

INFORMATION BULLETIN FOR CONTRACTED PROGRAMS**Implementation of the Family Law Act
(Bulletin Revised August 2015)**

The [Family Law Act](#) (FLA) came into effect on March 18, 2013, replacing the former Family Relations Act. The FLA places the safety and best interests of the child first when families are going through separation and divorce. It also clarifies parental responsibilities and the division of assets if relationships break down, encourages families to resolve their disputes out of court, and addresses family violence.

This bulletin highlights important information for victim service and violence against women counselling and outreach programs related to the implementation of the FLA. In particular, the bulletin provides basic information to programs on provisions in the FLA that address parenting arrangements, the best interests of the child, and provisions related to family violence, including the family law protection order.

It is important to affirm that victim service workers and violence against women counselling and outreach workers are not expected to be experts on the family court process or family law. However, there are provisions within the FLA that are important for programs and workers to understand as they relate to service provision and information provided to clients.

At the end of this bulletin there are a number of follow-up resources that programs and workers may find helpful. For additional information, we encourage you to consult these resources.

A New Approach to Family Law in BC

Overall, the FLA structures the law so that court is not the implied starting point to resolve family disputes. The act references dispute resolution options other than court, while clarifying and improving the tools that courts have available to them. Parents are encouraged to work together to resolve their differences and use family mediation or other assistance where appropriate, taking into account their circumstances and whether there is family violence. The act gives parents different ways to resolve family conflict without having to go to court unless necessary.

Family Violence and Safety Issues

For contracted programs, perhaps the most important aspect of the FLA are the provisions pertaining to family violence. The FLA enables the court to deal with family violence because it:

- requires family dispute resolution practitioners, such as lawyers and mediators, to screen for violence to ensure the processes used are appropriate;
- identifies children’s safety as an overarching objective in the best interests of the child test;
- includes the impact of family violence and consideration of civil or criminal proceedings relevant to the safety or well-being of the child as best interest factors;
- defines family violence and sets out factors to be considered in parenting cases that involve violence; and
- requires people seeking guardianship of a child to provide the court with evidence respecting their ability to care for a child, including information about their criminal and child protection history.

The FLA also created a new type of order – a protection order – that replaced the restraining orders previously available under the Family Relations Act. Additional details on this protection order are provided later on in this bulletin.

Dispute Resolution

Under the FLA, lawyers are required to screen for family violence in every case and, based on their assessment, provide people with information about non-court dispute resolution options that are suitable for them. They are also required to discuss the different ways of resolving family disputes and the support services available to their clients taking into account safety concerns or power imbalances.

The FLA also requires that all family dispute resolution professionals, including mediators, parenting coordinators and arbitrators meet minimum training and practice standards to ensure families are directed to appropriate processes conducted by qualified practitioners. As part of these standards they must take at least 14 hours of training on family violence. This is to ensure that out-of-court processes are safe and appropriate and are conducted by qualified people who have family violence training.

Definition of Family Violence

The FLA defines family violence to include:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

For cases that do go to court, the FLA provides for a broader range of remedies and more case management tools for judges. For example, judges have tools to manage a case where there might be litigation harassment. As well, there are a range of conduct orders that can help a judge to manage behaviours to de-escalate conflict; for example, a judge can order a person to pay the bills for a house, or can order the parents to communicate in specific ways, such as through email.

Best Interests of the Child

The FLA makes the best interests of the child the only consideration when decisions affecting the child are made. To be in the best interest of a child, the decisions must, to the extent possible, protect the child's physical, psychological, and emotional safety, security, and well-being. To determine what is in the child's best interest when making parenting arrangements, the court will consider the following factors:

- the child's emotional health and well-being;
- the child's views, unless it would be inappropriate to consider them;
- the child's relationships with parents, guardians, and other important people;
- the history of care;
- the impact of any family violence;
- consideration of whether it would be inappropriate to have an arrangement that requires the parents to cooperate; and,
- any civil or criminal proceedings relevant to the child's safety and well-being.

In addition, [section 38 of the FLA](#) provides specific guidance to the courts when considering the best interests of the child as it relates to assessing for family violence. In particular courts are now instructed to consider:

- a) the nature and seriousness of the family violence;
- b) how recently the family violence occurred;
- c) the frequency of the family violence;
- d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- e) whether the family violence was directed toward the child;
- f) whether the child was exposed to family violence that was not directed toward the child;
- g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- i) any other relevant matter.

This is intended to give a more nuanced assessment when considering what kinds of parenting arrangements might be in the best interests of a child. This is important because not all types of violence are the same and different types of violence carry different levels of future risk.

