

Family Law Act

Questions and Answers

General

Q: Why change the family law legislation?

- The Family Relations Act had not been comprehensively reviewed since its enactment in 1978. It is out of date and does not adequately reflect the reality experienced by families in B.C.
- The new Family Law Act modernizes the law to respond to family's needs and 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, addresses family violence and encourages families to resolve their disputes out of court.

Q: Was there consultation on the changes to the family law?

- There were extensive consultations conducted over five years throughout B.C. in developing the new Family Law Act. The act also benefits from extensive research, including reviews of family laws from Canadian and international jurisdictions.
- The White Paper released in July 2010 included proposals for a new family law and draft legislation. The ministry received feedback from more than 500 organizations, including men's and women's groups, community-based organizations, and multicultural and aboriginal family services, and members of the public during the consultation process.
- The Family Law Act reflects a carefully considered balance of the research and the diverse perspectives raised during the broad consultations.

Q: I am already involved in a court case. Does the new act change anything for me?

- Generally, the Act provides for the immediate use of the Family Law Act upon becoming effective March 18, 2013, even where a case has been started, but not resolved, under the Family Relations Act or where there are existing agreements or orders made under the Family Relations Act. This promotes a speedy transition to the new law and ensures the tools and benefits of the new law can be realized immediately by all families.
- There are a couple of exceptions to this general transition rule:
 - With the exception of pensions, property division proceedings that were commenced under the Family Relations Act will be determined under the Family Relations Act unless the parties agree to use the Family Law Act; and
 - restraining orders granted under the Family Relations Act will remain in effect. They are not impacted by the change in law.

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- This means that all child-related issues (such as guardianship, parenting arrangements) and support issues will be determined under the new Family Law Act as soon as it is in effect, while most ongoing property division issues will continue under the Family Relations Act rules.

Q: I already have a family-related agreement or court order. Do I need a new one?

- No. Any family-related agreement or court order already made continues. You do not need a new one.
- Child-related issues:
 - Where an agreement or order respecting child-related issues was made under the Family Relations Act, it will be considered and interpreted under the Family Law Act. Details of a party's parental responsibilities, parenting time or contact will be determined as best they can be through consideration of how the terms and conditions of custody, guardianship and access orders or agreements were described in the old order or agreement.

Judges cannot change the wording of an order or agreement based only on a wish to use the new terminology. However, if a future dispute arises or a change to the arrangements is required, the court will resolve the issue under the Family Law Act. For example, if there is an order respecting "access" made under the Family Relations Act and a dispute arises after the Family Law Act is in effect, the court will interpret the "access" as either "parenting time" or "contact" and will apply the new rules respecting changing or enforcing arrangements for time with a child.

- Property division issues:
 - Unlike child-related issues that may require changes as circumstances evolve, property division decisions are final.
 - Property division disputes that have been resolved under the Family Relations Act may not be re-opened by virtue that new property division rules have been introduced. The Family Relations Act continues to apply to agreements or orders made before the Family Law Act comes into force.
 - Where a property division proceeding is started under the Family Relations Act, it will be determined under the Family Relations Act unless the parties agree otherwise.

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Q: I am in a common-law relationship. What does the new Family Law Act mean for me?

- The number of common-law families in British Columbia is growing at a rate three times faster than the number of married couples. Many have children and resemble married families in a number of ways. The law needs to provide a clear and fair way for these families to resolve their disputes.
- Couples who have lived together in a marriage-like relationship for two years are treated the same under the Family Law Act as married couples.
- The main difference in the law for common-law couples is that the property division rules under the Family Law Act will apply to common-law couples. This means common-law couples, like married couples, will generally share the property that accrues during the course of their relationship—but not property brought into the relationship.
- If couples do not want the property division rules to apply to them, they can opt-out by agreement and divide their property as they see fit. The court will have less ability to overturn these agreements than under the Family Relations Act.
- Couples who have a child together and have lived in a marriage-like relationship for less than two years are not included in the property division rules, but are able to apply for and may be entitled to receive spousal support .
- Most other areas of the law, including wills and estates, income tax and spousal support, already treat common-law families the same as married families.

Q: Why promote out-of-court dispute resolution for families?

- It is better for most families and it is better for the justice system.
- For families, out-of- court dispute resolution is generally cheaper, quicker and less acrimonious than court proceedings and the outcomes are better and longer-lasting. Although not all cases can be appropriately resolved in out-of-court dispute resolution, most family disputes are better dealt with outside the court room.
- For the justice system, out-of-court dispute resolution can keep most families, who do not need the court to resolve their dispute, from ever having to enter a court room. This will better ensure effective use of valuable court resources.
- The Ministry of Justice provides publicly funded family dispute resolution services at Family Justice Centres and Justice Access Centres located throughout the province.

