

Ministry of Justice
Family Law Act Regulations

Section Notes for the Regulations

- These regulations support the new *Family Law Act* and replace the regulations made under the *Family Relations Act*, namely: the *Family Relations Act Rules and Regulations*, the *Child Support Guidelines Regulation* and the *Child Support Recalculation Pilot Project Regulation*.
- The *Family Law Act* regulations come into effect on March 18, 2013 along with the *Family Law Act*, with the exception of the regulations related to requiring family dispute resolution professionals to meet minimum practice standards. This will ensure professionals have adequate time—until January 1, 2014-- to train up.

PART 1 – Interpretation

Section 1: Definitions

- This section includes two definitions only:
 - “Act” – is defined as being the *Family Law Act*, except in Part 4 – Child Support Guidelines where the reference could be to other statutes depending on context; and
 - “child support guidelines” – is defined to mean the Federal Child Support Guidelines which are adopted in Part 4 as the provincial guidelines. This is a carry-over and is how most provinces deal with the issue.

PART 2 – Family Justice Counsellors

This Part addresses the details respecting the role and responsibility of Family Justice Counsellors. *The Family Law Act* establishes the principle that information obtained by a family justice counsellor when assisting clients is confidential. Generally, this section provides the exceptions to this principle. These are set out in the regulations to allow flexibility to make changes if required from time to time.

Section 2: Prescribed classes of persons for sections 11 and 12 of the Act

- Prescribes those ministry employees that assist family justice counsellors and therefore receive the same level of confidentiality protection with regard to disclosure of information received during their employment activities.

Section 3: Prescribed information for section 11 of the Act

- Lists exceptions to the general rule in the *Family Law Act* that information obtained by Family Justice Counsellors (FJC) in the course of assisting clients must be kept confidential.

- Subsection (2) lists the types of information that is not confidential:
 - the agreement to mediate signed by the parties and the FJC
 - written agreements between the parties that resolve family law issues between them;
 - information obtained from a child if the child agrees to the disclosure;
 - confirmation that the person met with an FJC if requested by that person; and
 - information that may be disclosed for historical or research purposes under the *Freedom of Information and Protection of Privacy Act*.
- Subsection (3) lists the situations in which otherwise confidential information could be disclosed:
 - when providing a referral to another agency if the person has consented;
 - the information is required by the *Child, Family and Community Service Act* or a court rule;
 - the information is required as evidence in a court application to set aside an agreement negotiated by the parties with the assistance of a FJC;
 - to protect a person or property from reasonably believed risk of imminent and serious harm; and
 - in a civil or administrative proceeding in which the family justice counsellor is a party.

PART 3 - Family Dispute Resolution Professionals

This Part primarily sets minimum training and practice standards for family mediators, family arbitrators and parenting coordinators who wish to assist people to resolve family law disputes.

During consultations, stakeholders said if government promotes the use of out-of-court dispute resolution processes, government also has a role in ensuring these processes are safe and appropriate for families, particularly where there may be family violence. To address this concern the Ministry, in consultations with the Law Society and other prominent dispute resolution organizations, developed regulations to set minimum training and practice standards to ensure families are directed to appropriate processes conducted by qualified practitioners.

The regulations have been structured to give professionals adequate time—until January 1, 2014-- to train up to meet these minimum standards.

Section 4: - Family law mediators

- A family law mediator is a neutral third party who may assist families to resolve their family law issues. Mediators do not make decisions for the parties.
- The section establishes the practice and training standards required of a mediator conducting a family law mediation under the *Family Law Act*. The section requires the mediator to:
 - be a member in good standing of one of the following organizations:
 - the Law Society of BC;
 - Mediate BC Family Roster; or
 - Family Mediation Canada.
 - or, if not a member of any of the above organizations, meet all of the following minimum standards:
 - 2 years of family related practice in law, psychology, social work, clinical counselling, teaching or nursing;
 - 21 hours of family law training;
 - 80 hours of mediation theory and skills training;
 - 14 hours of family violence training;
 - 10 hours of continuing professional development each year; and
 - maintain professional liability insurance.
 - use a written contract or agreement to mediate for each mediation; and
 - confirm in writing to their clients that they have met the practice and training requirements.
- The Law Society, Mediate BC Family Roster and Family Mediation Canada all provide for training and practice standards. They each provide oversight of their members' activities and their members are subject to a complaints and discipline regime.

