

**Ministry of Attorney General
Justice Services Branch
Civil and Family Law Policy Office**

Family Relations Act Review

Chapter 5

Family Justice Reform and Family Justice Services

Prepared by the Family Justice Services Division

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This paper is one of several discussion papers developed for the review of the *Family Relations Act*. The paper does not reflect a position or decision of government and is intended to generate discussion and feedback. The discussion paper is not intended to constitute legal advice. Any description of the *Family Relations Act* or other laws is provided solely for the purposes of the discussion paper and should not be relied on as legal advice or a statement of the law for any other purpose. Individuals with questions regarding the legal effect of provisions of the *Family Relations Act* or other laws should seek legal advice from a lawyer.

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SETTING THE SCENE

Legislation and programs and services are essential components of the family justice system. The Ministry of Attorney General is reviewing the *Family Relations Act*¹ as part of its justice reform and law reform strategy. At the same time, but separately, the Ministry of Attorney General is also examining its family justice programs and services.

The Family Justice Reform Working Group completed a major review of the family justice system in B.C. in 2005. The Working Group explored options for fundamental change in the family justice system that would:

- make the system more accessible,
- serve the needs of children and families first and foremost,
- use available resources efficiently and effectively,
- integrate service planning and delivery,
- promote early resolution of disputes, and
- minimize conflict by encouraging early cooperative settlement, refining and enhancing non-adversarial settlement processes, and supporting trials as an appropriate recourse only when other means are not appropriate or effective.

The Attorney General has endorsed the Working Group's report, *A New Justice System for Families and Children*.² In September 2006, the Ministry of Attorney General released an [update on work being done to implement the Working Group's recommendations](#).

Some of the Working Group's recommendations require changes to the *Family Relations Act*; these will be examined during the *Family Relations Act* Review. [Chapter 1](#) includes more information about the background and context for the review.

The Working Group's major focus was on programs and services. This paper describes family justice programs and services currently provided by the Ministry of Attorney General. It also highlights on-going work that is not part of the *Family Relations Act* Review, but which responds to some of the Working Group's key program and service recommendations.

CURRENT PROGRAMS AND SERVICES

Who Provides Them?

A network of people and organizations provide family justice programs and services in B.C. including

- government;
- the Legal Services Society, through legal aid, duty counsel, LawLINE;
- family lawyers;
- family mediators;
- non-profit organizations, such as:
 - the Law Courts Education Society, (Justice System Education Program, and School and Youth Program);
 - the People's Law School, (Speakers' Program and Law-related ESL Program);
 - British Columbia Mediator Roster Society, (family mediator roster); and
 - community groups.

This section of the paper focuses on family justice programs and services that are provided by the Justice Services Branch of the Ministry of Attorney General. Two divisions of Justice Services Branch are particularly involved in the delivery of family justice programs and services.

[The Family Justice Services Division](#) offers the following:

- **Dispute Resolution:** Family Justice Counsellors are accredited family mediators who provide mediation and other services such as information and referrals, primarily to people of modest means to help them resolve disputes about child custody and access, guardianship, and family support. Family Justice Counsellors also help their clients to prepare provincial court documents.
- **Assessment:** In Provincial Court Family Justice Registries at Kelowna, Vancouver (Robson Square), Surrey, and Nanaimo, people with disputes about child custody and access, guardianship, and family support must, with limited exceptions, meet with a Family Justice Counsellor before going to court.
- **Comprehensive Child Support Service:** This service, offered in Kelowna, Vancouver (Robson Square), Surrey, and Nanaimo, helps parents reach agreements on child support using the child support guidelines to determine the amount of support. Parents may also use the service to negotiate a change to an existing child support agreement or order.
- **Child Custody and Access Assessments:** In some cases, Family Justice Counsellors prepare full custody and access assessments or “views of the child” reports to assist judges in making decisions about custody and access.
- **Child Support Recalculation Service:** This is a pilot project in Kelowna Provincial Court that automatically recalculates child support amounts every year by applying the child support guidelines to updated income information. It will help parents keep their child support amounts current without going back to court.
- **Parenting After Separation (PAS) Program:** PAS is funded, but not delivered, by the Ministry of Attorney General. It is a free three-hour educational workshop that provides information about the impact of separation on children and adults, dispute resolution options and services, and child support guidelines. In 13 Provincial Court registries attendance is mandatory before a court appearance.

