



# **Richmond Family/Youth Court Committee**

## **Annual Report**

**2001**

# **RICHMOND FAMILY COURT COMMITTEE**

## **2001 ANNUAL REPORT**

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### **Background Information**

The Family Court Committee is provided for in law under the Provincial Court Act and the Young Offenders' Act.

The Committee is community based and is accountable to the Mayor and City Council, as well as to the Attorney-General of British Columbia. The Richmond Family Court Committee is the longest established Committee with continuous service in the Province since its establishment in 1964.

The Family Court Committee acts as a link between the community and justice system by:

- understanding and monitoring the legislation and court administrative practices
- being aware of the needs and the resources of the community
- recommending improvements to the City Council, the Attorney-General and others.

The Committee also gathers information with respect to problems raised by the community, the court, its officers, or clients. The Committee draws upon the support of the community and advocates for improvements in the justice system. Examples of meetings with relevant programs include: Victim Assistance Program, Family Maintenance Enforcement Program, Community Work Service Program, etc.

The Richmond Family Court Committee makes submissions to the Attorney-General and other Ministers on proposed changes in legislation and administrative practices which may have an effect on the delivery of family court services. The Richmond Family Court Committee actively liaises and works with other Family Court Committees on issues of mutual concern.

To achieve the mandate of "understanding and monitoring the legislation and administrative practices relating to the justice system", volunteer members of the Committee regularly attend both family and youth court. As impartial observers, they view cases involving applications made under the Family Relations Act, Reciprocal Enforcement and Maintenance Orders Act, Family Maintenance Enforcement Act, Family and Child Service Act, GAIN Act, and the Young Offenders' Act.

Issues and concerns arising from court watch activities are reported to the Family Court Committee for follow-up action to effect improvements. These may include identified gaps in service, lack of adequate resources, or concerns regarding courtroom process.

Court watch volunteers make objective observations on courtroom procedures, while respecting and maintaining the privacy of individuals involved in the proceedings.

**2001 Membership**

**Richmond Family/Youth Court Committee**

**Judy Assoon  
Christine Brodie  
Carol Chappell  
Sanjiv (Bob) Dyal  
Eva Flintoff  
Barry Freeman  
Tripta Kurl  
Ann Mackie  
Cheryl Rehm-Latiff  
Marina Reino  
Maureen Sanderson  
Manjit Sandhu  
Rose Marie Taylor  
Mumtaz Virani  
Fred Ursel**

## **CHAIRPERSON'S REPORT**

The Family and Youth Court Committee had a full complement of 15 members in 2001. These 15 members have a variety of educational, professional, and experiential backgrounds. The members are either currently working with or have in the past worked with youths and families and bring with them a wealth of knowledge and ideas to share in order to better serve Richmond through their community service.

Our guest speakers in 2001 were:

- ◆ Former Mayor Halsey-Brandt, who presented the Task Force on Drugs report. Discussions and comments on the report were sent to the task force.
- ◆ Ms. Bonnie Gallagher, coordinator of the Youth Intervention Programme, gave a presentation for the committee. Our Restorative Justice Committee, along with other community agencies, has been working together with YIP to form a peer panel. Report to follow.
- ◆ Mr. Doug Welbanks, Director of Debtors Assistance, gave an outline of his departments work as it pertains to the Family Court clients in establishing budgets for separating spouses.
- ◆ Ms. Jeannine Fraser, Family Justice Counsellor, explained the services offered by the counsellors to those who attend Family Court. Our committee will be requesting that the Parenting After Separation course be made mandatory in Richmond for those couples undergoing separation who are appearing in Family Court.
- ◆ Committee member Bob Dyal presented his article on proposed changes to Family Law. The article is attached as Appendix I.

A one day conference in Vancouver was held for Family/Youth Court Committees from the Lower Mainland. Fred Ursel, Bob Dyal and Cheryl Rehm-Latiff attended. The workshops presented were the history of youth justice and sexual exploitation of children. Also present were judges, lawyers, representatives from the Department of Justice Canada, the Ministry of Children and Families and Youth Court workers. The conference was both useful and informative.

Our annual social event for the Judges, Justice of the Peace, court clerical staff probation staff and sheriffs was held at the home of Chris Brodie. We enjoy a good relationship with the staff at the court house which makes our role as court watchers much easier.

Long term committee members Barry Freeman and Taz Virani will be leaving the Family Court Committee. They have given a great deal of time and service to this committee and we thank them for a job well done. Barry and Taz will certainly be missed.