Section 5: Family law arbitrators

- A family law arbitrator is a neutral third party who will make binding decisions in a formal dispute resolution process to resolve family law issues after separation. Because arbitrators play a private judge-like role, the arbitrator standards are more restrictive than those for mediators.
- The section establishes the practice and training standards required of an arbitrator conducting an arbitration under the *Family Law Act*. The section requires the arbitrator to:
 - be a lawyer who meets the Law Society's training and practice standards (which are similar to the Ministry's requirements); or

- be a member of the College of Psychologists or Social Workers of BC and have:
 - 10 years of family related practice;
 - 40 hours of arbitration training;
 - 30 hours of family law training;
 - 14 hours of family violence training;
 - 10 hours of continuing professional development each year; and
 - maintain professional liability insurance.
- use a written contract or agreement to arbitrate and
- confirm in writing to their clients that they have met the practice and training requirements.
- Only an arbitrator who is a lawyer may conduct arbitrations on all family law issues, including child-related issues, property and spousal support. An arbitrator who is a psychologist or a counsellor may only arbitrate child related issues or straightforward child support.
- This distinction addresses a concern that there are professionals, other than lawyers, who should be able to arbitrate family matters, however they should only do so in the area of their expertise. Psychologists and counsellors are well-positioned to help families resolve their parenting arrangements, but may not have the legal expertise needed to deal with the complicated financial or legal issues related to property and spousal support.
- The regulatory bodies (Law Society or College of Psychologists or Social Workers of BC) provide oversight of their members' activities and their members are subject to a complaints and discipline regime.

Section 6: Parenting coordinators

- A parenting coordinator is a neutral third party who assists families in implementing the terms of an agreement or order about parenting arrangements in a formal dispute resolution process. A parenting coordinator may take a mediative or arbitral role—they may help the parties to come to an agreement but failing agreement, may make a binding decision on the matter.
- This section establishes the practice and training standards required to be a parenting coordinator under the *Family Law Act*. The section requires the parenting coordinator to:
 - be a lawyer who meet the Law Society's training and practice standards (which are similar to the Ministry's standards);
 - be a member of any of the organizations listed in the mediator and arbitrator sections, or a member of the Parenting Coordinators Roster Society;

- and have:
 - the training required to be a mediator;
 - 10 years of family related practice;
 - 40 hours of parenting coordination training;
 - 21 hours of family law training;
 - 14 hours of family violence training;
 - 10 hours of continuing professional development each year; and
 - maintain professional liability insurance.
- use a written contract or agreement to be a parenting coordinator and
- confirm in writing to their clients that they have met the practice and training requirements.
- This section also sets out that, although a parenting coordinator may assist families in making an agreement respecting the implementation of their agreement or order, they are restricted on the matters on which they may make binding decisions (determinations). Parenting coordinators may only make determinations to resolve the family's post-agreement or post-order child related-issues and may not make any determination that fundamentally changes the agreement or order. This is because the parenting coordinator's role is to implement, not change, existing agreements or orders.
- The regulatory bodies that a parenting coordinator must belong to provide oversight of their members' activities and therefore will ensure parenting coordinators are subject to a complaints and discipline regime.

PART 4 – Child Support Guidelines

The Federal Child Support Guidelines are used in British Columbia to calculate child support amounts. In 2002, the federal government completed a comprehensive review of Federal Child Support Guidelines and found they were working well.

This Part replaces the *Child Support Guidelines Regulation* under the *Family Relations Act* with provisions that adopt the Federal Child Support Guidelines for use under the *Family Law Act*.

Section 7: Definitions

- Defines the Federal Child Support Guidelines as those made under the *Divorce Act*.

Section 8: Establishment of child support guidelines

- Adopts the Federal Child support Guidelines for use under the *Family Law Act*.

Section 9: Application of child support guidelines

- Translates the references used in the Federal Child Support Guidelines to align with the references used in the *Family Law Act*.

Section 10: Application of federal child support guidelines to courts and court rules

- Sets out the rules to apply when there may be a conflict between the child support guidelines and any court powers or rules, and establishes that the guidelines will trump if there is a conflict.

PART 5 – Child Support Recalculation

This Part replaces the *Child Support Recalculation Pilot Project Regulation* under the *Family Relations Act* with provisions setting out details respecting the child support recalculation service under the *Family Law Act*.

