



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

UNIFIED FAMILY COURT
JUSTICE REVIEW TASK FORCE BACKGROUND REPORT

RESPONSE OF THE PROVINCIAL COURT OF BRITISH COLUMBIA

In response to the request for comments regarding the Justice Review Task Force Background Report on Unified Family Court, the Chief Judge struck the Unified Family Court Advisory Committee, consisting of members of the judiciary from various regions of the province with expertise in matters of family law. The Committee received comments from many judges of the court, considered models of Unified Family Court in other provinces and countries, assessed family caseloads, and discussed the effectiveness of Unified Family Court with judges in other provinces who presently sit in Unified Family Courts. The Committee also considered the response of the judges of the Supreme Court of British Columbia. The Committee's response to the Report was then circulated among the members of the judiciary for further comment, and now forms the foundation for this response on behalf of the Court.

The Provincial Court has concluded that the public interest favours the amalgamation of all family cases into one Court, whatever its name. We have concluded that in a general sense, amalgamation will create efficiencies, and avoid the undesirable duplication of proceedings.

Specifically, the Court supports the concept of:

- One court to deal with all family law problems in a timely, cost-efficient manner with:
 - Simplified rules, procedures and forms;
 - Modest fees based on ability to pay;
 - Complementary family justice support services;
 - Assignment of judges who are interested and well educated in, as well as committed to, family law, and
 - Accessibility to all British Columbians

Judges of the Provincial Court are committed to the delivery of accessible justice to family litigants and see this work as a vital and important part of their judicial duties. They recognize that accessible family justice support services are an essential element to any family justice court model. Judges are concerned that a move toward a Unified Family Court not reduce service and accessibility levels below those currently provided by the Provincial Court.

The Court has a long history of accessibility, both geographically and by way of simplified and economical process.

Since the Gove report of 1995, the Court has reassessed its accessibility in child protection matters, introducing province-wide mediation in all child protection matters by way of judicial dispute resolution, and taking this process to more remote communities not previously served by family court, such as Fort Ware.

In child protection matters the Court also participated in setting up and supporting court annexed processes like the facilitated planning meeting concept in Surrey, which was expanded to Maple Ridge and Burnaby.

The child protection innovations were followed by Family Relations Act Rules which simplified and expedited process in custody, access and maintenance cases. Judicial dispute resolution was introduced for every case, province wide.

“Rule 5” registries¹ were introduced in locations encompassing a significant percentage of the family cases in the province. Rule 5, through these registries, introduced and incorporated community based programs such as Parenting After Separation and Family Justice Counselors into the court process. These programs embody the simplified, economical and community resource concepts of the Unified Family Court proposals. Due to the success of the “Rule 5” registries, the Court has pressed for more funding and expansion, but to date no further resources have been provided.

In 1999, in conjunction with the implementation of the Criminal Court Rules, the Court began a province-wide review of all the locations where the Court held family court. In each location the Court reviewed its family court scheduling and in most cases created more time, and more appropriate scheduling considerations, for family litigants.

Access requires a flexible court, dedicated to its pursuit, and a sufficient pool of judges to make it available in as many rural and remote areas of the province as possible. This is especially true of child protection matters, but the presence of a family court in a community is also a significant factor in equalizing the imbalance of power that exists in many relationships and that can be exacerbated by remoteness.

The Court has addressed these issues for many years and specifically over the last six years. It is reluctant to embrace a model of family court which does not set as its baseline the continuation of this level of accessibility.

The Court is prepared to endorse the concept of a Unified Family Court, provided a commitment is made by government to provide adequate, permanent funding to support all aspects of a Unified Family Court, and to ensure that such a Court maintains or enhances levels of access to justice. The current proposal lacks sufficient detail as to governmental commitment to put the needed resources into place over the long term.

¹ At Rule 5 Registries, all litigants are referred to family justice counselors before their first appearance in court. The family justice counselor may refer the parties to a number of services: for assistance in maintenance calculations, to mediation, for parenting post-separation classes, or to other services which may assist in parties.

Specific concerns regarding the Justice Review Task Force Background Report:

The Unified Family Court Advisory Committee identified the following concerns regarding the Justice Review Task Force Background Report, which are adopted by the Court:

1. The Committee does not find acceptable the limitation of Unified Family Court to 7 sites and recommends that the services of family law courts, both judicial and other services, should be available to all British Columbians within a reasonable time and distance. If the Unified Family Court model was extended province-wide, the Committee estimates that 45 judges would be required.²
2. The Committee recognizes that the use of simplified forms, rules and procedures is essential. The Committee notes that other Unified Family Courts in Canada have adopted complicated rules, procedures and forms consistent with practice in superior courts, and is concerned that a similar situation not occur in British Columbia.
3. The Committee acknowledges the requirement of adequately funded family justice support services and agrees with the comments and recommendations of the Supreme Court. The Committee is deeply concerned about the lack of available support services, particularly in smaller centres throughout British Columbia which have been hard hit by cutbacks in the justice system and by courthouse closures. The loss of family justice counselors in many locations has had a serious impact on the delivery of justice in Provincial Court.
4. The Committee has concerns about the cost-effectiveness of a Unified Family Court. If one assumes that the Unified Family Court would be province-wide, it is anticipated that Unified Family Court judges would spend a considerable amount of time on circuit, sitting in locations where the Provincial Court now sits on circuit. At present, a Provincial Court Judge deals with all matters in those locations. It is not cost-effective to have two judges sitting in the same location, when one judge potentially could do all the work if that judge had s.96 powers. Additionally, specialization on the part of the Unified Family Court judges will significantly reduce flexibility in scheduling, as judges of either court will not be available to take overflow cases from the other.
5. The Committee recommends that before the Provincial Court endorse a specific proposal for a Unified Family Court, not only must commitments be made for adequate, permanent funding, but similar commitments must be forthcoming that the implementation of a Unified Family Court will not result in the loss or diminution of funding, resources or access levels for the delivery of family law justice in other parts of the province.

² During the calendar year of 2001, the Provincial Court sat a total of 19,055.1 hours in family court (11,265.2 hours on F.R.A. matters and 7,789.9 in CFCSA matters.) The Supreme Court sat a total of 11, 268.5 hours. If one takes the total family hours of 30,323.6 and divides it by 675 hours (average used by the JRTF), one arrives the requirement of 45 judges.