Q: Does the new Act give judges more tools to help families?

- Family law is unique. Unlike other areas of law, families need to work together after the dispute is resolved. The issues in a family law case are personal, emotional and the stakes are high. Family law does not benefit from a one-size-fits-all approach and a typical civil justice court process is usually not the best approach to address these complexities.
- The Family Law Act provides both Provincial and Supreme Court with a broad range of tools to better resolve these challenging cases, ranging from preventative

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solutions to address the underlying issues to more punitive remedies to promote greater compliance with obligations, agreements and orders. The Act provides a new regime to deal with non-compliance with parenting time agreements and orders, sets out a framework to resolve difficult relocation cases, and provides clear obligations and remedies respecting disclosure of information.

- Judges can manage families through conduct orders that range from ordering interventionist approaches, such as counselling or parenting coordination, to providing restrictions on how the parties will communicate to lower conflict, to restraining a party from making trivial or unnecessary applications.
- Use of extraordinary remedies, imprisonment and apprehension of a child where there are no safety concerns, have been limited because they usually work against a child's best interests; in most cases the range of other remedies available will provide a more effective solution.
- The broad range of tools will assist judges in tailoring the process to respond more effectively to an individual family's needs, while ensuring justice system resources are used efficiently.

Guardianship and Parenting Arrangements

Q: Why does the act change the terminology from custody and access to guardianship, parental responsibilities and parenting time?

- The terms custody and access suggest there are winners and losers when it comes to parenting. The Family Law Act replaces these terms with less adversarial terms such as guardianship, parental responsibilities and parenting time. This can promote a more collaborative approach to parenting.
- The change is more than just a wording substitution- it is a new way of looking at parenting after separation. The change promotes a model that respects each parent's role- even where they have different roles and levels of responsibility.
- Alberta made similar changes to their family law and found the changes have generally been well-received by practitioners and parents.

Q: What if I already have an agreement or order with the terms "custody" and "access"?

- The agreement or order continues. You do not need a new agreement or order.
- Generally, where a person has "custody" or "guardianship," they will be considered a guardian with "parenting time" and "parental responsibilities."
- Where a person does not have custody or guardianship, but does have access, they will have "contact."

Q: I have an agreement or order that says I have “sole guardianship” or “sole custody”. Does this mean that under the Family Law Act, I will be the only guardian?

- It is important to emphasize that “guardianship” under the Family Law Act is a different concept than how the term was used in the Family Relations Act. Guardianship under the Family Law Act describes who is legally responsible for a child’s care and upbringing. A parent is usually a guardian, although they may have limited parental responsibilities where a restricted or defined role is appropriate.
- If the original order or agreement provides a person with custody or guardianship then that person is a guardian of the child under the Family Law Act.
- Most “sole guardianship” agreements or orders under the Family Relations Act also provide that parent with “sole custody”. In this case, that parent will remain the only guardian under the Family Law Act. The other parent would not be a guardian, since they did not have either custody or guardianship, and time with their child would be “contact”.
- If the original agreement or order provides for “sole guardianship” but “joint custody” (or “joint guardianship” and “sole custody”) then the other parent is also a guardian of the child under the Family Law Act. The parenting arrangements will not change; each parent retains the parenting time and parenting responsibilities (or restrictions) that align with the arrangements set out in the original agreement or order.
- The Family Law Act does not re-open resolved issues about guardianship and parenting arrangements. Parents may not go back to court to seek different guardianship or parenting arrangements, based only on the fact that there is a new act. They may only seek to change the arrangements where there is a change in the family’s circumstances.

Q: Will the Family Law Act change child support amounts?

- No, in B.C., we use the federal child support guidelines and the child support tables for British Columbia.
- The federal government updates these every five years or so to reflect changes in tax rules. The tables were last updated on Dec. 31, 2011.
- For more information about the federal child support guidelines, visit the federal Department of Justice website at: <http://canada.justice.gc.ca/eng/pi/fcy-fea/sup-pen/index.html>

Property Division

Q: Is property division different under the new Family Law Act than under the Family Relations Act?