## Richmond Family Court Committee

The committee wishes to thank Richmond City Council for providing a meeting place, support staff, and an annual budget so that we could continue our service to the City. Special thanks go to Deborah MacLennan, Fran Ashton and David Weber. We also thank the City for the Civic Appreciation dinner.

The Richmond Family Court Committee looks forward to 2002 and serving the citizens of Richmond through our committee work.

Cheryl Rehm-Latiff  
Chairperson

## SUBCOMMITTEE REPORTS

### COURT WATCH COMMITTEE

Chaired by Taz Virani.

Court watch duties were shared by Christine Brodie, Carol Chappell, Bob Dyal, Barry Freeman, Tripta Kurl, Ann Mackie, Maureen Sanderson, Fred Ursel and Taz Virani.

There are three court days for youth and family in Richmond. The court sessions are held at the court house on Gilbert and Granville between 9 am and 4:30 pm on Tuesdays, Wednesdays and Thursdays. Tuesdays are for youth trials, Wednesdays are for youth remands, 1<sup>st</sup> appearances and trials, and Thursdays are for family matters. These days are flexible in that if there are no youth matters then family matters can be scheduled. Show cause youth matters or emergency cases may be heard on any of the three days.

#### *Wednesday Youth Sessions: C. Rehm-Latiff*

The Wednesday morning sessions are divided into two parts. The Justice of the Peace presides over the 9:00 am to 9:30 am session for initial/1<sup>st</sup> appearances, confirmation of proceedings, status of court cases, age and notice by parents, notification of further appearances, diversion applications and other related cases. After the 9:00 am list is completed the Judge handles all other cases scheduled for that day.

The court staff are a hard working group of individuals who carry on their jobs efficiently and competently. Richmond is fortunate to have a Judge and Justice of the Peace who have a great deal of experience and knowledge. The same Crown Counsel has been with the court for the past year and comes to court well prepared for his cases. The Youth Probation Officers continue to give excellent predisposition reports which are invaluable in helping to determine appropriate sentences for youth offenders.

The court staff and sheriffs have been very helpful and co-operative in providing youth lists and informing us of changes in the days proceedings. Without their co-operation our role as court watchers would not be possible.

#### *Tuesday Youth Sessions – Taz Virani*

Tuesdays have been assigned to trials and in-custody matters. There is no duty council present on these days. During this year, Tuesdays have been extremely slow. Most matters did not proceed as a number of them ended up in pleas and diversion. There

were hardly any cases during the summer. However, this time was then utilized for the family matters.

**Court Watch Report 2001 (Family Court)**

**(a) Family Case Conferences**

Family Case conferences may be held at a Provincial Court in an informal setting. If the conference is successful a consent order can be drafted and approved by the participating judge, thus eliminating the necessity of conducting a formal trial.

The objective of the conference is to have the parties involved come to a mutual agreement on all, or at least some, of the matters; i.e. custody, access, guardianship, maintenance etc. The conference allows for participation of all involved parties; parents, extended family members, older children where it is appropriate, lawyers, social workers, family justice counsellors, etc. A provincial court judge has the responsibility for supervising the conference.

The continuing success rate of the conferences is very encouraging.

It should be noted that members of the Family Court Committee do not sit in on the conferences. It is the opinion of this member that it should not be part of our 'Court Watch' responsibility as it is an informal procedure which is not open to the public and could therefore be perceived as infringing on the privacy rights of parents.

**(b) Family Maintenance Enforcement Program**

We are pleased to report that during the year 2001 there has been a noticeable reduction in the number of Default Hearings brought to the court by the offices of the above program.

In the year 2000 our committee met with officials of the program. The purpose of the meeting was to express our concerns relating to communication problems, particularly where it involved the payors.

The evidence forthcoming from those default hearings that are brought to court appears to indicate that efforts are being made by the staff of the Family Maintenance Enforcement Program to both improve communication channels and, where appropriate, to attempt to resolve problems prior to a court appearance.



## Richmond Family Court Committee

### (c) Parenting After Separation

This program consists of a three hour information session held prior to a court appearance with its main objective being to assist parents adjust to separation. These sessions are free and are available in more than 50 communities in BC. It is presently mandatory to a formal court appearance in several Lower Mainland communities.

The local offices of the Department of the Attorney General are responsible for organizing and conducting the sessions. There has recently been a small increase in the staffing of Family Justice Counsellors at the local Richmond office and in view of this we may hopefully see an increase in the participation of Richmond parents.