[The Maintenance Enforcement and Locate Services Division](#) manages the Family Maintenance Enforcement Program and related programs. Its purpose is to help families and children to receive the support to which they are entitled under a court order or agreement.

In addition to programs and services provided by the Justice Services Branch, both courts and judges have an important role to play in the early resolution of family law disputes. In Supreme Court, Rule 60E requires people to attend a “Judicial Case Conference” before they can go to court. The purpose of the conference is to help people reach agreements as soon as possible. Judges help by working with people to narrow the issues and consider out-of-court settlement options such as mediation. A case conference can also occur in the Provincial Court (a “Family Case Conference”), but a judge has to order it.³

NEW DIRECTIONS

The Family Justice Reform Working Group envisioned a family justice system that gives people help to manage conflict early; focuses on the best interests of children and gives them a voice in decisions that affect them; acknowledges the emotional dimensions of family law disputes; and understands that family disputes are generally best resolved outside of a courtroom. Family justice services are seen as essential to this justice system, and should be available to people as early as possible.

[The Working Group's report](#) includes 37 recommendations. Some recommendations call for specific changes to the *Family Relations Act*. These are discussed in the papers that have been or will be posted for discussion and comment as part of the *Family Relations Act* Review. Most of the recommendations, however, call for changes to family justice programs and services. For example:

- establishing family justice information hubs as a front door to the family justice system;⁴
- requiring people to attend a mandatory dispute resolution session before taking a first contested step in court, unless exempted;⁵
- improving ways to discover children's best interests and make them a meaningful part of family justice processes;⁶
- developing more services for high conflict families;⁷
- making information on the family justice system accessible to all British Columbians, including those who live in remote locations;⁸
- developing a single set of family rules and forms for use in both Provincial and Supreme Court;⁹
- improving data collection to inform the development and evaluation of family justice programs and services;¹⁰ and
- supporting changes in the role of family lawyers.¹¹

The Attorney General stated in his letter in support of the Working Group's report that there are significant cost implications associated with many of the recommendations and signalled government interest in implementing the recommendations within the limits of available financial resources. The Attorney General also noted the need for more analysis and consultation about the report's recommendations.

Given the Attorney General's support for the Working Group's report, the Ministry of Attorney General is examining how the services it provides to families in B.C. can best meet the report's recommendations.

Family Justice Services Centre

The Working Group recommended that family justice information hubs be established to provide a wide range of family justice services. On April 2, 2007, the Ministry of Attorney General, in partnership with the Legal Services Society and other organizations, implemented this recommendation and opened a Family Justice Services Centre in Nanaimo. This pilot project will run for one year and will be evaluated.

The Family Justice Services Centre builds on existing services and procedures, including:

- Family Justice Centres;
- Parenting After Separation sessions;
- mandatory pre-court meetings with a Family Justice Counsellor;
- services provided by the Legal Services Society (LSS) such as advice lawyers, duty counsel, and legal information available over the telephone (LawLINE); and
- the Supreme Court Self-Help Centre in Vancouver, a partnership between the Ministry of Attorney General and a number of non-governmental agencies, which provides legal information, education and referral services to people who do not have lawyers.

The Family Justice Services Centre is meant to be a “front door” to the family justice system. People can go to the centre to:

- ask questions of a lawyer or staff member;
- get basic legal information and referrals to legal advice;
- obtain printed materials and view informative videos;
- look up information on dedicated computer terminals;
- talk to a qualified and trained professional about services and options to meet their needs, including accessing resources available in the community;
- attend courses; and
- participate in mediation.

The centre’s [website](#) provides information about the centre’s services and also points to other important sources of information, such as the Legal Services Society’s website ([Family Law in British Columbia](#)) and the [Law Courts Education Society website](#).

The centre’s website is a first step towards implementing the Working Group’s recommendation that an Internet portal be developed to provide information about the law and family justice services. The Working Group suggested that an electronic gateway to the family justice system would make it simpler for people to find information. It pointed out that there is a lot of information available online from many sources but there is no one website that pulls it all together. A family justice portal is meant to address this by providing a single point of entry linking and organizing relevant family justice information on the Internet.¹²

Mandatory Dispute Resolution

The Ministry of Attorney General has completed initial research on the Working Group’s recommendation that people be required to attend one dispute resolution session before going to court. As a first step towards introducing mandatory dispute resolution, it is looking at expanding the Notice to Mediate to family cases in the Supreme Court in Nanaimo, in conjunction with the development of the Family Justice Services Centre.

