

Part 1 – Interpretation

This Part defines terms and provides some general principles of interpretation for the Family Law Act.

Section 1 Definitions

- Section 1 changes some definitions and adds others that are needed to interpret the Act. It amends and creates definitions necessary to support interpretation of the other sections in the legislation.

The following table lists each definition in the Family Law Act, followed by the definition in the Family Relations Act, if any, and the rationale for any change or inclusion.

“Child”
FLA definition: “child”, except in Parts 3 [<i>Parentage</i>] and 7 [<i>Child and Spousal Support</i>] and section 247 [<i>regulations respecting child support</i>], means a person who is under 19 years of age;
FRA definition: “child” means a person who is under the age of 19 years
Rationale: <ul style="list-style-type: none">• No substantive change
“Child support guidelines”
FLA definition: “child support guidelines” means the child support guidelines, provided for under section 247, for calculating child support;
FRA definition: “child support guidelines” means the child support guidelines established by regulation under section 129 for the calculation of maintenance awards;
Rationale: <ul style="list-style-type: none">• No substantive change

“Contact with a child” or “contact with the child”

FLA definition:

“contact with a child” or “contact with the child” means contact between a child and a person, other than the child’s guardian, the terms of which are set out in an agreement or order;

FRA definition: None.

Rationale:

The Family Law Act does not use the terms “custody” and “access.” It replaces them with a new model for parenting after separation in Part 4. Under this new model, “contact” is the time that a person who is not the child’s guardian, including a parent who is not a guardian, has with the child.

“Court”

FLA definition:

“court” means

- (a) the Supreme Court, or
- (b) to the extent that it has jurisdiction to make an order, the Provincial Court;

FRA definition:

“court” means the Provincial Court exercising the jurisdiction referred to in section 6, or the Supreme Court;

Rationale:

- No substantive changes.

“Excluded property”

FLA definition:

“excluded property” means property that would otherwise be family property but is excluded under section 85 [*excluded property*];

FRA definition: None

Rationale:

The Family Law Act introduces a new scheme in Part 5 for dividing family property on relationship breakdown. “Excluded property” is an important concept in this new scheme. This definition directs the reader to the section that sets out what property is excluded property.

“Family debt”

FLA definition:

“family debt” means family debt as described in section 86 [family debt];

FRA definition: None.

Rationale:

Unlike the Family Relations Act, Part 5 of the Family Law Act sets out how family debt is to be treated on relationship breakdown. This definition directs the reader to the section that sets out what is included in family debt.

“Family dispute resolution”

FLA definition:

“family dispute resolution” means a process used by parties to a family law dispute to attempt to resolve one or more of the disputed issues outside court, and includes

- (a) assistance from a family justice counsellor under Division 2 [Family Justice Counsellors] of Part 2,
- (b) the services of a parenting coordinator under Division 3 [Parenting Coordinators] of Part 2,
- (c) mediation, arbitration, collaborative family law and other processes, and
- (d) prescribed processes;

FRA definition: None.

Rationale:

A pillar of the Family Law Act is to encourage out-of-court resolution of family law disputes through more collaborative and flexible processes, namely family dispute resolution.

“Family dispute resolution professional”

FLA definition:

“family dispute resolution professional” means any of the following:

- (a) a family justice counsellor;
- (b) a parenting coordinator;
- (c) a lawyer advising a party in relation to a family law dispute;
- (d) a mediator conducting a mediation in relation to a family law dispute, if the mediator meets the requirements set out in the regulations;
- (e) an arbitrator conducting an arbitration in relation to a family law dispute, if the arbitrator meets the requirements set out in the regulations;
- (f) a person within a class of prescribed persons;

FRA definition: None.

Rationale:

This definition identifies the types of practitioners who are considered to be family dispute resolution professionals under the Family Law Act. It provides a regulation-making authority to set minimum qualification requirements and practice standards for practitioners.

“Family justice counsellor”

FLA definition:

“family justice counsellor” means a person appointed as a family justice counsellor under section 10 (1) [family justice counsellors];

FRA definition: None.

Rationale:

This definition modernizes the term “family court counsellor” used in section 3 of the Family Relations Act to better reflect the current roles and terms used.

“Family law dispute”

FLA definition:

“family law dispute” means a dispute respecting a matter to which this Act relates;

FRA definition: None

“Family member”

FLA definition:

“family member”, with respect to a person, means

- (a) the person’s spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
- (c) a parent or guardian of the person’s child,
- (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
- (e) the person’s child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

FRA definition: None.

Rationale:

This broad definition is important for the definition of “family violence” and for Part 9- Protection Orders of the Family Law Act since protection orders are only available between family members.

