving approach”⁴ to dispute resolution and what is implied by “changing” legal culture. These papers will soon be posted on the Ministry website.
 - **Voluntary Code of Family Law Practice:** the Ministry hopes that the Law Society, the CBA, mediators and practitioners will consider the benefits of a unique code of practice designed specifically to address family law issues. With a view to stimulating discussion we commissioned research on such codes as they have been implemented in other jurisdictions and considered options for establishing a similar code or protocols in BC. We expect that a discussion paper on this topic will be generated from those materials. Some of our research on this issue has already been made available to the Law Society.
 - **Roster of Collaborative Law Practitioners:** The Ministry has extensive experience in promoting the use of mediation as a dispute resolution option. We also know that while the practice of collaborative law is growing throughout the province, the public may not know about this innovative way to resolve family legal matters. We have looked into the question of establishing a provincial roster of collaborative law practitioners. It is likely that a discussion paper on this topic will be posted in the foreseeable future looking at issues such as criteria for admission to such a roster, and different models of operating, maintaining and administering a roster.
 - **Family Justice Education:** This year a plan will be developed to promote "public literacy" (education and information) about the family justice system. Materials will be developed and learning opportunities identified in public elementary, middle, and high schools; colleges; and law schools. The Law Society and the Canadian Bar Association of BC will be asked to participate in the distribution and promotion of these materials.

⁴ A Continuing Legal Education Society conference on was held on this topic in Vancouver all in May 26, 2006.

IV. Other Initiatives

- a) **Family Relations Act Review** (Recommendations 22 - 27). The Report made several suggestions for changes to the *Family Relations Act (FRA)*. In February, 2006 the ministry announced a complete review of the *FRA*; this provides an opportunity to consider how the principles set out in the Report might be enabled by or reflected in the statute. However, the scope of the *FRA* review will entail much more than contemplating amendments pursuant to the Report. The Act is approaching 30 years old. The goals of the review include reconsideration of a number of substantive areas, modernizing the law, supporting co-operative approaches to resolving disputes, and having legislation that is easy to read and understand. Over the next months, discussion papers will be posted on the Civil and Family Law Policy Office webpage for comment and review. A description of the *FRA* review project can be found at:

http://www.ag.gov.bc.ca/justice-services/publications/Review_Family_Relations_Act.pdf

There will of course be consultation with the bar and other interested parties. The ministry's intention is to achieve a sound understanding of the views, interests, issues and recommendations from the public, the family bar and others. A new *Family Relations Act* could be drafted by 2009/10.

- b) **Voice of the Child** (Recommendation 16). The Report recommended that the family justice system find better ways to make children's best interests a meaningful part of the family justice process and that the report of the International Institute for Child Rights and Development (IICRD) on the matter child participation in family court processes be carefully considered by family justice system policymakers. The IICRD report was recently released and can be found on the web at:

<http://www.iicrd.org/familycourt/>

As well, the ministry has contributed towards the cost of the IICRD Kelowna project *Child Participation in BC Family Court Processes Project*⁵. This pilot project is testing a streamlined process designed to get the views of children involved in custody and access matters before the court. IICRD will be evaluating the project in 2006/07. That project is also described on the IICRD website.

V. Unified Family Court

- a) The Section 96 Model. The Report strongly endorsed the general idea of a unified family jurisdiction (Recommendations 28 – 34). However, it identified some concerns about the viability of the Section 96 model of unified family court (UFC) which has been implemented in seven other provinces. Specifically, it recommended that the Section 96 model be adopted only if the province could be certain that it would be implemented across the province within a reasonable period of time, that it would be adequately resourced, and that it would be at least as accessible and responsive to family clients as the current two-court system. The Report expressed the concern that funding might not be sufficient to provide

⁵ See description of project at <http://www.iicrd.org/cap/mcpfamcourtprocess>.

the necessary level of services and the province-wide implementation necessary to improve on the existing system.

As the Report suggested, the ministry has researched these concerns further. This research included consultation and meetings with officials from the federal Department of Justice (DoJ). The Ministry objectives for these meetings included:

- to help the Ministry to understand in greater detail just what implementation of the Section 96 UFC model would look like, particularly in terms of the possible number and nature of judicial appointments, the financial and revenue consequences (including the impact on funding for family justice services and the cost of start-up), timing (including if and when federal funding would be available), and the ultimate possible number and location of UFC courts in British Columbia;
- to provide the Department of Justice with a more detailed understanding of the B.C. position on UFC, with respect to our family law policy values but in particular with respect to UFC implementation issues and concerns; and
- to hear what the Department of Justice had to say about the concerns raised in the Report about the Section 96 model.