The Notice to Mediate allows either person in a case to require the other to attend a mediation session. Attendance at the session is mandatory, but reaching an agreement is not. In the past, many people have suggested the Notice to Mediate would be very useful in family cases. In 2000, the B.C. Provincial Council of the Canadian Bar Association passed a resolution supporting the expansion of the Notice to Mediate to appropriate family cases.

Some of the policy issues involved in using the Notice to Mediate in family cases are:

- screening (ensuring only appropriate cases proceed to mediation);
- independent legal advice;
- timing of mediation; and
- exemptions.

The Working Group made a number of recommendations about mandatory dispute resolution, including that a roster be established for collaborative law practitioners, modelled on the B.C. Mediation Roster Society’s family mediator roster.¹³

The Working Group saw a roster as a way of ensuring that mandatory dispute resolution services are provided by qualified practitioners who meet recognized standards of practice.¹⁴ The Ministry of Attorney General provided funding to determine practitioners’ interest in, and the viability of,

establishing a roster of collaborative law practitioners. The outcome of these consultations is expected to be known in spring 2007.

Children's Participation

Currently, the main way for children to participate in family cases is through reports prepared by Family Justice Counsellors. One kind of report focuses on the views of the child and addresses one or two issues, such as the child's views on where he or she wishes to live, but places the child's views in the context of the family by also including comments from parents, where appropriate. The other, a full custody and access report, is more comprehensive, involving interviews with parents, children and others, such as teachers. Both kinds of reports are useful. Preparation of custody and access reports is resource intensive, and for this reason, the number of reports prepared is limited. Judges have expressed a high degree of satisfaction with the reports, and find their recommendations valuable. However, they have expressed concern with the difficulty in obtaining a report in a timely fashion.¹⁵ The Ministry of Attorney General is exploring ways to manage its resources to increase its ability to supply reports to the courts.

In May 2007, the Family Justice Services Division of the Ministry of Attorney General plans to pilot child-inclusive mediation as another way for children to participate. This will mean either actually involving children in mediation, or having the mediator interview the child to bring the child's voice to the mediation table. This pilot program will take place in a number of Family Justice Centres around B.C. including Prince George, Terrace, Nanaimo, Surrey, Langley, Abbotsford, Kamloops, New Westminster, Vancouver, North Vancouver, and the Tri-Cities.

Services for High Conflict Families

A high conflict case may involve violence or abuse, or it may be a case involving a highly contentious issue, such as relocation. Currently, there are very few services available to help families experiencing high conflict. The Working Group report refers to the need for more services for these families.

Options being considered are specially designed Parenting after Separation sessions for high conflict families, such as those provided elsewhere in Canada and the United States, and a more efficient way to provide supervised access and safe exchange services.

Also under consideration is the Working Group's recommendation about parenting co-ordinators. A parenting co-ordinator is a highly trained mental health professional, mediator or family law lawyer who is appointed by a judge to help parents resolve parenting disputes. Generally speaking, parenting co-ordinators have a dual role. They try to mediate disputes within the scope of their appointment, but, if mediation is unsuccessful, they can arbitrate (make the decision).

While Ministry of Attorney General Family Justice Counsellors are trained mediators, they do not arbitrate disputes. Parenting co-ordination could, therefore, be an awkward fit with the existing service.

As well, the Ministry of Attorney General is supporting work at the community level in Nanaimo and the surrounding area to look at a number of issues, including: defining what constitutes "high conflict;" identifying existing community resources for high conflict families, as well as gaps and limitations in existing services; and identifying training and education requirements for people working with high conflict families. The information gathered will help government and others in the family justice system to design better programs for families experiencing higher levels of conflict. It could also inform the design of Family Justice Services Centres.

A More Accessible Court System

The Working Group recommended changes to the court process to make it more accessible, simpler, and less costly. A single set of family rules and forms for use in both the Supreme and Provincial Courts was a key recommendation. A Family Rules Committee that includes

representatives from both courts and the Ministry of Attorney General as well as family lawyers has been established to look more closely at the feasibility of this recommendation.

