

**Justice Review Task Force  
Family Justice Reform Working Group  
Terms of Reference  
July 22, 2003**

## **Background**

The Justice Review Task Force (JRTF) was established on the initiative of the Law Society of BC, in March 2002. The objective of the JRTF is to identify a wide range of potential reform initiatives that may help make the justice system become more responsive, accessible and cost-effective. The Task Force has begun to identify projects which it wishes to explore as a matter of priority.

As it proceeds to explore certain reforms in more detail, the Task Force will be mindful of the importance of benefiting from the expertise and gaining the support of those who participate in the justice system, not just those represented on the committee. To that end, the following principles will guide Task Force work:

- Those with a significant interest in the issue being explored should be involved in the process;
- Involvement should be meaningful. Those who are interested in being involved in the discussions should have access to relevant information and the opportunity to participate effectively throughout the further development and implementation of any reform initiative;
- The process for development of the reforms should be flexible. How a plan is developed may vary with each initiative;
- The people involved in designing the plan may be as important as the design itself. Plans for the development of a particular reform idea should be designed with, not for, those who use or are affected by them.

The Task Force has published on its web site a list of potential justice system reforms that may be worthy of further exploration. From that list the Task Force has already begun to identify projects which it wishes to explore as a matter of priority.

### ***Unified Family Court***

The first such possibility to be explored was Unified Family Court. On October 7, 2002, in anticipation of an announcement of federal UFC funding, the JRTF released a background and discussion paper on the topic of Unified Family Court. The paper had the following purposes:

- to serve as a general orientation to the topic of Unified Family Court;
- to identify issues requiring consideration; and
- to begin to collect the information necessary to weigh the merits of having a Unified Family Court in British Columbia.

Over the subsequent months, the JRTF conducted research and consulted with various members of the judiciary and the family bar in order to determine the advantages and disadvantages of implementing UFCs, and to assess the judiciary and bar's support for such a

move. At the same time, the Ministry of Attorney General engaged in a series of discussions with the federal government to determine the exact nature of the UFC initiative, including the funding conditions.

In the Spring of 2003, the JRTF determined that further analysis, consultation and examination was required in order to successfully implement any changes to the existing family law system in BC. The JRTF concluded that the two year timeframe dictated by the federal funding formula for the implementation of UFCs may not allow for a thorough consideration of range of complex issues that would need to be resolved for UFCs to be successful. Nor is it clear that federal financial support for UFC would be sufficient at this time.

While not abandoning the prospect of UFCs, the JRTF is establishing the Family Justice Reform Working Group to complete the research, analysis and consultation required to assist the Task Force in determining the answers to fundamental questions about the delivery of family justice in BC.

### **Family Justice Reform Working Group Membership and Mandate**

#### ***Previous Studies and Reforms***

Since 1976, 16 reports on the family justice system in BC have been prepared by a variety of committees, commissions, working groups, practitioners and consultants. (A summary of these reports will ultimately be provided to the Task Force members). Each of these reports identified problems with the family justice system and recommended courses of action. Generally:

- Most reports are based on consultation with members of the bar, with parents who had been through the justice system, and with community agencies and interest groups;
- A common and consistent conclusion has been that courts are very often the wrong forum for addressing the emotionally charged issues facing separating families. Litigation is often protracted, expensive and focused on the rights of the parties rather than the best interests of the child;
- All reports recommended non-adversarial approaches to resolving family disputes, including mediation services and better information for separating parents, with special consideration in cases where family violence is a factor;
- There were also calls for improved services after an initial resolution was reached, better enforcement of support orders and the provision of supervised access services;
- Finally, many reports recommended greater access to services in rural areas, for non-English speaking and for aboriginal people.

Many of the recommendations from these reports have already been implemented, including the establishment of family justice centres, parenting after separation programs and the strengthening of maintenance enforcement. While there is no doubt that there is a broader range of services available to families going through separation and divorce today than years ago, and that the culture of dispute resolution in the family area has changed dramatically over the last 15 years, many professionals in the field believe that more can and should be done to fully realize the vision flowing from these reports.

These reports represent a wealth of information and insight into our family justice system. The Family Law Working Group should build on and incorporate the research and findings of these reports.

### ***Mandate***

The mandate of the Working Group is to:

- build on previous reports in the course of exploring options for fundamental change, on a cost effective basis, to the family justice system in BC;
- consider the unified family court model and consider whether or not it is the preferred model for organizing BC's family justice system;
- consider other methods or models of organizing the family justice system in BC;
- complete the research, analysis and consultation necessary to develop recommendations regarding the design of a family justice system that will meet the following criteria:
  - accessible
  - effective
  - integrated
  - fosters early resolution
  - minimizes family conflict
  - oriented to the needs of children and families;
- consider the best methods for the delivery of family justice services;
- consider how non-adversarial and settlement-oriented processes for families should be structured; and
- report on an interim basis to the JRTF as requested.

### ***Terminology***

***'Family justice system' means:***

- public and private services assisting families with issues arising out of separation, divorce or child welfare and includes all professionals who help families resolve these issues, and
- institutions such as the courts, government ministries, the Legal Services Society, as well as individual judges, lawyers, mediators, social workers and counselors.