In March 2006, DoJ staff travelled to BC to meet with ministry officials, to visit sites where family justice services are offered in Vancouver and Kelowna, and to meet with the Chief Justice of the Supreme Court, the Chief Judge of the Provincial Court and with other representatives of both courts.

DoJ staff was very well informed and very helpful. Bearing in mind that many assumptions needed to be made to develop an implementation scenario, the outcome of our meetings can be summarized as follows:

- Full implementation could see savings to the province as a result of dedicating some Section 96 judges to family work; elevating some provincial court judges, and making some new appointments. In the Provincial Court, more judge time could be committed to matters other than family law.
- For both practical and political reasons full implementation never occurs in a single step. Under the "as if" model developed by the DoJ, partial implementation could see about one third of the province served by UFC. This scenario is cost-neutral and no funds would be freed up for application to family services.

The Report raises the following concerns about the Section 96 model:

“[it] should be implemented, but only if the Province is certain that:

- it can be adequately resourced, and
- it can be at least as accessible (particularly geographically) and responsive to the range of family clients as is our current two-court system.”

“that the test for determining adequacy of resources be that there are resources sufficient to provide:

- the information assessment and referral services recommended in ...the report and the subsidy for CDR recommended...
- judges and staff sufficient to hear cases in a timely manner; and
- a commitment to province-wide implementation of a UFC within five to seven years.”

Our discussions with DoJ lead us to conclude these concerns cannot be addressed within the conventional Section 96 UFC model. While there is unanimity about the objectives of UFC (minimizing the negative impact of separation and divorce on children; early resolution of disputes; increased use of consensual dispute resolution processes, enhanced family services) we cannot conclude that the Section 96 model will provide those outcomes, at least in BC.

Problems arise not with respect to policy values and policy goals but only with respect to practical questions arising on implementation. The section 96 model appears best suited to implementation in densely populated urban areas. Cost considerations associated with putting specialized judges in remote or rural areas appear to be prohibitive. Further, BC could not reasonably expect that province-wide implementation would be accomplished within the five- to seven-year time frame recommended in the Report.

As the Report concludes, with anything short of province-wide implementation BC would have three courts doing family law, which is not consistent with a vision of a simplified accessible family justice system. The Section 96 model seems inconsistent with other aspects of this vision, for example:

- The Report says that "adequate funding for expanded services is critical". While some savings could eventually accrue to the province through the Section 96 model, in relative terms it appears that such savings would have only a small impact with respect to new or additional services. It would not be a large enough sum to create a compelling incentive, and the fact that there would be no new dollars on the initial implementation does not help.
- The Report warned that a UFC would need to be at least as responsive to the wide range of needs of family clients across British Columbia as is the existing system. We have concluded that there is certainly some very considerable risk that the Section 96 model would not be as responsive as the existing system.

A number of points of interest arise out of the Ministry's study of the Section 96 model which will be helpful in terms of considering future options. These include:

- Many existing Supreme and Provincial Court judges would resist sitting on a Unified Family Court if their time was entirely, or substantially, dedicated to family law.

- We received diverse and inconsistent feedback from other Canadian jurisdictions – ranging from very positive to very negative - on the question of how well UFC is actually working. Federal research to examine the effectiveness of UFC has been initiated, but findings won't be available for a couple of years.
 - The Ontario Superior Court had considerable difficulty incorporating the child welfare work from its provincial courts into the UFC. It is not possible to predict with certainty the workload impacts of such a transfer of jurisdiction.
- b) **The Coordinated Family Court Jurisdiction Model.** The Report recommended that if the Section 96 option was ultimately rejected then either the "full provincial court jurisdiction" model (as it was described) or the "coordinated jurisdiction model" be explored. Given that the full provincial court jurisdiction model is effectively barred by the established judicial interpretation of Section 96 of the Constitution Act⁶, the only option remaining available to British Columbia is the coordinated jurisdiction model. A summary description of this model is set out at part 6.6 at page 97 of the Report.

Accordingly, the Ministry will continue to work with the courts and the bar and others to develop a strategy to move towards coordinated jurisdiction in family courts. Some of the projects identified above - for example developing a single set of family court rules - would complement this project.

VII. Conclusion

The Ministry will continue to report regularly on the progress made with respect to the recommendations of the Family Justice Reform Working Group Report.

⁶ see page 94 of the Report