



BC Justice Review Task Force

Unified Family Court

Background and Discussion Paper #1

October 7, 2002

www.bcjusticereview.org

1. Introduction

The objective of the Justice Review Task Force¹ is to identify a wide range of reform ideas and initiatives that may help to make the justice system more responsive, accessible and cost effective. To this end, the Task Force provides a forum for its participants to exchange information, engage in mutual consultation respecting proposed administrative, procedural or program changes, and coordinate initiatives where appropriate.

The Task Force has recently published a list of potential justice system reforms that may be worthy of further exploration.² From that list the Task Force has begun to identify projects which it wishes to explore as a matter of priority. The first such possibility to be explored is Unified Family Court.

What follows is a background and discussion paper on the topic of Unified Family Court. The paper has 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.

This paper is both preliminary and exploratory in nature. The decision to explore this particular option does not mean that the idea of Unified Family Court is necessarily endorsed by one or all of the participants of the Task Force.

All interested parties are invited to review this paper and forward comments to the Justice Review Task Force at: <http://www.bcjusticereview.org/> by December 1, 2002. Views relating to any matters raised or comments respecting the viability of the Unified Family Court concept for British Columbia are sought and welcomed.

¹ The representatives sitting on the Justice Review Task Force are: BC Supreme Court – Chief Justice Donald Brenner, BC Provincial Court – Chief Judge Carol Baird Ellan, Law Society of BC – Richard Margetts, QC, Canadian Bar Association – Peter Leask, QC, Ministry of Attorney General – Gillian Wallace, QC, Ministry of Attorney General – Jerry McHale, QC.

² See Exploring Fundamental Change, A Compendium of Potential Justice System Reforms at: http://www.bcjusticereview.org/recent_announcements/2002/potential_reforms_07_02.pdf).

2. What is a Unified Family Court?

A Unified Family Court (UFC) consists of a single level of court for all family law matters, with simplified court procedures and specialized judges and a wide range of non-judicial family justice services. A client-centred focus is an important characteristic of a UFC.

3. Background

The first UFCs in Canada began operating in the 1970s. Manitoba, New Brunswick and Prince Edward Island now have province-wide UFCs. Saskatchewan, Ontario, Nova Scotia and Newfoundland have UFCs in some parts of the province. The long-term goal in Nova Scotia and Ontario is to expand their UFCs province-wide. Ontario's 1998 UFC expansion proposal states:

Ontario is committed to Unified Family Court expansion. The benefits of a single forum for the resolution of family law matters, coupled with the provision of appropriate services, are clearly recognized by the province and have received broad public support.³

British Columbia, Alberta and Quebec are the only provinces without UFCs, although Alberta has been working on a UFC proposal.⁴ In its 1998 report, the Special Joint Parliamentary Committee on custody and access recommended that the federal government continue to work with the provinces to establish UFCs across Canada.⁵

A "unified family court" project ran in Surrey, Richmond and Delta from 1974-77. Despite its name, it was not a true UFC but only an administratively integrated court with both Provincial Court and Supreme Court judges available through a common registry.

Over the years, there has been concern that establishing UFCs in British Columbia would reduce access to court for family law matters because:

- there is no easy access to Supreme Court in many areas of the province, particularly in rural and isolated areas;
- the complicated procedures and formality of Supreme Court would be barriers to self-represented litigants; and
- the expense of Supreme Court proceedings would be a barrier to many litigants.

³ Ontario Ministry of the Attorney General, "1998 Unified Family Court Expansion in Ontario", page 3

⁴ See Appendix A for a list of the recommendations made by the Alberta Unified Family Court Task Force in May 2001

⁵ Parliament of Canada, "For the Sake of the Children", Report of the Special Joint Committee on Child Custody and Access December 1998, recommendation 22.1

However, the continuing support for UFC in other provinces, some of which have had UFCs operating for more than 20 years, suggests that concerns such as these can be successfully addressed.

