

Family Law Act Regulations

Questions and Answers

Training and Practice Standards for Family Dispute Resolution Professionals

Q: Why has government set training and practice standards for family law mediators/ parenting coordinators/ arbitrators?

- Government is committed to ensuring out-of-court processes are safe, appropriate and are conducted by qualified people who have family violence training.
- 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 consultation with stakeholders, developed the regulatory minimum training and practice standards to ensure families are directed to appropriate processes conducted by qualified practitioners.

Q: Are the training and practice standards new?

- Yes. Prior to these standards, there were no minimum training or practice standards for mediators, parenting coordinators and arbitrators that applied across the board.
- In a specialized area such as family law, where people's personal lives and safety are involved, it is important to ensure the professionals involved have a minimum level of training.
- The regulations were developed in consultation with the Law Society and other dispute resolution organizations to ensure that all family law dispute resolution professionals meet minimum standards to ensure they are trained in their area.
- As well, all professionals are required to have family violence training.

Q: Did mediators, parenting coordinators and arbitrators have time to train up in order to meet the new requirements?

- Yes, professionals had over a year to meet these minimum training and practice standards.

Q: What about lawyers? Do they have to meet the standards when they are acting as mediators/ parenting coordinators/ arbitrators?

- Lawyers practising in B.C. are governed by the Law Society of B.C. The Law Society also implemented new practice standards for lawyers who act as family law mediators, parenting coordinators or family arbitrators.

- The new Law Society rules are similar to the standards provided under the regulations for non-lawyers. This ensures all family dispute resolution professionals, whether they are lawyers or non-lawyers, meet minimum standards.
- The ministry worked closely with the Law Society and other dispute resolution organizations in developing the training and practice standards.

Q: Do the changes mean that my pastor won't be able to help families sort through their issues without taking all the training required to be a family dispute resolution professional?

- The minimum standards do not restrict a person, such as a pastor, from helping families through difficult times—that is not the practice of mediation, which is a formal dispute resolution process. The regulations prohibit a person from making a business as a family law mediator if they do not have the qualifications.

Q: Won't setting training and practice standards for family dispute resolution professionals limit access to justice?

- There are two objectives we are achieving in this area – promoting access to justice and protecting the public. Government believes that the minimum practice standards deliver on both.
- In a specialized area such as family law, where people's personal lives and safety are involved, it is important to ensure the professionals involved have a minimum level of training.
- Every family dispute resolution professional must meet a reasonable minimum standard that includes a level of family related experience and training in their area of practice. They must take training on family law and must learn to screen for family violence. As well, they must take training annually to ensure their training remains relevant.

Q: What happens if someone who does not meet the minimum standards acts as a mediator, parenting coordinator or arbitrator?

- The family dispute resolution professional is required to confirm to the parties that they meet the minimum requirements to act. If an agreement is negotiated by someone who does not meet the requirements and as a result the outcome is not fair, the agreement may be able to be set aside by the court and replaced by an order of the court made under the Family Law Act.
- As well, generally family dispute resolution professionals must be members of a professional body or a dispute resolution organization. These organizations have complaints and discipline mechanisms.
- The roster organizations, such as Mediate BC, Family Mediation Canada and the Parenting Coordinators Roster Society, provide lists of their qualified members to the

public. Families are encouraged to look to the rosters when seeking a family dispute resolution professional to ensure they are using a qualified professional.

Q: Why is there no specific regulation with respect to screening for family violence?

- Section 8 of the Family Law Act requires all family dispute resolution professionals, including lawyers, mediators, parenting coordinators and arbitrators to screen for family violence to assess whether dispute resolution processes are appropriate and safe for the family. Section 8 allows for the development of regulations with respect to screening.
- Instead of regulating particular rules or tools with respect to screening, the regulations provide that, as part of the minimum practice standards, mediators, parenting coordinators and arbitrators must complete at least 14 hours of family violence training to learn to identify, screen for, and deal appropriately with family violence. The Law Society practice standards have a similar requirement for lawyers acting as family mediators, parenting coordinators and family arbitrators and the Law Society has strongly recommended that all family lawyers take this training.
- This is an area that is evolving rapidly and there is no one tool that is appropriate for all practices. This approach will ensure that practitioners have taken in depth training about family violence that includes introduction to a range of screening tools. This will provide a flexible approach to screening that can evolve with the field and be adapted to the needs of the various professions, while ensuring the professionals have the training needed to appropriately address the issue of family violence.

