

Unified family courts should be expanded



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The *Courts of Justice Act* specifically contemplates the existence of a family court under s. 21.1.

According to s. 21.2(3), every judge of the Superior Court of Justice is also a judge of the family court. This essentially means that a judge who would primarily sit in the family court could also potentially hear non-family related matters in the Superior Court of Justice.

Alternatively, a judge who rarely sits in family court could be required to hear disputes regarding family law matters. Consequently — and despite the existence of a family court — family law litigants may be subject to appearing before judges who do not often sit in a family court, which is not in the best interests of the litigants.

It is evident that family law litigants are often engaging in intensely emotional and sensitive disputes, the outcome of which could affect the rest of their lives. Therefore, it is of paramount importance that the individuals charged with the authority to make decisions in order to resolve family law disputes have all the



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necessary and requisite resources, including experience with and specialized knowledge of family law.

It is incredibly ineffective to allow judges with minimal knowledge in family law to hear family law disputes merely because they are also superior court judges. It is counterintuitive and defeats the purpose of a family court. The Law Society of Upper Canada recommends that lawyers who

practice in specific areas of law become proficient and experienced in that rather than engaging and practicing in numerous diverse areas. In so doing, the lawyers are better able to serve their clients effectively and efficiently. Therefore, it would seem as though expecting the same specialization and experience from superior court judges on a family court matter would provide a more effective way to serve the public and access justice. Ultimately, when a prospective client walks into a family law office, they expect to meet someone who is well-versed in family law, why should they expect anything different when they walk into a family law courtroom?

A unified family court throughout Ontario would be ideal, provided that litigants are able to present their arguments to special-

ized judges dealing exclusively and consistently with family law related matters. A specialized judge does not need to deal with family law all of the time, but should appear in a family court on a regular basis in order to fully understand family law litigation.

A pilot project was undertaken in Hamilton, Ont. in 1977 to determine the viability of a unified family court. In a nutshell, the federal and provincial governments came together to create a court that would have complete jurisdiction over all family law matters and that would utilize specialized judges and services in order to deal with family law issues in a speedy way. Since the creation of the unified family court, the concept has expanded and branched off into 17 locations across Ontario.

The family court consists of superior court judges who hear matters of both provincial/territorial and federal jurisdiction. In addition,

there is a tendency within these courts to encourage the use of constructive and non-adversarial techniques to resolve issues and provide litigants with access to various support services within their community, such as parenting education classes, mediation and counselling.

For the remaining locations that have yet to institute a family court, family law matters may be heard in either the Ontario Court of Justice or the Superior Court of Justice.

In order to mitigate this problem, and in an attempt to reform family law litigation, Justice Warren Winkler has suggested that the family courts be expanded so that they spread across all of Ontario.

According to Justice Winkler, a family court would provide our system and family law litigants with increased efficiencies since all resources would be concentrated in one set of courts. In addition, a family court would provide family litigants with a more simple and streamlined procedure so that decisions could be rendered quickly and with less cost to the litigants.

Having practised family law exclusively for almost 20 years, I can say that most parties in family law matters want quick and reasonable resolutions. Typically, the issues the parties are dealing with involve high emotions that create lots of stress.

I agree with Justice Winkler's statement that the expansion of the family courts would afford family law litigants increased efficiencies. In addition, we would not only need a specialized court, but rather a specialized court containing specialized judges. ■

Andrew Feldstein is the managing partner of the Feldstein Family Law Group, one of the largest family law firms in Greater Toronto exclusively practising family law.

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- Rick v. Brandsema (S.C.C.) re: financial disclosure
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- Bhupal v. Bhupal (Ont. C.A.) re: material change clauses
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- Family Statute Law Amendment Act, 2009 (ON only) re: custody and access applications and pending pension changes

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Isolation and fear of illiteracy exposed

Literacy

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and that can even lead to law society complaints.

Programs are in place in some high-volume courts to help unrepresented litigants with low literacy. At the Sheppard Avenue E. court, for example, articling students work pro bono doing document preparation. Workshops are being implemented at other courts to teach litigants how to fill out the forms to change their amount of child support and to explain what documents, such as tax returns, the court needs to see to make a decision. But there is still much that can be done. As Justice

Brownstone says, "Duty counsel must be trained to alert the judges to potential literacy issues. If there are no opportunities for lawyers or students to work pro bono, then we must enlist the help of the community in the same way that has been done in the criminal courts."

Now that you know the extent of the problem, how will you help? ■

Valerie Mutton is a lawyer and journalist who lives in Bowmanville, Ontario. She was recently awarded the 2011 Peter Gzowski ABC Life Literacy Foundation Journalism Fellowship, to research and write about adult literacy issues.

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Another challenge we face is when they haven't filed any materials. Often that is because they cannot fill out the forms.

Justice Stanley Sherr