4. Reasons to Consider UFC

British Columbia already has well-regarded family justice services, such as mediation and Parenting After Separation programs (PAS) that are available through 29 Family Justice Centres located throughout the province. In addition, in recent years, both BC Supreme Court and Provincial Court have introduced procedures designed to manage family law cases more efficiently and to provide opportunities for early resolution of disputes. However, with increasing numbers of unrepresented people looking for help with family law problems and limited resources available to assist them, the family justice system needs to become more efficient to be more effective.

The divided and overlapping jurisdiction of two levels of court results in practical and procedural problems, such as:

- people who start proceedings in Provincial Court may not be able to resolve all their issues there because only Supreme Court can deal with division of property and divorce, resulting in multiplicity of proceedings;
- proceedings dealing with the same matters may be started in both courts where there is concurrent jurisdiction, resulting in duplication of proceedings; and
- an application to Provincial Court to enforce a Supreme Court support order can be delayed if the payer asks to vary the order at the enforcement hearing.

A single level of court for all family law matters eliminates these problems. Having one court, with one set of procedures and forms, provides the opportunity to improve administrative efficiency, make better use of court time and provide better service for people who approach the court. Other provinces have found that UFC improves the administration of family law.⁶

A single level of court also allows for better integration and co-ordination of family justice services and the court process. Currently some family justice services focus on people dealing with Provincial Court and are not available to people dealing with Supreme Court. With a single level

⁶ For example, see Freda Steel, "The Unified Family Court – Ten Years Later, *Manitoba Law Journal* 1996 Volume 24 No 2, page 380, where the author surveyed a small random sample of family law lawyers. All respondents agreed that one court with comprehensive jurisdiction over all family law matters was much better than the previous system.

of court, family justice services can be made available more efficiently and effectively to more people.

5. Issues

This section briefly highlights issues that must be considered before establishing a UFC. Looking at other provinces' experience with UFC can be of great assistance in resolving these issues.

5.1 Funding

In 1998, the federal government provided funding for UFCs in four provinces by appointing new superior court judges for UFCs, most from the ranks of the provincial court judiciary. The provinces used the money that they saved on provincial court judges' salaries to provide family justices services. This allowed Newfoundland, Ontario and Saskatchewan to expand their existing UFCs and Nova Scotia to establish its first UFCs.

Under its agreement with the federal government, Nova Scotia used the salaries and benefits of two Family Court judges who retired, as well as the salaries and benefits of all judges elevated from the Family Court to the UFC, for family justice services. Nova Scotia also provided additional space and renovations to existing space to support the services. In addition to paying for the UFC judges, the federal government continued to provide funding for services through the Child Support Guidelines initiative.

In August 2002, the federal Minister of Justice stated that the federal government was still committed to expanding the availability of UFCs. The recent federal Throne Speech indicated that the federal government wishes to support further expansion of Unified Family Courts. Federal officials have suggested that provinces that wish to establish or expand UFC should now make proposals to the federal Department of Justice.

The Alberta Unified Family Court Task Force report highlights the importance of adequate funding to successfully implement and operate a UFC. The report concludes that the benefits of a UFC can only be achieved if the UFC has adequate judicial, administrative, and support services, and sufficient financial resources. It recommends establishing a UFC only if the provincial government is prepared to commit the financial and administrative resources needed and the federal government is prepared to commit the judicial resources needed to allow the UFC to do an effective job of helping people with family law problems.

In addition to savings on judges' salaries and benefits, there may be another potential source of federal funding for family justice services. Since 1996 the federal government has provided the

provinces and territories with funding for family justice projects, initially as part of the Child Support Guidelines initiative. That funding ends March 31, 2003 and the federal government has not yet indicated whether it intends to continue to provide funding after that. However, if it does, the province might be able to obtain some additional funding for UFC family justice services, as Nova Scotia did when it established its UFCs.