Parenting Arrangements and Responsibilities

The FLA describes parents' roles and responsibilities in less adversarial terms than the old Family Relations Act. Instead of referring to the ill-defined terms of custody and access, the act refers to guardianship, which is described in terms of parental responsibilities that allow for a more customized parenting arrangement. Under the FLA, a child's guardians are responsible for raising the child, providing day-to-day care and supporting the child's well-being and development.

Under the FLA, both parents retain guardianship of their children after separation unless they agree, or the court orders, differently. Parents are generally guardians, unless they have never lived with, or regularly cared for their child.

[Section 40 \(2\) of the FLA](#) states:

Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parenting responsibilities with respect to the child, in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.

If parents are unable to agree on how to divide their parenting time and parental responsibilities after separation, they may apply for an order respecting parenting arrangements that define:

- each guardian's parenting time with the children; and
- how the parental responsibilities are allocated, including how decisions about a child and their health, education and upbringing will be made and ways for guardians to address future disputes.

Practice Tip: Programs may be uncertain whose consent is required for a child to participate in a program or service such as a counselling or a Children Who Witness Abuse (CWWA) program. One of the parental responsibilities identified in section 41 of the FLA is the responsibility to give, refuse or withdraw consent to health-related treatments for the child (subject to the child's ability to give their own consent under the Infants Act). Consenting to a child's participation in a counselling program falls within this category of parental responsibility. Only a child's guardian may exercise parental responsibilities and section 39 of the FLA specifies that while a child's parents are living together and after a child's parents separate, each parent is a guardian of that child. While the parents are living together, either parent may register a child in a counselling program. After the parents are separated either parent may register a child in a counselling program unless there is an order or an agreement between the parents that allocates the responsibility to make health-related decisions to only one parent.

Section 40(2) of the FLA requires the guardian who wishes to register the child in a CWWA program to consult with any other guardians, unless it would be unreasonable or inappropriate to do so. Whether it is unreasonable or inappropriate will depend on the circumstances of each individual case. For example, consultation may be inappropriate in situations where the whereabouts of another guardian are unknown or where contact would constitute a safety risk. Also, an obligation to consult does not mean the other guardian's consent is required. If the guardians do not agree that participation in a program is in the child's best interests after consultation occurs, the guardian who disagrees may choose to seek an order from the court allocating the responsibility for making decisions about counselling programs. If an existing order or agreement allocates responsibility for healthcare decisions or specifies that both guardians must consent to services/medical treatment and that arrangement is not working in the child's best interests, then an application may be made to vary the order or agreement.

To be clear, a guardian may register a child in a counselling or CWWA program as long as there is no order/agreement in place that either specifically requires the consent of all guardians or allocates responsibility for making health-related decisions to another guardian. Programs should review their operational policies accordingly.

It is important to note that parenting arrangements can be tailored to meet the needs of each family and may change over time as a family's circumstances and the child's needs and interests change. For example, parents could equally share the parenting time and parental responsibilities. Or one parent could have most of the parenting time and parental responsibilities and the other parent could have limited parenting time and defined parental responsibilities such as the right to information about their child.

Most times, both parents will continue to remain guardians and parenting arrangements will be tailored by allocating parenting time and parental responsibilities. But in some cases it may not be appropriate for a parent to remain a guardian. In this case, the parent can be removed as guardian by agreement between the parents or by court order. A parent who is not a guardian may continue to have contact with their child, but will not have parental responsibilities.

Where it is appropriate, the court may also make contact orders to allocate time with a child to a non-parent such as a grandparent. A person who is not a parent can only become a guardian by court order. They will be required to provide information, in the form of a section 51 affidavit, about their history and relationship with the child, as well as criminal and child protection records checks.

When making orders for guardianship, parenting arrangements or contact, courts must consider only the best interests of the child, and will take into account all of the child's needs and circumstances, including factors related to family violence.

For additional information on guardianship and parenting arrangements, consult the Ministry of Justice ["Family Law Act Questions and Answers"](#) resource or the [JusticeBC website](#).

Compliance Respecting Parenting Time or Contact with a Child

[Sections 61-63 of the FLA](#) address compliance respecting agreements of orders about parenting time or contact with a child. This helps to make sure that parents receive – and follow through on – the time they are given with their child. It provides for remedies to address denial of parenting time or contact and sets out when denial is not wrongful. It also provides for remedies to deal with failure to exercise parenting time.