In conclusion, we wish to express our appreciation to the competent and courteous staff at the Richmond Family Court. A good portion of their daily tasks and responsibilities involves dealing with individuals who are under varying degrees of emotional stress. The consistent patience and kindness of staff members is a very positive factor.

We have indeed been fortunate in having the Honourable Judge B. Davis continue as our resident judge. His wisdom and ability as a judge is of the highest order and he is a strong advocate for the concept of "fairness", particularly as it relates to children and youths.

### Richmond Community Advisory Council

Liaison – Committee Member – Maureen Sanderson

#### *Introduction*

For approximately the past four years, I have been a member of the Richmond Family Court. I participated as a Court Watcher, that is, as an observer in Youth Court. I also represented the Committee at the meetings of the Richmond Community Advisory Council.

#### *Richmond Community Advisory Council*

Over the past four years I have attended the RCAC meetings. I have found this Council a superb mechanism for what is happening in the community relating to all issues – social, recreational, educational, resources, neighbourhood problems etc. etc. etc.

Over the past year or so this Council has been struggling with restructuring. This is a pity. I don't believe there are very many communities that have this type of resource, and in whatever way is possible, the Council should be encouraged to continue in Community liaison. What other way can agencies keep in touch? I have enjoyed my

## **Richmond Family Court Committee**

participation on the Family Court Committee and the Richmond Community Advisory Council. I thank Richmond for the opportunity to have been involved.

### **Alternative Measures Sub-Committee Report**

Liaison – Committee Member – Judy Assoon

This year has been frustrating for a variety of reasons. We still wish to establish the Richmond Alternative Measures – Restorative Justice Panel for Youth. This project has been in the discussion phase for three years now, in connection with Richmond Youth Intervention Programme, Richmond Youth Probation Services and Richmond RCMP. Our Sub-Committee (representation from YIP, Probation, Youth and Family Court Committee, RCMP and Victim Services) had numerous organizational meetings and early last spring we were set to go with several recommendations in place for “first clients”. Due to office moves, staffing changes, a policy review and a proposed programme evaluation at Richmond YIP, we have had to put our plans and meetings on the “back burner” since last spring.

We strongly believe that the very best “place” for a Restorative Justice Panel would be within the expertise and framework of the already existing alternative measures programmes, which have been so effectively running through Richmond YIP and Richmond Youth Probations. The personnel in both these programmes are professional, trained, ethical and highly effective. Resources of the community are known and available to them. We (Richmond Youth and Family Court Committee) would be involved as the community mentors, with a twenty-six year experience with and knowledge of the needs of Youth and the Court in our community.

It is our hope that after the current policy review and programme evaluation, that we can reconvene our planning committee. We had been informed last May that a representative from our Sub Committee would be included in the programme review and valuation process and we await further information from City staff regarding this.

### **Richmond Community Action Team**

Liaison – Committee Member – Christine Brodie

Christine Brodie participates on the Richmond Community Action Team and reports on the group's activities and information sessions.

The Richmond Action Team is studying the issue of sexual exploitation of youth and children as it affects our community. The committee is comprised of a variety of people who work with youth at risk. Our goals include raising awareness and educating our citizens of all ages about the many faces of sexual exploitation. We advocate a proactive approach to understand the issues and to work together towards supporting and protecting our youth.

## **Richmond Family Court Committee**

### **Advisory Committee on Policing**

Liaison – Committee Member – Fred Ursel

Fred Ursel participated on this Committee and reported on its policies and progress.

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Having our members serve on the above Committees as well as the Family Court Committee provides us with more information so we can all work together and share ideas and avoid duplication.

## **MANDATE OF THE FAMILY COURT COMMITTEE**

Municipal authority to appoint Family Court Committees and the mandate and duties of persons appointed are set down as mandatory requirements in section (4) of the Provincial Court Act, Chapter RSBC 1996.

- (1) *A municipality must have a family court committee appointed by the municipal council in January of each year.***
- (2) *The members of a family court committee must include persons with experience in education, health, probation or welfare.***
- (3) *The members of a family court committee serve without remuneration.***
- (4) *If a court facility in which family matters are dealt with serves more than one municipality or area not in a municipality, the family court committee must be composed of representatives from each area served.***
- (5) *The municipalities involved must appoint one member of the family court committee as chair, and another as vice chair.***
- (6) *The family court committee must do the following:***
  - (a) *meet at least 4 times a year to consider and examine the resources of the community for family and children's matters, to assist the court when requested and generally, to make the recommendations to the court, the Attorney General or others it considers advisable;***
  - (b) *assist the officers and judges of the court, if requested, to provide a community resource or assistance in individual cases referred to the committee;***
  - (c) *report annually to the municipalities involved and to the Attorney General respecting their activities during the past year.***

## MANDATE OF THE YOUTH OFFENDERS ACT (YOA)

The desirability of maintaining community involvement in the provincially-administered juvenile justice system is addressed in section 69 of the Young Offenders Act which allows for the discretionary establishment of Youth Justice Committees in place of Juvenile Court Committees which had been serving a useful function.