The availability of funding will be a key factor in determining whether to establish a UFC in British Columbia. If the federal government provides new funding for UFCs on the same basis as it did in 1998, a key question is whether the money saved on provincial court judges' salaries and benefits (as well as any other federal funding available) will be sufficient to cover the expenditures required to establish and operate an effective UFC in British Columbia.

5.2 UFC sites – An Example

Please note, the locations referred to in this part do not reflect, in any way, an intention or bias on the questions of where Unified Family Court registries could or should be established. Nor does the reference to a limited number of sites necessarily imply a bias towards limited or partial as opposed to province-wide implementation of Unified Family Courts. The intent of this and the next section of the paper is merely to begin to explore the questions of scope of potential implementation and the potential savings that will be available to apply to services at different levels of implementation. Many assumptions are behind both the appropriateness of the sites selected and the calculations of potential savings. In due course each of these assumptions must be the subject of further research, discussion and consultation. The locations and dollar values referred to here should be considered as examples only, intended to illustrate one possible form and level of information, and to serve as a point of departure for future discussions.

In an exercise intended to allow us to begin to understand the potential savings from judges' salaries if a UFC were established in BC, seven locations were identified as potential UFC sites. These particular sites were selected because they are centrally located and have relatively high court sitting hours on family matters (based on 2001/2002 statistics.) They are:

- Surrey (includes New Westminster)
- Robson Square (includes Vancouver Law Courts and Burnaby)
- Victoria
- Abbotsford
- Kelowna (includes Penticton)
- Kamloops
- Prince George

5.3 Potential savings on judges' salaries

Assuming that a UFC judge would sit 675 hours per year⁷, 29.3 UFC judges would be required for the 7 locations. Of these, 15.5 would be needed to do the work currently done by 14 Provincial Court judges (because Provincial Court judges currently sit an average of 750 hours). It must be noted that this estimate of the number of UFC judges required does not include any factor for reduction of workload due to increased availability of services which are alternatives to court or any elimination of duplication or improvement in administrative procedures.

The federal government is most likely to employ a funding formula by which it would appoint 75% of the needed judges from the Provincial Court to UFC, with the remaining 25% being new appointments. The savings on salaries and benefits available to the province to invest in services by this formula would be approximately \$2,000,000.⁸

5.4 Potential improvements to family justice services

Currently Family Justice Centres provide a community-based point of entry into the family justice system. The services available include:

- Family mediation – provided by family justice counsellors, who are certified family mediators, to help resolve disputes related to child custody, access, guardianship and support.
- Parenting After Separation programs (PAS) – attending PAS is mandatory at the 9 largest provincial court registries. PAS is also available on a voluntary basis, and is offered in Punjabi, Hindi, Cantonese and Mandarin in certain communities. A self-study package is available through the public library system for parents unable to attend seminars. Referral to PAS is now part of the Supreme Court Judicial Case Conference process.
- Child custody and access assessments for the court – a limited number of court ordered child custody assessments are provided by family justice counsellors specializing in this service.
- Supervised access services – contracted services are available in four communities.

In addition, with the assistance of federal funding, the Ministry has enhanced administrative assistance for obtaining and varying child support orders, early dispute settlement opportunities for parents approaching the Provincial Court, support enforcement mechanisms and the comprehensive and integrated delivery of family justice services through community based family justice centres.

⁷ This figure was chosen because it is midway between the estimated average sitting hours of a Supreme Court judge and a Provincial Court judge.

⁸ Based on 2003/04 salary rate of \$161,250 plus 22.6% benefits

The savings on judges' salaries and benefits would be used to improve and expand the array of family justice services that provide people who are separating with options for resolving their disputes.

The following services are provided in UFCs in some or all of the other provinces:

- intake services – e. g., document checking, help with completing documents and referrals to mediation or community services;
- help with court process;
- mediation services;
- information brochures;
- information for parents;
- legal services – e. g., duty counsel;
- supervised access and exchange; and
- assessments and home studies – e. g., custody and access reports.