Criminally Enforceable Protection Order

Protection orders are now available under [section 183 of the FLA](#), replacing the restraining orders previously available under the Family Relations Act. Family law protection orders may include one or more of the following provisions:

- a) a provision restraining the family member from
 - i. directly or indirectly communicating with or contacting the at-risk family member or a specified person,
 - ii. attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
 - iii. following the at-risk family member, or
 - iv. possessing a weapon or firearm;

- b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
- c) directions to a police officer to
 - i. remove the family member from the residence immediately or within a specified period of time,
 - ii. accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
 - iii. seize from the family member any weapons or firearms and related documents;
- d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- e) any terms or conditions the court considers necessary to
 - i. protect the safety and security of the at-risk family member, or
 - ii. implement the order.

A family law protection order can be made on application of a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative. Applications for protection orders can be made without notice to the person who the order would potentially apply to and may be made whether there is an existing family law court action or not. Victim service and violence against women counselling and outreach workers are reminded that they are not funded by the Ministry of Justice to make applications in family court on behalf of clients and therefore they do not have master insurance coverage for those activities.

Family law protection orders are criminally enforceable under section 127 of the Criminal Code. This means that breaches of family law protection orders will be treated as criminal offences. The police have the authority to arrest the person named in the protection order if they disobey the terms of the order and Crown counsel can charge that person with a criminal offence.

Family law protection orders expire one year from the date the order was made, unless the court specifies otherwise. Restraining orders that were made under the Family Relations Act before the FLA came into effect remain valid but are not enforceable under the Criminal Code.

As with other protection orders (including peace bonds and other criminal court orders), family law

Criminal Code of Canada – s. 127

Disobeying order of court

127. (1) Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

- a) an indictable offence and liable to imprisonment for a term not exceeding two years; or
- b) an offence punishable on summary conviction.

protection orders are entered into the [Protection Order Registry](#).

Practice Tip: Discuss with clients who have old Family Relations Act orders the benefits of applying to the courts to obtain a new family law protection order that is criminally enforceable. For more information on applying for family law protection orders, consult the [“For Your Protection: Peace Bonds and Family Law Protection Orders” brochure](#).

[Section 189 of the FLA](#) provides direction in cases where there are conflicting orders in effect. The FLA gives priority to safety-related protection orders including:

- protection orders under the Family Law Act;
- protection orders under the Child, Family and Community Service Act;
- Criminal Code protection orders (e.g. peace bonds or bail conditions); and
- safety related orders made under legislation from another province.

Protection Orders under the Child, Family and Community Service Act

To ensure there is a consistent and effective approach in cases where safety is at risk, breaches of protection orders under s.28 or s.98 of the Child, Family and Community Service Act are also criminally enforceable under s. 127 of the Criminal Code.

If there is a conflict or an inconsistency between a protection order listed above and another order made under the FLA, the other order is suspended, to the extent of the conflict or inconsistency, until:

- a) either the other order or the protection order is varied in such a way that the conflict or inconsistency is eliminated, or
- b) the protection order is terminated.

The Legal Services Society’s brochure [“For Your Protection: Peace Bonds and Family Law Protection Orders”](#) offers an explanation of family law protection orders for clients.

Practice Tip: In cases where there are overlapping conditions in multiple protection orders, or a protection order and another order under the FLA, the most restrictive safety related conditions apply. For example, a protection order with specific no contact clauses would supersede a previously made order regarding parenting time or contact.

Practice Tip: Victim service and violence against women counselling and outreach workers are reminded about the importance of working with clients to ensure that protection orders covering children are provided to the child’s school and/or daycare. Copies of protection orders naming the client should also be provided to a client’s place of work and to any medical facilities where a client is receiving services.

Additional Resources

In addition to the information provided in this bulletin, there are a number of other updated resources available:

- The *Help Starts Here* series of publications ([link](#));
- The brochure “For Your Protection: Peace Bonds and Family Law Protection Orders” ([link](#)); and,
- Online domestic violence safety planning training ([link](#)).

For additional information on the FLA, consult the following resources:

- Ministry of Justice – Overview of the Family Law Act ([link](#)) including clause by clause interpretation ([link](#)), a Q&A for commonly asked questions ([link](#)), and the JusticeBC website ([link](#)).
- Legal Services Society – Guide to the new BC Family Law Act ([link](#)), family law in BC website ([link](#)) and revised safety publications for clients ([link](#)).
- Ending Violence Association of BC – Information bulletin on the Family Law Act ([link](#)).
- John-Paul Boyd – A Very Brief Introduction to the Family Law Act for Justice System Workers and Advocates ([link](#)).