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The Branch Adopts Best Practices for Family Law *Also authorizes Bench/Bar Committee.*

At the Provincial Council meeting held on June 18th, 2011, CBABC unanimously passed a resolution adopting the *Best Practice Guidelines for Lawyers Practicing Family Law* and approving the formation of a permanent Bench/Bar Committee for family law. Both reflect the Branch's long-standing participation in and dedication to the evolution of family practice in the province.

No one can doubt that family law has evolved significantly in our province, as elsewhere. First there was the pioneering work on family law mediation starting in the mid-1980s. It was followed by the experiment of family justice centres, Parenting After Separation, the development and recognition of collaborative family practice, the more recent introduction of child protection mediation, family duty counsel, parenting coordinators, distance mediation, hear-the-child reporters, judicial case conferences, justice access centres and judicial interviews of children. In the last few years we have seen extensive consultations resulting in the new Supreme Court Family Rules and the White Paper for an entirely new *Family Law Act*.

When the Justice Review Task Force (JRTF) wrote their May 2005 report, *A New Justice System for Children and Families*, they noted that family law stood apart from other civil litigation, with distinct needs and implications

for both clients and for children. They said, "Family law is distinct from other areas of law and the lawyers and judges working in this area must adopt roles, functions and values that are compatible with the needs of families." (p. 8)

That sentiment was echoed both in the White Paper and in the objects to the new Rules. Rule 1-3 says in part that the objects include minimizing conflict, promoting cooperation and being mindful of the impact of the proceeding on children.

One of the recommendations of the JRTF report was that the Law Society consider creating a separate code of conduct for family law. Neither the Law Society nor the CBA liked the idea of a code, but we did agree that it would be worthwhile to explore best practice guidelines or core principles for family law. We have been working together on this idea since January 2008. The final version was produced in March of this year and was presented to the members of our eight Family Law Sections in the months leading up to the June meeting.

It is perhaps as well that this effort took some time. Initially, there was some concern as to why family law should be singled out, or how a statement of best practice guidelines might be used. But I think it has

become obvious to all of us – if it wasn't before – that family law is indeed its own animal. So, rather than resist this distinction, the feeling became, why not embrace it?

In the UK, a group called Resolution did just that. They simply announced that all their members would follow a code of practice that promotes a non-confrontational approach to family problems. This was one of the models we started from.

The Law Society has been clear from the beginning that they were not looking for a regulatory or disciplinary tool. They wanted a

leadership and educational document. That is why they came to the CBA, rather than trying to do it alone. And we are pleased that they did. It took some time, but in the end, we were able to draft a document our members ultimately agreed does reflect

widely accepted best practices.

The Bench/Bar Committee was the idea of the Branch's Working Group, supported by the Law Society and by all three levels of court. We felt that if the goal was to define a new "culture" of family practice, the most effective way of encouraging that was through the court system. We have great expectations for this new committee. We also hope both the profession and the courts will come to accept the guidelines, as we have.

The full text of the best practice guidelines can be found at www.cba.org/bc/bartalk_11_15/pdf/best_practice_guidelines.pdf.



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