

Response to the Report and Recommendations of the Unified Family Court Task Force

RECOMMENDATION 1:

The following policies and principles should apply to the family-law court system:

- Application of law while minimizing damage to individuals
Family-law courts should decide disputes according to law, but, within legal requirements, should be sensitive to minimizing the damage to individuals caused by family-law disputes, and should be supported in doing so by judges familiar with family-law problems and by appropriate court services.
- Encouragement of alternative means of dispute resolution
Persons with family-law problems should be encouraged to resolve them by means other than judicial decisions, and should be supported in so doing by the courts and services provided through the courts.
- Geographic accessibility
The services of family-law courts, including both judicial and other services, should be available to all Albertans within a reasonable time and distance.
- Economic and procedural accessibility
Economic and procedural barriers should be kept as low as possible by the adoption of efficient court structures and simplified court procedures and by the provision of court services for the assistance of family-law litigants.

GOVERNMENT RESPONSE:

Recommendation 1 accepted in principle.

RECOMMENDATION 2:

To give effect to the principles set out in Recommendation No. 1, a unified family court should be established in Alberta expeditiously:

- to exercise all family-law jurisdictions and powers
- to provide essential services to people involved in family-law disputes.

GOVERNMENT RESPONSE:

Recommendation 2 is accepted in principle

RECOMMENDATION 3:

The unified family court should be a division of the Court of Queen's Bench of Alberta.

GOVERNMENT RESPONSE:

The possibility of including a Unified Family Court as part of a Unified Trial Court is being explored.

Consultation and stakeholder discussion with respect to a Unified Court Model has been commenced. The Unified Family Court would proceed as the first component of a Unified Court should that approach be adopted.

In the event that a Unified Court Model is not adopted, a Unified Family Court Model would be brought forward for approval on a stand alone basis.

An Implementation Committee working on how the Unified Family Court will would operate regardless of the structural model utilized.

RECOMMENDATION 4:

1. Regard should be given to the following criteria among others, in the appointment of the judges of the unified family court:

- interest in family law and a desire to serve in the unified family court
- common sense, patience and problem-solving skills
- an understanding of human nature and motivations
- community involvement.

2. A special appointment process should be adopted. It should include

- personal interviews with prospective appointees to the unified family court
- consultation with the Provincial Government.

The Provincial Government should endeavour to obtain the agreement of the Federal Government to these recommendations.

GOVERNMENT RESPONSE:

Recommendation 4 is accepted.

To ensure the quality of appointments to the court and to deal with the issue of section 96 responsibility/authority, as well as the apportionment of costs, a consultation between the provincial and federal government should occur, and an appointment protocol should be developed by agreement between the federal and provincial governments.

Appointment protocol will relate either to a Unified Court or specifically to a Unified Family Court. In any event, Section 96 appointments should be to the Unified Court specifying a division. That way, the opportunity will exist for a judge to sit in other divisions when needed and assigned by the Chief Justice, even though the judge has a specific appointment to a particular division. It would allow for periodic rotation out of the division to allow for sabbatical or respite as family court work can be very demanding and wearing. It would also allow for refreshing or for special projects where the Chief Justice so determines.

RECOMMENDATION 5:

1. The Family Division of the Queen's Bench should be composed of judges devoted to the administration of family law.
2. Unified family court judges should be specifically appointed to the Family Division of the Queen's Bench, but the judges of both the Family Division and the general division should be able to exercise all the jurisdictions and powers of both divisions.
3. The bulk of the judicial work of the Family Division should be done by judges appointed to the Family Division.
4. The legislation establishing the Family Division should provide that the judges of the Family Division will spend a substantial majority of their judicial time in the Family Division.

GOVERNMENT RESPONSE:

Recommendation 5 is accepted in principle.

Specialized judges should be appointed to the Family and Youth Division of the Unified Trial Court,

and should be able to exercise all the powers currently held by Provincial Court judges and Queen's Bench judges in relation to family law matters.

See Recommendation 4.