The *Family Law Act* allows for the establishment of a child support recalculation service to administratively recalculate child support amounts every year based on changes in income. This authority is carried over from the *Family Relations Act* and does not substantively change the current process.

Currently, the recalculation service operates out of the Kelowna Provincial Court Registry.

Section 11: Definitions

- Sets out the definitions for the part:
 - “party” – means a payor or recipient of child support; and
 - “registry” – means a registry in which recalculation occurs.

Section 12: Prescribed court registry

- This section identifies registries where the child support recalculation service operates.
- Currently, the service operates out of the Kelowna Provincial Court Registry.

Section 13: Income information to be provided to the child support service

- Sets out the income information that a person must provide to the child support recalculation service and sets out the related timelines for providing this information.

Section 14: Contact information

- Sets out the contact information that a person must provide to the child support recalculation service and sets out the related timelines for providing this information.

Section 15: Authorization to release income tax information

- Prescribes the form a party must use to consent to the release of income tax information by the Canada Revenue Agency to the child support recalculation service.

Section 16: Prescribed differences for the purpose of section 155(4) of the Act

- Section 155(4) of the *Family Law Act* states that the child support amount to be paid will be adjusted if the difference between the current amount and the new amount is more than the prescribed amount. This regulation prescribes the amount to be a \$5 difference.

Section 17: Notification of recalculated amount

- Provides the rules for notifying the parties of the change in their child support amount and requires the notice to be in writing.

Section 18: Child support service must decline recalculation

- Provides that the child support recalculation service must decline to recalculate if certain circumstances exist.
- Generally the service is restricted to straightforward calculations of child support that are based solely on the child support guideline tables and do not require any discretion in determining the amount of child support or the amount of the payor's income.

Section 19: Requirements for recalculation under child support agreements

- Provides for the requirements that must be included in an agreement about child support in order for the child support amount to be recalculated annually by the child support service.

Section 20: Deemed receipt

- Provides the rule that a person is deemed to have received documents 5 days after they are sent.

Section 21: Correction to statement of recalculation

- Provides authority for the service to correct a mistake within a certain time frame.

Section 22: Application respecting recalculated amount

- Sets out the time frames and the steps for a person to make an application to challenge the recalculated child support amount.

PART 6 – Prescribed information, forms and fees

This part deals with the other regulations that are required under various parts of the *Family Law Act*.

Section 23: Form for appointment of a testamentary or standby guardian

- Provides the form to be used to appoint a guardian for a child under sections 53 and 55 of the *Family Law Act*. This form may be used in two situations:
 1. A child's parent or guardian may appoint a testamentary guardian to replace them if they die. This form may be used instead of a will and provides a way for a guardian to appoint a replacement guardian to take responsibility for their child upon their death.
 2. A parent or guardian who is facing a terminal illness or permanent mental incapacity may appoint a standby guardian to provide for the orderly transition of guardianship. The appointment takes effect when the appointing guardian, while still alive, is unable because of the illness or mental incapacity to attend to his or her responsibilities, in accordance with the terms set out in this form.

Section 24: Small property

- This section sets out provisions related to Part 8 of the *Family Law Act* - Children's Property. Part 8 allows guardians to manage small amounts of money or property in trust for their children, instead of requiring a court-appointed trustee or the Public Guardian and Trustee to manage these funds or property.
- It provides that the limit of the value of a child's money or property that a guardian may hold is \$10,000.
- The section also provides the forms to be used to acknowledge the delivery of money or property from the person with the duty to provide it to the child to the child's guardian (or to the child if the child has a duty to support another person). The form releases the person with the duty to deliver the money or property and binds the guardian to manage it as a trustee.

Section 25: Person to whom searchable information may be disclosed

- This section prescribes a police officer as a person included in section 240 (1)(g) of the *Family Law Act*.
- This section includes a list of people to whom a search officer, acting under the *Public Service Act*, may disclose specified information. Because the information may include information about safety or protection orders, police officers are included within the list.

Section 26: Fee for filing a notice of agreement in land title office

- This section prescribes the fee for filing a notice of agreement in the land title office to be \$5. This is a carry-over from the *Family Relations Act* and is not a change.

Section 27: Forms

- This section requires the use of the forms provided but allows for minor alterations if circumstances require.