5.5 Accessibility

There is some concern that establishing UFCs in BC will limit access to justice because there will be fewer court locations, court procedure will be more complex and proceedings will be more expensive.

Geographic accessibility

The Alberta Unified Family Court Task Force report recommends that UFCs should be available to everyone within a reasonable time and distance. This represents a challenge in a huge geographic area, such as British Columbia, where much of the population is located in smaller centre, some distance from large urban areas.

Technology can play an important role in increasing access to UFC. A range of technological options are available from simple options such as fax filing to sophisticated electronic services (“e-services”) that utilize the internet, as well as video conferencing. Fax filing permits parties to fax their documents to court and to pay filing fees electronically. E-services envision a fully electronic court process where forms are completed and filed over the internet and case management is supported by a fully electronic tracking system. Video conferencing, approved or ordered by the court, now occurs in some registries and has many advantages including eliminating the need for witnesses, parties, co-counsel or judges to travel. Current technology

allows a primary site or court of record to be linked to a secondary site, which may be a non-court site.

Other technological applications make information widely available. Today information about the justice system, including dispute resolutions options and the court process is available on the web. Note, for example, the Ministry of Attorney General's Family Justice Website, the websites of the Provincial and Superior Courts, and the Legal Services Society (LSS) website⁹. The latter site provides self-help kits for parents applying for or varying child maintenance orders. Making court forms available on an appropriate website for review and downloading is another option. In a simple but effective technological application, public information about family justice services posted on the web directs people to services that are available in their communities. These include services offered in Family Justice Centres that provide a community-based point of entry into the family justice system. Services are delivered in an integrated and coordinated fashion, ensuring people are informed of and referred to appropriate resources, including other dispute resolution options.

Circuit courts can also increase access to UFC. These courts see court services staff and judges travelling to remote communities on scheduled days, or communities where a full time permanent court is not viable. Circuit court judges can preside in appropriately designated non-court sites in communities. There are currently 36 circuit courts operating British Columbia, 5 of which are new. Ultimately fax filing, e-services and video conferencing can enhance and complement circuit court service.

Manitoba has had province-wide UFC since 1989. However, because of the need for people in northern and some rural areas to continue to have easy court access, family law cases (other than those within the exclusive jurisdiction of the superior court) in those areas can be heard in either Provincial Court (which sits in many regional centres) or UFC.

One issue to consider is whether a UFC could be established province-wide in British Columbia all at once. Ontario's experience suggests that it is possible to build an effective UFC in phases, working toward the goal of having UFC serve the whole province.

Ontario established its first UFC in Hamilton in 1977. In 1995, it successfully expanded UFC to 4 more locations. As a result of a further expansion in 1998, UFC is now available in 17 locations and Ontario is still firmly committed to the goal of province-wide UFC. In areas where there is no

⁹ www.ag.gov.bc.ca/family-justice/index.htm; www.provincialcourt.bc.ca; <http://www.courts.gov.bc.ca/>
www.familylaw.lss.bc.ca/

UFC, family law matters continue to be dealt with in both the Superior Court of Justice and the Ontario Court of Justice (provincial court). The provincial court uses the same court rules for family matters as the UFC.

Procedure

In view of the increasing number of unrepresented people approaching the court to deal with family law matters, as well as the impact that complex procedures can have on the cost of proceedings for people with or without lawyers, simplifying and reducing the formality of court practices and procedures is essential to the success of UFC. An evaluation of the Nova Scotia UFC found that the high volume of paperwork was a big concern.¹⁰

Ontario has developed special court rules— a complete set of simplified procedures and forms in plain language - for its UFCs. For example, the rules provide:

- only one type of originating document – an application;
- telephone and video conference motions as of right; and
- examinations for discovery or cross-examinations on affidavits only by consent or court order (except in child protection cases).