RECOMMENDATION 6:

1. The unified family court should have exclusive jurisdiction in the following areas of law:

- marriage (including capacity to marry and solemnization of marriage)
- divorce and nullity of marriage
- judicial separation
- spousal support
- division of matrimonial property
- support, custody of and access to children
- enforcement of support, custody and access orders
- guardianship of children (personal)
- guardianship of children (property)
- adoption of children
- parentage of children
- child welfare
- protection and restraining orders, including orders under the *Protection Against Family Violence Act*
- protection of children under the *Child Welfare Act* and the *Protection of Children Involved in Prostitution Act*
- school attendance.

The Family Division should have concurrent jurisdiction with the Provincial Court to issue warrants for detention and examination under sec. 10 of the *Mental Health Act*.

GOVERNMENT RESPONSE:

Recommendation 6 is accepted.

As progress is made to a Unified Trial Court particular attention can be paid to placement of Youth matters and all areas of primary jurisdiction of the different divisions of the court reviewed.

RECOMMENDATION 7:

The Task Force recommends that:

- young offenders should not be included in the jurisdiction of the unified family court at this time.
- the question of including young offenders in the jurisdiction of the unified family court should be reviewed no later than two years after the establishment of the unified family court, and a decision should be made in the light of circumstances at the time of the review.
- in the meantime,
 - services such as those recommended for the unified family court should be made available to young offenders where they are relevant to the situation of young offenders.
 - provision should be made for the sharing of information between the Youth Court and the unified family court to enable both the Youth Court and the unified family court to be aware of proceedings regarding common problems where such sharing is appropriate.

GOVERNMENT RESPONSE:

Recommendation 7 is accepted.

The inclusion of young offender matters should be addressed during the course of planning for the implementation of a unified family court and in the course of discussion of the appropriate divisions of a Unified Trial Court.

RECOMMENDATION 8:

The following areas of law should not be included in the jurisdiction of the unified family court:

- family violence (adult criminal charges)
- dependent adults
- wills and estates
- family relief

GOVERNMENT RESPONSE:

Recommendation 8 is accepted.

Appropriate study of these issues should be dealt with in discussion of the divisions of a Unified Trial Court.

RECOMMENDATION 9:

1. Simplifying and reducing the formality of court practices and procedures should be a principal objective of the unified family court.

2. The unified family court's practices and procedures should:

- be unique to the unified family court and should not vary from place to place
- ensure timely access to the court and timely resolution of disputes
- enable everyone who appears before the court to give oral evidence where appropriate and to feel that they have had a fair hearing
- minimize cost and avoid unnecessary numbers of court proceedings
- be flexible enough to accommodate the needs of different participants in family-law litigation, including unrepresented litigants.

The Task Force recommends to the Minister that steps be taken to design rules of procedure and practice that will achieve the objectives of the unified family court, with the benefit of input from the bench, including the Queen's Bench and the Provincial Court, the bar, and other providers of services in the family-law system.

GOVERNMENT RESPONSE:

Recommendation 9 is accepted.

Much of the focus of the Family and Youth Division will be to resolve disputes with the participation of the parties and without formal adjudication, where possible.

Part of the process of developing practices and procedures should include a review of and provision for pre-court processes including mediation, and should focus on the role of collaborative law, DRO's and other innovative resolution oriented processes.

RECOMMENDATION 10:

1. The unified family court should:

- be adequately staffed with personnel trained to facilitate the objectives of the unified family court.

- have one official who is responsible for the administration of the court throughout the province.
- share court facilities in centres where people have access to justice generally.

2. The unified family court should be headed by an Associate Chief Justice of the Family Division.

GOVERNMENT RESPONSE:

Recommendation 10 is accepted in principle.

The system of administration for the Unified Family Court will be based on eliminating distinctions between different levels of courts and utilizing functional approaches rather than hierarchal distinctions.

There is no need to provide the resourcing for an additional administrator as the existing clerks of the court could continue to coordinate administration of the court in the family law area.

Resourcing issues will be at least partially dealt with in discussion with the Federal Government in respect of compensation for Judges. Any resourcing saved in this area by the Province will be distributed to pre-court process and administrative process.

The issue of how this court is headed will be dealt with in discussion of a Unified Trial Court.