Q: What kind of family violence training is required?

- Family dispute resolution professionals are required to screen for family violence under the Family Law Act. The training and practice standards require mediators, arbitrators and parenting coordinators to take a minimum of 14 hours of family violence training.
- This training must include training on identifying, assessing and managing family violence and power dynamics to ensure that the processes used are appropriate for the family's circumstances. Professionals are trained to screen for family violence so that they can determine whether or not dispute resolution processes can be used or adapted to account for safety concerns or power imbalances.
- This training is not intended to make lawyers, mediators or other professionals, experts on family violence and does not replace the role of trained experts such as social workers or counsellors. However, it will provide them with skills to recognize family violence to ensure families are directed to processes that are safe and appropriate. As well, it will provide them with tools to screen appropriately and skills to identify high risk cases.

Q: Will the existence of family violence automatically exempt a family from participating in dispute resolution?

- The act requires all family dispute resolution professionals (including lawyers, mediators and family justice counsellors) to screen for family violence. Based on this assessment, they must provide people with information about non-court dispute resolution options that are suitable for them.
- In some family violence cases, the available dispute resolution processes may not be appropriate, considering safety concerns or power imbalances. But the mere existence of family violence is not a bar to dispute resolution.
- More and more in the family law context, procedures are being modified to address power imbalances and safety concerns that exist in family violence cases. For example, collaborative law or shuttle mediation may be used to limit contact or communication and ensure adequate support. In fact, research shows that modified out-of-court processes with trained professionals often provide victims of family violence with better outcomes and a more empowering experience than the adversarial court process.
- In order to ensure that families are not put into inappropriate or dangerous processes, the training and practice standards under the regulations provide that all family dispute resolution professionals must have at least 14 hours of family violence training.

Q: What is the difference between mediators/ parenting coordinators/ arbitrators?

- All three are family dispute resolution professionals who are neutral third parties. All must take training in their area, family law training, family violence training and have a level of experience working in a family related practice.
- A family law mediator assists families in a formal dispute resolution process to resolve family law issues after separation. Mediators help the parties come to an agreement together; they do not make decisions for the parties. A person with at least two years experience in any family related professional background (including social workers, nurses or teachers) can take the training to become a mediator.
- A parenting coordinator may assist families in making an agreement respecting the implementation of their agreement or order. If the parties cannot agree, they may also make binding decisions (determinations) to resolve the family's post-agreement or post-order child related-issues. However, they 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. Because of the specialized decision-making component of parenting coordination, a person must have at least 10 years experience in family related practice to become a parenting coordinator.
- A family law arbitrator 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 restrictive. 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 and 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 legal issues related to property and spousal support. Because of the binding nature of arbitration, a person must have at least 10 years experience to become an arbitrator.

Q: Who do people contact to find out where to get training?

- The Justice Institute of BC and the Continuing Legal Education Society of BC offer family violence training. Both also offer mediation training.
- Mediate BC, Family Mediation Canada, the BC Parenting Coordinators Roster Society and the BC Arbitration and Mediation Institute are also good resources.

Child Support

Q: What do child support regulations do?

- The regulations about child support replace 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. There is no significant change in the child support rules.
- 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.

Q: What is the child support recalculation service?

- 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. These regulations do not substantively change the process. The Child Support Recalculation Pilot Project Regulation under the Family Relations Act included similar provisions. The recalculation service currently operates out of the Kelowna Provincial Court Registry.

Pensions

Q: Do the regulations about pensions change the rules? (or What do the pension regulations do?)

- The pension regulations set out the requirements for dividing a pensions under Part 6 of the act, including the forms a spouse must use, the pension plan administrators' duties to provide information to the member and spouse, and the formulas to be used to calculate a spouse's share of the member's pension.

Other

Q: What does the form for appointment of a testamentary or standby guardian under section 23 of the regulations do?

- This form can be used to appoint a guardian for a child under sections 53 and 55 of the Family Law Act. It 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.

Q: What does section 24 of the regulations, the "small property" regulation, do?

- 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. This regulation provides that the limit of the value of a child's money or property that a guardian may hold is \$10,000.

Q: Why does section 26 of the regulations provide for a fee for filing a notice of agreement in land title office?

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