“Family property”

FLA definition:

“family property” means family property under section 84 [*family property*];

FRA definition: None

Rationale:

The Family Law Act introduces a new scheme in Part 5 for dividing family property on relationship breakdown. This definition directs the reader to the section that provides the detailed framework for determining what property is family property.

“Family violence”

FLA definition:

“family violence” includes

- (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;

FRA definition: None.

Rationale:

This definition is included to give all family justice participants a clear and common understanding of what family violence is for the purposes of the Family Law Act.

“Guardian”

FLA definition:

“guardian” means a guardian under section 39 [parents are generally guardians] and Division 3 [Guardianship] of Part 4;

FRA definition:

"guardian" means the person who has all the powers and duties under section 25 respecting a child;

Rationale:

While the changes to the definition may appear minor, the roles and responsibilities associated with the concept in Part 4 of the Family Law Act are a significant change from the Family Relations Act. The roles and responsibilities associated with the concept are clarified with the list in section 41 in Part 4.

“Parent”

FLA definition:

“parent” means a parent under Part 3 [Parentage];

FRA definition:

"parent" includes

- (a) a guardian or guardian of the person of a child, or
- (b) a stepparent of a child if
 - (i) the stepparent contributed to the support and maintenance of the child for at least one year, and
 - (ii) the proceeding under this Act by or against the stepparent is commenced within one year after the date the stepparent last contributed to the support and maintenance of the child;

Rationale for change:

This definition defines “parent” in terms of legal parentage. Part 3 of the Family Law Act provides a comprehensive framework for determining who is a legal parent for all purposes of the law.

The definition in the Family Relations Act did not define who had legal parentage. Rather, the definition provided for an expanded meaning of parent for the purposes of that Act to include guardians of the person and stepparents. This expanded definition does not mean that these

people become legal parents, but rather that under the act they will be treated in the same way as a parent; wherever the act talks about a “parent” it also means a “guardian” or a “step-parent”. These expansions are carried forward in the Family Law Act, but are located in the relevant part of the Act: Part 7-Child and Spousal Support, section 146 [*Definitions*] and 147[*Duty to provide support for child*] in.

“Parental responsibilities”

FLA definition:

“parental responsibilities” means one or more of the parental responsibilities listed in section 41 [*parental responsibilities*];

FRA definition: None

Rationale:

The Family Law Act introduces a new model for parenting after separation. It includes the concept of parental responsibilities, which are the responsibilities that guardians have respecting children. The definition directs the reader to the section that lists the parental responsibilities.

“Parenting arrangements”

FLA definition:

“parenting arrangements” means arrangements respecting the allocation of parental responsibilities or parenting time, or both;

FRA definition: None

Rationale:

This definition provides an umbrella term to describe the allocation of parental responsibilities and parenting time.

“Parenting coordinator”

FLA definition:

“**parenting coordinator**” means a person who may act as a parenting coordinator under section 14 [parenting coordinators];

FRA definition: None.

Rationale:

This definition directs the reader to the section that explains who may act as a parenting coordinator.

“Parenting time”

FLA definition:

“**parenting time**” means parenting time as described in section 42 [*parenting time*];

FRA definition: None.

Rationale:

The Family Law Act does not use the terms “custody” and “access.” It replaces them with a new model for parenting after separation in Part 4 of the Act. Under this new model, parenting time is the time that a guardian has with a child.

The definition directs the reader to the section that provides a detailed explanation of what parenting time is.

“Police officer”

FLA definition:

“**police officer**” means a person who, under the Police Act,

- (a) is a provincial constable or municipal constable or has the powers of a provincial constable or municipal constable, or
- (b) is a constable other than a constable referred to in paragraph (a) and is within a prescribed class of constables;

FRA definition: None.

Rationale:

This definition is broad and includes both municipal police and the RCMP. It is important in relation to the enforcement of protection orders made under Part 9 of the Family Law Act.

“Spouse”**FLA definition:**

“**spouse**” means a person who is a spouse within the meaning of section 3 [*spouses and relationships between spouses*];

FRA definition:

"**spouse**" means a person who

- (a) is married to another person,
- (b) except under Parts 5 and 6, lived with another person in a marriage-like relationship for a period of at least 2 years if the application under this Act is made within one year after they ceased to live together and, for the purposes of this Act, the marriage-like relationship may be between persons of the same gender,
- (c) applies for an order under this Act within 2 years of the making of an order
 - (i) for dissolution of the person's marriage,
 - (ii) for judicial separation, or
 - (iii) declaring the person's marriage to be null and void, or
- (d) is a former spouse for the purpose of proceedings to enforce or vary an order.