RECOMMENDATION 11:

1. Family-law and youth courts should be provided with one computer system, or compatible computer systems, that will

- allow the sharing of information about individuals involved in family-law or young offenders matters before the courts,
- allow the courts to collect common statistical information for use in the planning of court resources and operations.

2. The legislation should be reviewed to ensure that relevant information can be shared by the courts where appropriate.

GOVERNMENT RESPONSE:

This will be reviewed in the context of the IT plan for Justice and the Government's overall strategy for information technology.

RECOMMENDATION 12:

The unified family court should have video-hearing and video-conferencing capability to reduce costs and travel time for litigants, their lawyers, judges and court staff.

GOVERNMENT RESPONSE:

Recommendation 12 is accepted in principle.

RECOMMENDATION 13:

The following categories of services should be available as early as possible to persons who come to family-law courts:

1. Education of parents

- courses of instruction to parents for working out custody and access matters in an amicable manner, such as the existing Parenting After Separation and Communication in Conflict courses, should be continued and made more generally available
- courses for parents in high conflict situations.

2. Services relating to access to courts

- one-stop administrative centres which will provide information about the court and procedures, assistance with documents, and plain-language self-help materials and forms, and will guide litigants through court procedures
- native counseling services
- court-generated orders
- interpreter services
- judicial officers other than judges, who would be able to deal with matters that do not have to be dealt with by judges, thus providing for quicker and easier access to the courts when required.

3. Special services for the benefit of children

- courses or counseling for children involved in the breakdown of family relationships
- legal counsel for children involved in family breakdown
- services to deal quickly with allegations of abuse and alienation in situations of breakdown of parental relations.

4. Services that facilitate access to children

- access supervision
- access exchange facilities.

5. Assistance for the court

- custody and access reports.

6. Legal services

- expanded access to legal aid for litigants
- duty counsel.

7. Alternative dispute resolution

- mediation services
- case management and judicial dispute resolution.

8. Judicial education

This should include courses for judges about the effects of such things as:

- cultural diversity and social context education
- mental health
- substance abuse
- dynamics of family violence

- health issues, such as fetal alcohol syndrome.

GOVERNMENT RESPONSE:

Recommendation 13 is accepted in principle.

The provision of court annexed family services are intended to achieve the following objectives:

- a. emphasizing resolution and problem solving through mediation and similar processes rather than the adversarial process;
- b. emphasizing doing what is right for children and removing children as "bargaining chips";
- c. encouraging acceptance of parental responsibility;
- d. encouraging appropriate and discouraging inappropriate parental behaviours.

The issue of legal services will be reviewed with the Legal Aid Family Law Project.

See recommendation 10 regarding application of resources saved from Judicial salaries.

RECOMMENDATION 14:

The reform of family law should be pursued vigorously and carried to as early a completion as possible.

GOVERNMENT RESPONSE:

Recommendation 14 is accepted.

This is anticipated to be completed in 2003.

RECOMMENDATION 15:

1. It is imperative that the changeover to the unified family court be made in a planned and orderly manner so that family-law litigants and their families will not suffer from inadequate court organization or inadequate resources.

2. We urge the Minister to ensure that careful planning is undertaken for the implementation of the unified family court. At the appropriate stage a comprehensive and detailed business plan should be prepared after consultation with a steering committee composed of members of the bench, both Queen's Bench and Provincial Court, the bar, other service providers and the public, which could assist in the implementation process.

3. The business plan:

- should include a plan for the judicial and other resources required and should provide a timed plan for the orderly implementation of the Task Force's proposals, whether in a staged progression or as one operation,
- should be designed to achieve the goal of establishing a unified family court which will serve the whole province.

GOVERNMENT RESPONSE:

Recommendation 15 is accepted.

RECOMMENDATION 16:

The Provincial Government should not establish a unified family court unless:

- the Provincial Government is prepared to commit to the unified family court the financial and administrative resources,
- and unless the Federal Government is prepared to commit the necessary judicial resources,

which are necessary in order to enable the unified family court to do an effective job for Albertans who have family-law problems.

GOVERNMENT RESPONSE:

Recommendation 16 is accepted.