Section 69 of the Young Offenders Act states that:

***The Attorney General of a province or such other Minister as a Lieutenant-Governor in Council of the province, may designate, or a delegate thereof, may establish one or more committees of citizens to be known as Youth Justice Committees, to assist without remuneration in any aspect of the administration of this Act or in any programs of services for young offenders and may specify the method of appointment of committee members and the functions of the committee.***

**APPENDIX I - ARTICLE RESPECTFULLY SUBMITTED BY BOB DYAL ON  
PROPOSED CHANGES TO THE FAMILY LAW:**

**Streamlining Settlements of Matrimonial Matters**

*Introduction*

The principle goal of this article is to suggest enhancements in the law, which the author believes will improve the settlement of matrimonial issues brought before the courts. The Family Court Watch Subcommittee has observed the impact of existing family laws on the operation of the court and their impact on the litigants themselves. Regrettably, there is much room for further improvement as has been noted by current and past members of the Richmond Family Court Committee. At this point, I wish to express my gratitude to all Committee members, court personnel and guest speakers whose combined knowledge has made this work possible. Throughout this paper, I will focus on proposed solutions to the major problems in Family Court today. Naturally, I will provide a brief background on the problems themselves and how they affect our community.

*Challenges*

Family law, by its nature, deals with emotional subject matter. Unfortunately, emotionally upset litigants cannot be expected to act in a rational manner. Thus, the committee frequently observes cases where there is no sensible purpose to the litigation – only raw emotion. Another difficulty faced by parties is the cost and delay inherent in modern civil litigation. It is now all too common to see self-represented laypeople in our courts. Their limited understanding of law and procedure (for which they are not to blame) has contributed to the delay factor in litigation. Finally, the laws themselves contribute to repetitive court proceedings being brought by the same parties. It is not uncommon to see some parties appear in court several times per year. All of this has a direct effect on the community at large. The government of Ontario estimated that the cost of having a judge preside for one day is \$20,000 to its taxpayers in 1995. There is no reason to believe that this figure is much different for British Columbians. Also, at the very least, there is anecdotal evidence to suggest that acrimonious family litigation leads to increased spousal abuse, youth crime, severe depression, etc. It goes without saying that these undesirable by-products create a strain on community resources such as policing, health care, social assistance, the criminal courts, youth courts and so on. With a better appreciation for the scope of family law problems, appropriate solutions can be considered.

*Mandatory Emotional Counselling*

There are various professionals who are available to assist individuals experiencing emotional difficulties. Family doctors, psychiatrists, social workers, psychologists and counsellors are all available to provide the necessary support to affected persons. Many

of these services are provided at little or no charge through the medical services plan or employee assistance programs. However, none of this makes any difference unless a person takes advantage of the services provided by these professionals. Therefore, a provision in the Family Relations Act (FRA) should make emotional counselling a requirement before any real litigation is heard with the exception of applications for restraining orders against assets or people. The duration of this "freeze" on litigation would be 90 days. It is worth pointing out that the provision will obviously not specify the mode of therapy. The only requirement is that the parties have each consulted with a specified professional. A list of such professionals can be attached to the FRA as a schedule. Furthermore, the parties or their legal counsel must provide a certification to this effect. Some suggested professionals might include members of the B.C. College of Physicians & Surgeons, the B.C. Psychological Association, the Board of Registration for Social Workers of the Province of B.C. and the American Association for Marriage & Family Therapy. Ultimately, the list of approved professionals is best left to ministerial discretion. It is expected that this approach will help to ensure that emotional extremes are moderated prior to litigation.