Rationale:

The time limits related to being a spouse have been moved from the definition section to section 198 [Time limits] of the Family Law Act. The definition directs readers to the interpretation section – section 3 [Spouses and spousal relationships] - for additional details.

Substantive change: Extends the definition of spouse to include common-law couples for the purposes of property and pension division and common-law couples who have lived together for less than two years, if they have a child together, for other purposes under the Family Law Act.

“Written agreement”**FLA definition:**

“**written agreement**” means an agreement that is in writing and signed by all parties;

FRA definition: None

Rationale:

The definition establishes criteria for written agreements under the Family Law Act.

The following table lists the definitions that are not carried forward from the Family Relations Act in section 1 or replaced by Family Law Act definitions, followed by the rationale.

Family Relations Act definitions	Rationale
<p>“guardian of the estate of a child” means the person who has all the powers and duties under section 25 respecting the estate of a child;</p>	<p>The Family Law Act will not distinguish between guardian of the estate and guardian of the person. Instead guardianship will be defined through distribution of parenting responsibilities.</p> <p>The term “guardian of the estate of a child” is no longer used in British Columbia law. Where the Public Guardian and Trustee Acts as an institutional guardian for a child, they will be the child “property guardian.” The authority to act as a “property guardian” is set out in section 51 [If a child has no guardian] of the Infants Act. The scope of their power to act is set out in the Public Guardian and Trustee Act.</p>
<p>"guardian of the person of a child" means the person who has all the powers and duties under section 25 respecting the person of a child;</p>	<p>The Family Law Act will not distinguish between guardian of the estate and guardian of the person. Instead, guardianship will be defined through distribution of parenting responsibilities.</p> <p>The term “guardian of the person of a child” is no longer used in British Columbia law. Where the Ministry of Children and Family Development acts as an institutional guardian for a child, they will be the child’s “personal guardian.” The authority to act as “personal guardian” is set out in section 51 [If a child has no guardian] of the Infants Act. The scope of their power to act is set out in the ministry’s statutes.</p>
<p>“child support order” means a maintenance order, as defined in section 87, for the maintenance and support of a child;</p>	<p>The Family Law Act uses the descriptive phrase “order respecting child support” rather than this defined term.</p>
<p>“Nisga’a child” has the same meaning as in the Nisga’a Final Agreement;</p>	<p>This definition has been moved to section 208.</p>
<p>Nisga’a Final Agreement” has the same meaning as in the Nisga’a Final Agreement Act;</p>	<p>This definition has been moved to section 208.</p>
<p>“Nisga’a law” has the same meaning as in the Nisga’a Final Agreement.</p>	<p>This definition has been moved to section 208.</p>

“Nisga’a Lisims Government” has the same meaning as in the Nisga’a Final Agreement;	This definition has been moved to section 208.
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Section 2 – General Interpretation

- Section 2 provides general guidance on how references to agreements and orders are to be interpreted throughout the Family Law Act.
- It also provides general guidance on how references to parents and guardians are to be interpreted throughout the Family Law Act.

Section 3 – Spouses and Relationships Between Spouses

- Section 3 of the Family Law Act expands the definition of “spouse” to include common-law spouses, who have lived together for at least two years, for the purposes of property and pension division.
- Under the Family Relations Act spousal support provisions applied to common-law couples, but property and pension division provisions did not. Therefore, common-law spouses had to rely on constructive trust claims to deal with property division, which were complex, expensive, rarely successful, and often resulted in unfair outcomes.
- The number of common-law relationships is on the rise (increasing three times faster than marriages) and it is important to have a clear and effective law that applies to these relationships to avoid expensive and protracted court cases. Saskatchewan, Manitoba, Quebec, Nova Scotia, Northwest Territories and Nunavut include common-law couples in all aspects of their family law, including property division. Other areas of law, including wills and estates and income tax, already extend the same rights and responsibilities to common-law couples as to married couples.
- Section 3 also includes as a “spouse” people who have lived together in a marriage-like relationship for less than two years if they have a child together. This applies to spousal support but does not apply to property or pension division.
- Section 3 provides interpretive guidance to ensure “former spouses” are treated like spouses for the purposes of making applications.
- Section 3 establishes the start date for a relationship between spouses and provides guidance for determining the date of separation. The start and end dates of a spousal relationship are important to determine when rights or responsibilities accrue under the Family Law Act, particularly respecting property division.
- Married and common-law spouses retain the ability to make choices about the structure of their relationships and the obligations flowing from them. They may agree to opt-out of the property division regime and make alternate arrangements through a written agreement.