



SUPPORTING BC'S FAMILIES

BC's families face challenges in gaining access to and taking full advantage of our justice system, as highlighted in the discussion of legal aid in the preceding section. The *Family Law Act* was introduced in 2013 with a stated goal of encouraging families to resolve their disputes out of court. Unfortunately, we have not yet seen the resources committed to support out-of-court resolution, including more family justice counsellors and government-paid mediators, access to paid legal aid-funded counsel in mediation and resources for distance mediation. Therefore neither the families the Act is intended to serve nor the taxpayers have realized the potential benefits of the Act. In this section we review challenges parents face as they seek to address legal matters related to parenting, as well as the issues of reverse mortgages and wrongful death legislation, which are linked by the Court's responsibility to safeguard the interests of families and individuals.



Funding Out-of-Court Resolution Processes

Supporting out-of-court resolution of family disputes helps families achieve a less-stressful and less-costly resolution of their problems while also reducing costs to the justice system.

A. Views of the Child

The new *Family Law Act* requires that the views of the child be considered in determining what is in the best interest of the child when making decisions related to parenting, including guardianship, parental responsibilities, parenting time, and contact. The views of the child are traditionally collected in two ways. One is via a “Views of the Child Report,” which is prepared by a trained and independent interviewer

who focuses on reporting what the child says without assessment or opinion. The second is an assessment of the views and needs of the child, which is done by a trained person who may do multiple interviews, view the child’s interactions, and conduct a full investigation before expressing an opinion in a report. These reports, performed by BC’s Family Justice Centres, play important roles in helping to stabilize families going through disruptive changes, often assist in defusing high conflict situations, and encourage settlement of disputes. Unfortunately, they are often available too late in the process to serve a purpose beyond evidence at trial.

Reports are available privately, for a fee, but are beyond the means of many litigants. The Family Justice Centres do them for free, but are significantly underfunded. There is typically a wait of about six months for the interview report and about 18 months for the assessment reports.

B. Mediation

Mediation is an effective means of settling family law matters and is encouraged by the *Family Law Act*. Such resolutions save considerable court time and expense. However, those wishing to use government-funded services available through Family Justice Centres must wait weeks or months. This means that the window of opportunity in the course of a dispute in which mediation may succeed is often missed. The problem of long waits is compounded

RECOMMENDED ACTION

Increase funding to BC’s Family Justice Centres to allow them to increase the number of trained staff available to produce interview and assessment reports within six weeks of initial request, and/or to make funding available to qualified outside organizations to produce the reports.

RECOMMENDED ACTION

Increase funding to BC’s Family Justice Centres to allow them to increase the number of trained mediators and family justice counsellors in order to reduce wait times for mediation, as well as to provide greater access to distance mediation for those who are not in communities serviced by Family Justice Centres.



by the fact that there are only 24 Family Justice Centres (including the three Justice Access Centres) in British Columbia; only two of which are north of Kamloops. While opening additional centres would be an expensive solution, access to mediation in non-served communities could be dramatically improved by using video-conferencing for “distance mediation.” The cost of private mediation is prohibitive for many British Columbians.

Unified Family Court

British Columbia has two separate but parallel courts dealing with family law matters, with duplications and overlaps in services and jurisdiction that are confusing to the public and wasteful of scarce resources. The Provincial Court deals with more than half of the family law cases in British Columbia, but there are many matters it cannot deal with. The Supreme Court has full family law jurisdiction, but fewer locations and more complex procedures. This results in confusion, inefficiency, duplication and delay.

RECOMMENDED ACTION

Work with the federal government to establish a Unified Family Court – as has been done in other provinces – to resolve existing issues resulting from two separate but parallel courts (Supreme and Provincial Courts) dealing with often overlapping family matters.

Seven provinces have moved, in whole or in part, to a “Unified Family Court” in which one level of court deals with all family law matters. Such a court has many advantages, including simplified rules and procedures, a specialized bench, a strong cooperative resolution focus and extensive services for children and families. This has been recommended by various studies, notably in 2005 in the Family Justice Reform Working Group’s report as part of the BC Justice Review Task Force.

Creation of such a court requires cooperation from the federal government, which has indicated a strong interest in creating and improving Unified Family Courts across the country.

Successful implementation of a unified family court would need to ensure that:

- It remains accessible throughout the province, such that those living in smaller centres currently served by the Provincial Court but not the Supreme Court continue to have access to family justice;
- Its procedures are no more complex than required and are adaptable to the needs of a particular case; and
- It provides a focus for family services to assist families in moving to resolution as quickly as reasonably possible, with a strong focus on the encouragement of cooperative resolution while efficiently moving those cases for which cooperative resolution will not succeed to final resolution.



Reverse Mortgages

Reverse mortgages are popular among homeowners, primarily those aged 55 or older who wish to borrow against their homes without the requirement of immediate payments against principal or interest. Reverse mortgages are typically repaid upon the sale of the real estate, on the borrower's death, or when the real estate is no longer the borrower's principal residence. In its Report No. 41 issued in February 2006, the BC Law Institute identified the concern that some reverse mortgage borrowers

do not understand the implications of these rising debt loans. Since periodic payments are not made, interest accruing on the loan is not reduced. Interest compounds and the borrower pays interest on accumulated interest. This feature of reverse mortgages results in the outstanding loan amounts growing quite large. While lenders are required to provide a borrower with a disclosure statement, CBABC is concerned that the disclosure statement required under the Consumer Protection Act is not broad enough. Without sufficient disclosure, seniors may be vulnerable to unethical lending practices and may be surprised at the amount owed after a period of time.

RECOMMENDED ACTION

Amend the *Consumer Protection Act* as proposed in the BC Law Institute Report on Reverse Mortgages to include specific legislation addressing potential confusion regarding the cost of borrowing under a reverse mortgage and the rising debt nature of a reverse mortgage. Additional disclosure requirements are needed to further protect reverse mortgage borrowers, who are typically senior citizens.

Wrongful Death Legislation

The current failure of the law to recognize and compensate the pain and suffering of family members of someone killed as a result of the negligence or intentional acts of another is out of step with current notions of fundamental justice. The CBABC has advocated for changes to the *Family Compensation Act* to bring align it with the law in other provinces, including to permit:

- Claims for both pecuniary (monetary) and non-pecuniary losses to be made by the spouse, parent or child of a deceased, as well as certain other family members in specific circumstances;
- Recovery of bereavement damages, including grief and loss of guidance, care and companionship; and
- Claims for punitive damages to be made in appropriate cases.

RECOMMENDED ACTION

Amend the *Family Compensation Act* to better align it with current notions of fundamental justice in terms of a family member killed as a result of negligence or intentional acts by another.