### *Mediation And Non-Binding Arbitration*

The Courts in Ontario have adopted a mandatory mediation program in civil cases. The program requires that a judge refer suitable cases to mediation before the court will hear the matter. Oddly, the program does not cover family law cases. A useful proposal would be to add a provision in the FRA, which would require courts in B.C. to refer suitable family matters to mediation and non-binding arbitration. Some cases, such as those involving family abuse, are not suitable for such a referral. This ought to be left to the discretion of the judge. The courts themselves offer free mediation services, as does the Debtor's Assistance Branch of the provincial Ministry of the Attorney General. The provision of mediation services at the Richmond Provincial Court is subject to some delay. Nevertheless, I am encouraged by the feedback of Family Justice Counsellors that an increase in their staffing levels will address this matter. Parties may also choose a private mediator but a fee is often involved. If the parties are legally informed, any resulting agreements should be made binding. The mediator should also render an opinion on issues, which remain unresolved once the mediation has concluded. Unless the parties agree otherwise, all mediation should be inadmissible in court proceedings so that confidence is fostered in the process. This approach offers parties a low-cost alternative to litigation.

### *Litigation: Clean Break Model*

In recent years, legislation and the courts have deviated from the "clean break model" of settling matrimonial matters. In practice, this seldom, if ever, achieves a fair or desirable result. Indefinite support orders and seemingly generous apportionment of assets beget further litigation. A proposed solution would be to restrict all matrimonial claims to only one of the following: assets, periodic spousal support or lump sum spousal support. By adopting this strategy, there is no risk of double recovery, which often leads to appeals

or applications to vary existing orders. Any claim for assets must not exceed half the value of the net family assets and neither should a claim for lump sum support. A claim for periodic spousal support should not exceed the duration of the marriage and must not exceed half the income disparity between the spouses. Applications to vary an order for periodic payment should only be allowed for the payer of periodic spousal support. This will encourage settlement of issues through a single payment rather than repetitive court applications. If the claim is for lump sum support, then it should be tax-adjusted on the payer's marginal tax rate and computed as the present value of what the periodic payment would have been using the court's post-judgement rate. Although this may sound a bit complex, this actually simplifies matters considerably. An example is attached at the end of this article to illustrate the effect of these proposals. It must be emphasized that child support is unaffected by these simplifications because the child's best interest are of paramount concern to civic-minded people.

### *Child Support*

Only minimal changes are required at this time. The changes will require the assistance of the federal government through amendments to taxation laws. Given that expenses normally rise after separation, it is an unfair burden that either parent should pay taxes on child support. A better proposal is to allow child support payers to deduct the payments from their taxable income and let the income be taxed in the hands of the child. Thus, parents who are trying to deal with higher expenses brought about by legal fees and duplication of rent, utilities, etcetera are relieved of an onerous tax burden. At the same time, the state will receive some tax revenue if the child's income from support payment is substantial. Should such circumstances arise, the parents can split the child's tax bill. These proposals have attracted considerable support from all parents irrespective of whether or not they have custody of a child.

### *Conclusion*

While the suggestions in this article do not solve every problem that could arise in connection with a family matter, they do go a long way to dealing with the issues identified under "CHALLENGES". For the first time, litigants will be required to give priority to their emotional needs before addressing their legal needs. Second, in suitable cases, family court users will have to give mediation a try before the court tries their case. Most people who have litigated prefer mediation to litigation. The informality and low cost makes it a desirable alternative. Finally, the promotion of the clean break model will free up scarce and costly court time. This results in obvious benefits to taxpayers and other stakeholders.

One final point worth mentioning in brief is the existence of state-subsidized litigation in family law matters. The existence of programs like the Family Maintenance Program, the Family Maintenance Enforcement Program and Legal Aid can severely tilt the "playing field" in favour of one party. When there is no economic cost of litigation to a party, there will usually be no incentive to settle either. Therefore, such programs have a



potential for abuse by the recipient of such services. It is outside the scope of this paper to delve into a deep discussion of the pros and cons of such programs. Suffice it to say that all such programs should be subjected to a high level of scrutiny at all times. On that note, I close this paper with the hope that its contents will generate awareness of issues, stimulate an intelligent debate on those issues and encourage adoption of its proposals by the appropriate levels of government.

***Settlement of a Fictitious Matrimonial Matter***

*The facts:*

Assume that a husband and wife are separating after twenty years of marriage. The husband earns approximately \$60,000 per year whereas the wife is a homemaker. The post-judgement rate is 7% and the net family assets are worth \$400,000. They have an adult son but he is living independently and does not require support. The husband's marginal tax rate is assumed to be 38%.

*The solution:*

Half of the income disparity is \$30,000 or \$2500/month. This payment from the husband to the wife would really be \$1550/month after tax. The length of the marriage in months is 240. Using a discount rate of 7%, the present value of this monthly stream of payments for 240 months would be \$203,293.42 which exceeds half the family assets. Thus, the wife should be entitled to \$200,000.