Cost

Unlike the Supreme Court, the Provincial Court does not charge fees in family proceedings. There is also no charge for family justice services, except a nominal fee for supervised access. One of the many challenges in designing a UFC will be to develop an appropriate schedule of fees to keep the financial barriers to accessing the UFC as low as possible. For example, Nova Scotia has fees for starting proceedings and a sliding scale of fees for some family justice services. Fees can be waived in certain circumstances. On the other hand, Manitoba does not charge fees for family justice services.

5.6 Court Structure

For a UFC to have comprehensive jurisdiction over family law, its judges must be superior court judges. The issue is whether the court should be structured as a separate court dealing only with family law or as division of the BC Supreme Court. While each approach has advantages and disadvantages, it is worth noting that all UFCs in Canada are divisions of the superior court of the province in which they are located. In Ontario, UFC was first established as a separate court

¹⁰ Nova Scotia Department of Justice, “The Nova Scotia Supreme Court (Family Division): A Summary of Evaluation Research Conducted during the Period 1999-2001”, May, 2002 at: <http://www.gov.ns.ca/just/publications/SCSumReport.pdf>

(although its judges were appointed to the District Court) but it is now part of the Ontario Superior Court of Justice.

5.7 Specialized judges

The Alberta Unified Family Court Task Force report recommends that judges be specifically appointed to UFC. This approach emphasizes that the appointment involves a long-term commitment to family law and will help make sure that only judges who want to work in the family law area will be appointed. It is the approach taken in Manitoba, New Brunswick and Nova Scotia where judges are appointed directly to the family division of the superior court. However, in Newfoundland, Prince Edward Island and Saskatchewan, judges are appointed to the superior court and then assigned to the family division. In Ontario, judges of the superior court are appointed to the Family Court (which is what Ontario calls its UFC).

In all of these provinces there is some limited flexibility to assign UFC judges temporarily to another division and to assign judges from other divisions temporarily to the UFC when workload requires it.

Advantages of having specialized judges have been found to include:

- they have in-depth knowledge of family law and greater familiarity with the practical implications of their orders and specific practices and procedures;
- they have greater interest in and commitment to family law and greater sensitivity to the non-legal and social and emotional issues involved;
- results tend to be more even and predictable; and
- better use of court time

Concerns about requiring judges to specialize include “burn-out” and whether there would be a sufficient number of judges interested in specializing in family law.

5.8 Specialized judicial officers

Masters and registrars already deal with many family law issues in Supreme Court. The role that they could play in UFC needs to be explored.

In addition, the potential for developing administrative processes to replace judicial processes, where appropriate, to give judges more time to deal with the issues that require their adjudication is another issue that could also be explored.

5.9 Jurisdiction of the UFC

In other provinces, UFCs have broad jurisdiction over family law matters, including child protection. While some provinces initially also included young offender matters in their UFCs, they later removed them because the anticipated commonality between young offender matters and family law matters did not occur. Nova Scotia is now the only province that includes young offender matters (for children 12-15) in its UFC. However, unlike most other provinces, before establishing its UFC, Nova Scotia had a province-wide provincial Family Court that heard most family law matters. When it established its UFC, the UFC assumed responsibility for matters under the provincial Family Court's jurisdiction, which included young offender matters for children 12 -15.

The Alberta Unified Family Court Task Force recommends against including young offender matters initially, with a review of that decision within 2 years of establishing the UFC.

5.10 Legislative Amendments

In order to establish UFC in British Columbia a number of provincial and federal statutes would have to be amended, starting with the federal *Judges Act* and the provincial *Supreme Court Act* which set the number of Supreme Court judges in the province.

The amendments would need to be passed before a UFC could start operating. A plan for implementing UFC would need to take into account that the main legislative session in BC is held each spring. That means that the very earliest that the amendments to provincial legislation needed to introduce UFC could be made would likely be spring 2004.

