

The Law Society of British Columbia



Report of the Family Law Task Force: Best Practice Guidelines for Lawyers Practising Family Law

For: The Benchers

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Purpose of Report: Discussion and Decision

Prepared on behalf of: Family Law Task Force

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PURPOSE OF THE REPORT

The Benchers are being asked to endorse the appended Best Practice Guidelines for Lawyers Practising Family Law (the “Guidelines”: **Appendix**) and for their publication as a practice resource. The intention is that the Guidelines represent an aspirational standard, and are not intended to constitute a Code of Conduct.

BACKGROUND

The Benchers of the Law Society of British Columbia, at their January 26, 2007 meeting, struck the Family Law Task Force, with the following mandate:

- (a) determine whether an amendment to the *Professional Conduct Handbook* is necessary;
- (b) determine whether a code of conduct or guidelines for family lawyers is necessary, and if so whether it should be mandatory or voluntary, and who should be responsible for developing it; and
- (c) report back to the Benchers with its conclusions.

The decision to strike the Task Force arose following consideration by the Benchers of the opinions of the Access to Justice Committee, the Ethics Committee, the Independence and Self-governance Committee, and the Family Law Working Group, respecting the recommendations in the Ministry of the Attorney General, “A Code of Practice for Family Lawyers”, Discussion Paper, March 2006, and Recommendation 36 of BC Justice Review Task Force, “A New Justice System for Families and Children”, May 2005. Recommendation 36, suggested in part:

that the Law Society of BC recognize the changing roles and duties of family law lawyers and develop a Code of Practice for Family Lawyers to give guidance in the balancing of a lawyer’s partisan role with the potential harm it may cause to other family members, especially children.

The Family Justice Reform Working Group report was a consensus report. The Family Law Task Force reported on their initial mandate at the May 2, 2008 Benchers’ meeting. That report made the case for the Law Society to develop best practice guidelines for lawyers practicing in the area of family law. The Benchers adopted the report and modified the Task Force’s mandate to read: "That the Family Law Task Force, in collaboration with the CBA, develop guidelines for the practice of family law lawyers."

The CBA BC Branch established a working group to help carry out the task of developing best practice guidelines and the Task Force held a series of meetings to advance the project. Along the way, delays have occurred. Since being charged with that mandate, the Task Force has been called upon on three occasions to provide input to the Benchers on developments in the area of family law, most notably the British Columbia Supreme Court Family Rules, and the review of the *Family Relations Act*. These tasks

brought with them a measure of delay for the Task Force and also occupied the time of the members of the CBA working group that the Task Force was liaising with on best practice guidelines.

Early on in the discussions it was determined that the best approach was for the CBA working group to run with the initial drafting and seek feedback from the Task Force. The view was that to the extent the guidelines had the broadest buy-in, the more beneficial they would be. Given that it was guidelines that were being created, and not a code of conduct, the Task Force felt this approach was appropriate. The CBA working group performed a lot of heavy lifting on the project and in the fall of 2009 provided a draft for discussion.

The initial draft of the CBA working group revealed a divergence in approaches inasmuch as the draft purported to set out guidelines for lawyers, judges and litigants. The Task Force does not mean to suggest that the concepts contained in the sections relating to judges and litigants are unimportant, but the Task Force had concerns about Law Society endorsed guidelines being broader than guidelines for lawyers. The CBA working group expressed the view that input from the judiciary is critical to the development of a final product. This led the Task Force to conclude that, despite the potential merit in the CBA working group's approach, the Task Force's mandate was narrower and that it was necessary to focus on generating a set of best practice guidelines for lawyers and complete its work on its primary mandate.

The Task Force advised the CBA working group of its decision. To its credit, the CBA Working Group agreed to segregate the component of the draft document that dealt with lawyers and to present it at the CBA Provincial Council meeting on June 18, 2011, with the understanding that the CBA working group would ultimately attempt to incorporate the Guidelines into a document with broader application (i.e. also addressing litigants and the courts).

The Task Force expresses its appreciation for all of the hard work undertaken by the CBA working group, and its responsiveness to the Task Force's request to finalize the "lawyer" component of best practice guidelines. The CBA working group has done much of the heavy lifting on bringing the Guidelines to pass, and remained flexible and open to input. The Task Force commends the CBA working group for their efforts, which lead to the Guidelines being adopted almost unanimously¹ at the CBA Provincial Council meeting.

RECOMMENDATION

The Family Law Task Force recommends that the Benchers endorse the Guidelines as aspirational standards for lawyers practising family law, to be included for publication in the Law Society's practice resources.

¹ The Task Force understands that only one vote was cast against adopting the Guidelines.

**APPENDIX:
BEST PRACTICE GUIDELINES FOR LAWYERS PRACTICING FAMILY LAW**

Lawyers involved in a family law dispute should strive to ensure it is conducted in the following manner:

1. Lawyers should conduct themselves in a manner that is constructive, respectful and seeks to minimize conflict and should encourage their clients to do likewise.²
2. Lawyers should strive to remain objective at all times, and not to over-identify with their clients or be unduly influenced by the emotions of the moment.
3. Lawyers should avoid using inflammatory language in spoken or written communications, and should encourage their clients to do likewise.
4. Lawyers should caution their clients about the limited relevance of allegations or evidence of conduct.
5. Lawyers should avoid actions that have the sole or predominant purpose of hindering, delaying or bullying an opposing party, and should encourage their clients to do likewise.
6. Lawyers cannot participate in, and should caution their clients against, any actions that are dishonest, misleading or undertaken for an improper purpose.
7. Lawyers should keep their clients advised of, and encourage their clients to consider, at all stages of the dispute:
 - a. the risks and costs of any proposed actions or communications;
 - b. both short and long term consequences;
 - c. the consequences for any children involved; and
 - d. the importance of court orders or agreements.
8. Lawyers should advise their clients that their clients are in a position of trust in relation to their children, and that
 - a. it is important for the client to put the children's interests before their own; and
 - b. failing to do so may have a significant impact on both the children's well-being and the client's case.
9. Lawyers should advise their clients of and encourage them to consider, at all stages of the dispute, all available and suitable resources for resolving the dispute, in or out of court.

² Lawyers are not obliged to assist persons who are being disrespectful or abusive.