



## New Ideas in Family Law from B.C.

By Jodi Wyman

---

Laws change regularly, and perhaps in family law more than any other area. As parental roles and families in general change, and knowledge of the effects of separation on children develop, family law must grow and develop as well.

British Columbia has recently taken a big step toward making some dramatic changes to its family law system. After three years of work, the Ministry of the Attorney General has released a paper summarizing proposed changes. The paper is presently awaiting feedback from lawyers.

Some of the changes are very interesting, and Manitoba may want to take note.

For example, the words “custody” and “access” would be replaced with “guardianship” and “parenting time”.

Judges will be able to issue “conduct orders” which would manage many aspects of parents’ behaviour. There would be serious consequences if the conduct order is breached,

and a series of breaches could result in a protection order.

Further, there will be more specific and better remedies when one parent is denying the other parent their time with the children. The punishments could include attending counseling, making up cancelled time, supervised exchanges or even imprisonment. In Manitoba, the options for the Judge are limited.

Parenting Coordinators can be assigned to a high-conflict family. The Coordinator would have the authority to make binding decisions about day-to-day disputes between parents. Unfortunately, at present lawyers are often called about day-to-day disputes, a costly and ineffective solution.

Presently in British Columbia in custody and access hearings the Judges are to consider “the best interests of the child”, which is the same as in Manitoba. In B.C. however, a review of “best interests” would be expanded to include issues of family

violence, including parental alienation. As well, the wishes of the child would always be taken into account unless it was inappropriate. In Manitoba, the child’s wishes are only taken into account if it is found to be appropriate.

Cases where one parent wants move away with the children are very difficult. As always, the only test for the Judges to apply is whether the move is “in the best interests” of the child. The new B.C. legislation would also set out a list of factors to be considered, such as whether the move would increase the family’s financial, educational or emotional opportunities.

The new law would also extend property sharing legislation to couples who have lived together for two years (in Manitoba it is three years), or who are in a “marriage-like” relationship and have children together.

There would be detailed provisions for how agreements can be set aside. This would include pre-nuptial,

cohabitation, separation and child support agreements. They could be set aside due to failures to disclose information, or if one spouse did not understand the agreement, or a spouse took advantage of the other's vulnerability.

One method of resolving differences outside of court is arbitration. Disputing parties hire an expert third party who will hear their concerns and evidence, and decide upon an outcome. The proposed changes also would amend B.C.'s arbitration legislation to allow for arbitration to be used more often in family law.

Presently in Manitoba there are rules in contract and family law for when agreements can be set aside, but the B.C. approach would consolidate the different rules and factors and give lawyers and Judges some guidance.