- Under the Family Relations Act, spouses generally share all assets that were used for a family purpose, regardless of the origin of the property. Significant discretion is used by the courts to divide family property. This regime is criticized because it is too difficult to predict and it promotes litigation.
- The Family Law Act reforms property division so that certain property, such as pre-relationship property and inheritances generally will not be shared upon separation, except for the growth in value of the excluded property during the relationship.
- The general rule is that family property and family debts are divided 50/50 upon separation. If an equal division of family property and debts causes significant unfairness, judges can provide one spouse with a larger share of the family property. In limited cases, such as long interdependent relationships, excluded property may be divided. These measures ensure there remains some flexibility to take into account a spouse's unique circumstances or vulnerabilities where appropriate.
- The most compelling reasons for changing the property regime are to make the law simpler, clearer, easier to apply and more fair. As a result, fewer people will need to go to court to settle their property disputes and the expense currently associated with property division will be reduced.
- The new property regime provides a default for property division, based on sharing the property that accrues during the relationship. If a couple does not wish to have property division rules apply to them, they can choose to opt out and make different arrangements through a written agreement. Judges will have less ability to overturn these agreements.

Q: Are common-law couples included in the property division regime?

- The new property division rules will apply to unmarried couples who have lived together for at least two years. This means common-law couples, like married couples, will generally share any property that accrues during the course of their relationship—but not property brought into the relationship.
- This approach was taken for many reasons. The number of common-law families in British Columbia is growing at a rate three times faster than the number of married-couple families. Many have children and resemble married families in a number of ways. The law needs to provide a clear and fair way for these couples to resolve their property issues.
- If common-law couples were not included in the Family Law Act property division rules, they could continue to be required to share property through the application of the equitable law of constructive trusts (as is the case under the Family Relations Act). These cases are complex and difficult to predict, which promotes lengthy and expensive litigation, and can result in unfair outcomes.

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- In addition, other areas of the law, including wills and estates and income tax, already treat common-law families the same as married families. Even the Family Relations Act currently applies spousal support rights and obligations to common-law spouses. Saskatchewan, Manitoba, Quebec, Nova Scotia, Northwest Territories and Nunavut also apply property division provisions to unmarried couples.
- During the consultation period, feedback indicated that many unmarried couples now are under the mistaken belief that, after two years, they are treated the same as married couples and are entitled to division of property if they separate. This misunderstanding causes significant disadvantage.
- The new property division rules exclude certain property, such as pre-relationship property and inheritances, from the 50/50 division of property upon separation. As well, couples can opt-out of the rules by agreement if they wish.

Family Violence

Q: What does the new law do to address family violence?

- The Family Law Act better addresses family violence. It:
 - creates a new protection order to restrain a family member from contacting or communicating with another family member where there is a risk of family violence -- breaches of protection orders will be a Criminal Code offence;
 - defines family violence and makes it a consideration in the “best interests of the child” test used when making decisions about children;
 - 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;
 - requires family dispute resolution practitioners, such as lawyers and mediators, to screen for violence to ensure the processes used are appropriate.

Q: What is a protection order?

- The Family Law Act creates a new protection order to restrain a family member from contacting or communicating with another family member where there is a risk of family violence. Protection orders replace restraining orders under the Family Relations Act.
- To promote timely, effective enforcement — which can save lives in this case — the new protection order regime is enforced through section 127 of the Criminal Code rather than through the civil justice system. To ensure a consistent approach, breaches of orders under the Child, Family and Community Services Act to protect children are also a Criminal Code offence.
- The protection order itself is a civil order. When the order is breached, the breach triggers the use of the Criminal Code. If the protection order is never breached, the parties are never brought into the criminal system.

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- Protection orders can be made on a stand-alone basis. Priority is given to safety-related orders—protection orders, peace bonds or other safety-related orders will be enforceable despite a conflicting family order.
- These changes will improve enforcement of safety-related orders and respond to numerous reports, including the *Keeping Women Safe* report and the Representative for Children and Youth's report, *Honouring Christian Lee*, that say that consistent enforcement of protection orders is critical to increasing victim safety.

Q: What happens to my restraining order made under the Family Relations Act?

- Restraining orders made under the Family Relations Act remain effective as per their terms and are not affected by the Family Law Act. This ensures that people do not lose the protection of restraining orders without their knowledge, which otherwise could leave them in an unsafe situation.
- Having a restraining order does not prevent a person from seeking a protection order. Where there is a continuing safety-risk, the person may benefit from seeking a new protection order. A Family Law Act protection order offers significant benefits over a Family Relations Act restraining order, including more effective enforcement. The Family Relations Act restraining orders are enforced through the civil justice system, whereas the Family Law Act protection orders are enforced through the criminal justice system. This change simplifies the enforcement process by using tools that police are familiar with to promote more effective enforcement.