The Working Group also recommended looking at a “one judge, one family” policy, noting that judicial management of the court process is much easier if one judge has responsibility for all matters concerning a particular family.¹⁶ The Family Rules Committee is also likely to consider this issue in its consultation on the family rules starting in the fall of 2007.

Measuring Family Breakdown: Better Data Collection

One of the Working Group’s findings is that there is a lack of management data in the family justice system. In 2006, the Justice Services Branch of the Ministry of Attorney General began to fund research about:

- how many families separate;
- how many children are involved;
- what happens to the approximately 97% of cases that enter the court system but do not go to trial; and
- the impact separating families have on the rest of the social system.

Focus Consultants prepared a [report](#) on two main questions:

1. How many children, adults and families are affected by separation and divorce in B.C.?
2. What does the family justice literature tell us about the impacts of separation and divorce on children, parents, families, and society?

A second report is underway. It is intended to better the understanding of how well the flow of family law cases in the Provincial and Supreme courts in British Columbia can be documented or described. It is expected to be completed in spring 2007.

Research that provides more data and information about the family justice system will help government, and others, in the development of services for B.C.’s families.

Legal Services for Families

The Working Group’s recommendations are being considered by others who provide services to separating and divorcing families, including family lawyers. For example, in February 2005, the Law Society of British Columbia began a study on the “unbundling of legal services” which it defined as: “lawyers offering clients the option of discrete or limited scope legal assistance, instead of full legal representation on all aspects of a transaction, dispute or process.”¹⁷ The Law Society also indicated its intention to establish a small working group to explore the implications of a voluntary code of practice for family lawyers.¹⁸

In November 2006, the Legal Services Society expanded services for eligible families, which promote the use of consensual dispute resolution, including mediation and collaborative law.¹⁹

ENDNOTES

¹ *Family Relations Act*, R.S.B.C. 1996, c.128.

² See: Letter from Attorney General to Co-chairs of the Justice Review Task Force, dated October 19, 2005, online: Ministry of Attorney General < <http://www.ag.gov.bc.ca/justice-services/publications/fjsd/jrtf/letter.pdf> > (last accessed: March 9, 2007).

³ British Columbia, *Provincial Court (Family) Rules*, R. 7.

⁴ Family Justice Reform Working Group Report, *A New Justice System for Families and Children* (2005), recommendation 1 at 111, available online: B.C. Justice Review Task Force < http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf > (last accessed: March 9, 2007).

⁵ *Ibid.*, recommendation 6 at 112.

⁶ *Ibid.*, recommendation 16 at 115.

⁷ *Ibid.*, recommendation 19 at 115.

⁸ *Ibid.*, recommendation 3 at 112.

⁹ *Ibid.*, recommendations 12 & 14 at 114.

¹⁰ *Ibid.*, recommendation 37 at 120.

¹¹ *Ibid.*, recommendation 36 at 119.

¹² *Ibid.*, at 28.

¹³ *Ibid.*, recommendation 9 at 113.

¹⁴ *Ibid.*, at 49.

¹⁵ Ministry of Attorney General, Family Justice Services Division, "Judges' Satisfaction with Custody and Access Reports: A Survey of B.C. Supreme and Provincial Court Judges," online: Ministry of Attorney General < <http://www.ag.gov.bc.ca/justice-services/publications/fjsd/survey/JudgeSurvey.pdf> > (last accessed: March 23, 2007).

¹⁶ Family Justice Reform Working Group Report, *supra* note 4 at 67.

¹⁷ Law Society of British Columbia, "Unbundling Legal Services Task Force," online: <http://www.lawsociety.bc.ca/about/TF-Unbundling.html> (last accessed: March 12, 2007).

¹⁸ Legal Services Society of British Columbia, "Benchers Form Family Law Task Force," *Benchers' Bulletin* (2007) No. 1 March, online: Law Society of British Columbia < http://www.lawsociety.bc.ca/publications_forms/bulletin/2007/07-03-09_family-law.html?h=+voluntary%20code%20of%20practice%20working%20group > (last accessed: March 23, 2007).

¹⁹ Legal Services Society of British Columbia, "Legal aid to give more help to families," News Release (October 30, 2006), online: Legal Services Society < http://www.lss.bc.ca/assets/newsroom/news_releases/Legal-aid-to-give-more-help-to-more-families.pdf > (last accessed: March 12, 2007).