***'Build on previous reports' means:***

using the 16 reports on the family justice system in BC that have been written since 1976 as a starting point. The research and analysis done in the preparation of these reports should not be duplicated by the Working Group.

***'Explore options for fundamental change' means:***

thinking as creatively as possible about how the fundamental policy and structural values set out in this mandate should be reflected in the institutions, processes and services that make up the family justice system. The Working Group should not be constrained in its thinking on these issues but should approach the task with an open and innovative perspective. For example, consider models in other jurisdictions, specialized benches, administrative processes for varying orders, and pre-writ resolution of cases.

***'Family justice services' means:***

services provided to families outside the courtroom that are intended to assist them to deal with issues that arise out of separation, divorce and child welfare problems, such as Parenting After Separation courses, information sessions with justice workers, duty counsel, and group legal advice.

***'Non-adversarial and settlement-oriented processes' means:***

- processes that encourage parties and their lawyers to resolve cases in a collaborative manner. Examples include mediation, collaborative law, judicial case conferences, judicial settlement conferences and child protection facilitated planning meetings;
- In their seminal paper, *Bargaining in the Shadow of the Law: the Case of Divorce*, published in 1979 in the Yale Law Journal, Robert Mnookin and Lewis Kornhauser describe “an alternate way of thinking of the role of the law at the time of divorce”. They state:

we see the primary function of contemporary divorce law not as imposing order from above, but rather as providing a framework within which divorcing couples can themselves determine their post-dissolution rights and responsibilities.

The article examines the importance of bargaining that occurs *outside* the courtroom, and the role of “private ordering” in the resolution of issues arising on separation. The JRTF would like the Working Group to consider ways in which the BC family justice system can provide a better framework within which divorcing couples can safely determine their own post-dissolution rights and responsibilities.

***'Accessible' means:***

- issues of cost, delay or complexity do not unduly impede access to resolution of family issues;
- processes that are user-friendly .

***'Effective' means:***

- the most efficient and effective possible use of available resources;
- services and processes are proportionate to the complexity and urgency of each family or individual's needs.

***'Integrated' means:***

- coordinated planning and services between the range of public institutions and private agencies serving families;
- minimum overlap in services;
- service gaps are minimized;
- seamless and easy links from one service to the next;
- all services working to common objectives;
- consistent policies and procedures between services;
- common values and priorities inform all services;
- communication and appropriate information sharing between services;
- comprehensive planning involving all services.

**‘Fosters early settlement’** means:

- processes should be designed to give parties opportunities and incentives to settle their family disputes as early as possible;
- cases should be managed by lawyers and the court with a view to settlement, i.e.; cases should not be treated as potential trials when only 3-5% go to trial, and court process should be reserved for the few cases that need it.

**‘Minimizes family conflict’** means:

- prevents or reduces conflict;
- encourages early collaborative settlement by refining and enhancing non-adversarial alternatives;
- regards trial as a necessary alternative to be used when non-adversarial approaches are not appropriate or effective.

**‘Oriented to the needs of children and families’** means:

- not designed primarily around the needs of the professionals in the system;
- ensuring that client needs are matched to appropriate services;
- remembering that issues arising on separation are governed as much or more by human needs as by legal rules.

### ***Deliverables***

The Working Group is asked to examine how access to justice can be improved for people in the family justice system in British Columbia.

1. The Working Group is asked to prepare recommendations to the JRTF regarding:

- Appropriate court structures for family law;
- Simplified and streamlined court processes and procedures;
- Court fee structures;
- The family law legislative framework, including jurisdiction and procedural (but not substantive) matters;
- Family justice services that will assist families to resolve their disputes both collaboratively outside the court room and by adjudication in the court room;
- Personnel, technological and facility requirements.

2. The Working Group is asked to develop a proposed work plan, including timelines, for implementation of its recommendations.

### ***Membership***

The Family Justice Reform Working Group will consist of representatives nominated by and reporting to the JRTF. The JRTF will select Working Group members based on the need to involve individuals having the following skills and experience:

- Family law experience (in both levels of court);
- Policy and research skills;

- Expertise in the delivery of family legal aid;
- Judicial experience;
- Knowledge of family justice services;
- Geographic diversity.

### ***Timeframe***

The Working group is to commence by September 2003 and will be asked to provide its final recommendations to the JRTF by September 2004. The Chair of the Committee (or his or her designate) will provide at least a bimonthly oral or written report to the JRTF. The Working Group will also bring major drafts and significant policy issues to the JRTF for discussion and direction. The Working Group will keep minutes of its meetings, including summaries of discussion and decision and action items.

### ***Resources***

The Working Group will be supported with the following resources:

- a project manager responsible to:
  - help to develop and work plan and work schedule;
  - oversee and coordinate the work of the Working Group;
  - schedule and convene meetings;
  - monitor progress;
  - act as a liaison between Working Group members;
  - organize research and distribute materials and information;
  - manage the project budget;
- travel expenses for in-person meetings,
- funding for certain miscellaneous expenses.

*We welcome your thoughts and suggestions.  
Please forward written comments to:*

*Justice Review Task Force  
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*OR e-mail comments to:  
[info@bcjusticereview.org](mailto:info@bcjusticereview.org)*

*Please see the Justice Review Task Force website at: [www.bcjusticereview.org](http://www.bcjusticereview.org)*