

Part 10 – Court Processes

This Part sets out the statutory framework respecting court processes. It defines the scope of the court's jurisdiction, provides for appeals, and provides for standing in Aboriginal matters. As well, this Part provides authority for the court to make orders respecting procedural matters, orders to manage the case or the parties, and orders for enforcement.

Unless indicated, authority throughout the Act is provided to both courts. Unlike the Supreme Court which has an inherent jurisdiction to make certain orders, Provincial Court is provided its authority by legislation alone. Outlining the broad range of powers in this Part provides the Provincial Court with a greater range of tools and powers to effectively manage proceedings, tailor procedures and results and provide appropriate remedies.

Division 1 – Jurisdiction of Court Generally

This Division sets out the scope of Supreme Court and Provincial Court jurisdiction respecting matters under the Family Law Act. It also provides rules for dealing with situations where both courts have jurisdiction over a matter and proceedings may be brought in either court.

Section 192 Supreme Court jurisdiction

- Section 192 clarifies that the Supreme Court has jurisdiction over marriage, divorce and all matters in the Family Law Act, subject to any restrictions imposed by the federal Divorce Act.
- It carries over section 5 of the Family Relations Act with minor changes.

Section 193 Provincial Court jurisdiction

- Section 193 replaces section 6 of the Family Relations Act with a provision that more clearly outlines Provincial Court jurisdiction. The provision does not withdraw power that had previously been within the Provincial Court's purview but more clearly expresses the restrictions in several areas to reflect the case law and provide clarity.
- Firstly, it restricts Provincial Court to making declarations of parentage except where the issue of parentage is related to another matter, such as child support. For example, a person cannot apply to Provincial Court seeking a declaration of parentage, but if a dispute about parentage arise in a child support case, and one person says they are not the parent, the Provincial Court may make a determination for the purposes of establishing whether there is a duty to pay child support.
- Secondly, the section prohibits Provincial Court from making any order respecting property, including orders for exclusive occupancy of the family residence.
- Despite the restriction on making property orders, the Provincial Court may make safety-related protection orders which may have the effect of restricting access to a family residence, since the Provincial Court has jurisdiction with regard to public safety.

Section 194 Overlapping court jurisdiction

- Section 194 carries over sections 7 and 8 of the Family Relations Act with changes to clarify the process for dealing with areas of overlapping court jurisdiction between Provincial and Supreme Court.
- As was the case under the Family Relations Act, proceedings may be commenced in both courts as long as relief has not already been granted in by one court.
- When applications are brought in different courts for the same or similar relief, the section provides the court a number measures to deal with the applications more effectively, including the ability to consolidate proceedings, make orders and decline to hear matters.
- It also outlines the rules for when the Supreme Court may and may not change, suspend or terminate Provincial Court orders. This prevents parties from taking a second kick at the can at the same issue where it has already been effectively resolved. At the same time, this section provides flexibility to adjust an order from Provincial Court where an issue in Supreme Court will impact that order, without requiring the parties to go back to Provincial Court again.

Section 195 Provincial Court enforcement of Supreme Court orders

- Section 195 provides that Provincial Court can enforce Supreme Court orders respecting parental responsibilities or contact with a child provided that procedural requirements are met.
- It carries over section 12 of the Family Relations Act with minor changes.

Section 196 Certain actions must not be maintained

- Section 196 carries over section 123 of the Family Relations Act. This section prohibits specific common law actions for matrimonial torts:
 - **Restitution of conjugal rights:** remedy that obligates a spouse to continue to live with the other spouse and carry out spousal duties
 - **Loss of consortium** : action based on the inability of one's spouse to have normal marital relations
 - **Criminal conversation:** action for damages against a person who has coaxed their spouse into adultery
 - **Jactitation of marriage:** A false boast of marriage
 - **Enticement of a spouse:** action against a person who caused a husband to lose the love, services or society of his wife.
 - **Harbouring of a spouse:** action against a person who harbour a man's wife after notice that she has left him without his consent
 - **Breach of promise to marry:** right of action for breaking a commitment to enter into matrimony.
- Section 123(3) and (4) are not carried over because they are no longer required: (3) is irrelevant because the relevant time frame for bringing an action has long passed; (4) is unnecessary because the Divorce Act (Canada) deals with the grounds for dissolution of marriage and is a no-fault system.

Division 2 – Procedural Matters

This Division addresses procedural matters respecting: a lawyer's duties, timing of bringing a family law disputes to the court, the involvement of children, intervener status, applications that may be heard in a party's absence, spousal compellability, privacy and information that should accompany orders.

Section 197 Complying with duties respecting family dispute resolution

- Section 197 requires lawyers to certify that they have complied with their duties in section 8 to discuss dispute resolution options with their client prior to starting a proceeding in court.
- It promotes the informed use of out-of-court processes to resolve family law disputes.
- This section harmonizes the Act with section 9 of the Divorce Act which requires lawyers to certify that they have complied with the duty to advise clients of family dispute resolution options before commencing an action.

Section 198 Time limits

- Section 198 provides clear limitation periods for certain proceedings, applications and agreements.
- The section also suspends the running of limitation periods during dispute resolution. This will discourage the need to start a proceeding in court where it is likely the dispute will be resolved out of court, but does so without prejudicing the parties if settlement is not achieved.
- Limitation periods were unclear in the Family Relations Act as they were embedded in the definitions section. This was confusing and did not provide adequate direction.

Section 199 Conduct of proceeding

- Section 199 encourages a child-focussed and less-adversarial approach to hearings.
- It replaces and expands upon section 120 of the Family Relations Act.