6. Developing and implementing UFC

6.1 Scope of the project

Developing and implementing UFC is a major undertaking. In Nova Scotia, where the project to establish UFC at 3 sites involved merging two city family courts into one and merging the supreme and family court functions in two major regions of the province, the project had two Department of Justice staff members who acted as team leaders. They dedicated most of their time to the project. There were two other people who worked on programming and other committee tasks such as training and developing policies and procedures.

Nova Scotia also established an Implementation Committee that included judges, lawyers and court staff among its members. Twenty-five sub-committees, with about 160 members, worked on

various aspects of the project for over a year, including re-writing court rules and procedures, overseeing changes in building structure, reclassifying and relocating staff, training, public education, developing programs and evaluation plans and more.

6.2 Initial steps

If a decision is made to pursue the idea of implementing UFC in British Columbia, there are a number of steps that should be taken immediately:

- *Assign responsibility and establish a project team*

A significant amount of work would be required to develop and implement UFC. A small project team, including Ministry of Attorney General staff from several branches (e. g., Justice Services, Court Services, Legal Services and Policy, Planning and Legislation) and representatives from the judiciary and the bar, should be set up to do the initial development work. Team members should include either two ministry staff members dedicated to the project to act as project manager and project co-ordinator or consultants contracted to perform those functions.

- *Negotiate with the federal government*

Discussions with the federal government should start as soon as possible in order to make the federal government aware of BC's interest in establishing UFC and to take full advantage of any funding made available for expanding UFC in Canada. The September federal Throne Speech made it clear that the federal government will support further expansion of Unified Family Courts in Canada. It will not be clear until the federal budget, possibly in February 2003, exactly how much funding is available. However, it is very likely that if BC wishes to take advantage of this opportunity, it will need to move very quickly.

One objective of these discussions may be to determine whether the federal government would agree to provide some initial funding to allow the province to hire a project manager and project co-ordinator to assist in developing and implementing UFC in BC.

In order to facilitate discussions, the province would need to be prepared to provide the federal government with some information (perhaps in the form of a preliminary proposal) about its plan for UFC, including the proposed number and location of UFC sites, the estimated number of judges needed to operate these sites, options for appointing judges, the proposed family justice services and the estimated cost of those services.

- *Prepare and submit a formal proposal to the federal government*

The formal proposal would need to set out the details of the province's vision of UFC and its plan for implementing UFC. It would need to provide details such as the structure, locations and legislative jurisdiction of the UFC, judicial resources required, source of judicial appointments, how the province intends to allocate judges to the UFC locations, a description of the family justice services to be offered and how they would be provided and detailed implementation plans for each UFC location.

6.3 Steps following federal approval

Following federal approval, there are many issues that would need to be addressed to implement UFC. The following list, based on issues identified in Nova Scotia's UFC work plan, highlights the major issues and some major tasks:

- 1) Project planning, research and evaluation
 - prepare work plan
- 2) Legislation
 - review legislation and draft amendments
 - review policies and procedures related to specific legislation, such as child protection or divorce, to identify potential improvements
- 3) Rules and procedures
 - adopt a vision for administrative and service delivery components
 - review current rules and practice directions
 - develop streamlined processes to improve case flow
 - prepare uniform rules for UFC
 -
- 4) Family justice services
 - update material and prepare new material
 - review and update policy and prepare new policy
- 5) Training and education
 - prepare materials
 - design, organize and deliver training sessions

- 6) Technology
 - review technology needs and decide on a technology base for the court
- 7) Staffing
 - assess workload of UFC and determine staffing needs
 - develop or change job descriptions as required
 - place or hire staff and train staff
- 8) Facilities
 - determine space requirements and renovations or relocations needed
 - locate new space, if required
 - plan and co-ordinate staff moves
- 9) Communications
- 10) Transition process
 - develop plan for transition – scheduling cases, assigning judges, etc.

We welcome your thoughts and suggestions by December 1, 2002

Please forward written comments to:

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WWW.BCJUSTICEREVIEW.ORG***