Section 200 Applications may be heard in party's absence

- Section 200 provides authority, in certain circumstances, for the court to hear applications when one party is absent.
- Under the Family Relations Act applications were made in a parties' absence under the Court Rules. Section 200 ensures that both courts have adequate authority to hear these applications and promotes greater consistency.

Section 201 Legal capacity of children

- Section 201 provides for the circumstances under which a child has the legal capacity to conduct or defend a proceeding on their own behalf without a litigation guardian, including once they are 16 years of age or older.

- The section also allows a court to appoint a litigation guardian for a child, even where the child has legal capacity under this section.
- The changes made in this section codify the common law.
- Section 201 replaces section 4(2) of the Family Relations Act which only recognized married children as having the legal capacity to conduct or defend an application. Section 4(1) of the Family Relations Act is not carried forward because marital status is no longer relevant in terms of determining a legal disability.

Section 202 Court may decide how child's evidence is received

- Section 202 provides courts the flexibility to admit children's evidence that may not otherwise be allowed by the rules of evidence. This also recognizes that it may not be appropriate for children to be fully involved in court processes.
- The purpose of the section is to allow children to participate in proceedings that impact them, which often results in better outcomes for children, without forcing them to engage in the proceeding.
- The provision adopts an approach used in the Child, Family and Community Services Act in child protection proceedings.

Section 203 Children's lawyer

- Section 203 allows the court to appoint a lawyer to represent a child in high conflict parenting disputes where it is necessary to protect the child's interest.
- Children's lawyers can be a useful tool in highly conflicted parenting cases. They can refocus attention on the child's best interests and help ensure that decision-makers have appropriate information when parents are unwilling or unable to provide it.
- However, use of children's lawyers is not appropriate in the vast majority of cases, as it tends to draw the child further into the conflict. It may increase the adversarial nature of the proceedings, and therefore may work counter to the child's best interests. Research shows that the best way to manage high conflict families is to get them out of court and into more interventionist approaches where they can resolve underlying issues.
- If an appointment is made, the court may allocate among one or both of the parties all or part of the lawyers' fees and disbursements. This approach used in Alberta's Family Law Act.
- Section 203 replaces section 2 of the Family Relations Act with a section that allows the court to appoint a lawyer to represent a child in high conflict parenting disputes where it is necessary to protect the child's interest. Section 2 of the Family Relations Act referred to a government-funded program of children's lawyers (family advocates) that is not operational.

Section 204 Intervention by Attorney General or other person

- This section allows the Attorney General or any other person to apply for leave to intervene in a proceeding at the discretion of the court.
- The section recognizes that interveners acting in the public's interest can assist the court in making determinations in some cases.
- Section 204 carries over section 18 of the Family Relations Act.

Section 205 Spouse Compellable as witness

- Section 205 establishes that the Act supersedes section 8 of the Evidence Act which states that spouses are not compellable witnesses against each other. This clarification is important otherwise spouses would be unable to testify in proceedings brought under the Act.
- Section 205 carries over section 19 of the Family Relations Act.

Section 206 Exclusion of the public or from publication

- Section 206 allows the court to exclude any person or the public from a hearing and prohibit publication of the identities of parties or children.
- This section provides the express authority for both courts to better manage their proceedings where appropriate.

Section 207 Information accompanying orders

- Section 207 mandates that prescribed information be given to a party when a court makes an order.
- The particulars of what and how information is to be given will be set out in the regulations.
- This section allows for the development of mandatory information materials to assist parties about their obligations and options after an order is made.

Division 3 – Standing in Aboriginal Matters

This Division carries over the provisions from the Family Relations Act respecting standing in proceedings respecting Aboriginal matters. The provisions were scattered throughout the Family Relations Act. This Division consolidates, but does not substantively change these provisions.

Section 208 Guardianship of Nisga'a child

- This section provides that the Nisga'a Lisims Government must be served notice and has standing in all proceedings with respect to a Nisga'a child.
- It ensures that British Columbia fulfils its obligations under the Nisga'a treaty.
- Section 208 carries over section 22.1 of the Family Relations Act.

Section 209 Guardianship of treaty first nation child

- This section requires that in cases where a first nation treaty provides for it, treaty first nations must be served notice and have standing in proceedings respecting treaty first nation children.
- This section ensures that British Columbia fulfils its obligations under first nation treaties.
- Section 209 carries over section 22.2 of the Family Relations Act.

Section 210 Property proceeding involving treaty lands

- This section provides treaty first nations with standing in proceedings where one party is a member of the first nation and a parcel of treaty land is at issue.
- It ensures that British Columbia fulfils its obligations under first nation treaties.
- Section 210 carries over section 66.1 of the Family Relations Act.

Division 4 - General Orders the Court May Make

This Division sets out the general types of orders a court may make during a proceeding. Each Part of the Family Law Act provides specific order making powers relating to their subject matter. This Division outlines additional types of orders that either the entire Act or multiple parts. The purpose of the Division is to consolidate the residual order making powers to make the Act more readable and coherent.

Section 211 Orders respecting reports

- Section 211 allows the courts to order reports on the needs and views of the child or on the ability of parties to satisfy the needs of a child in proceedings related to guardianship, parenting responsibilities and parenting time.
- These reports are:
 - publically funded through Family Justice Services Division (MOJ), or
 - privately funded by private practitioners.
- Section 211 carries over section 15 of the Family Relations Act with minor changes to promote clarity.

Section 212 Orders respecting disclosure

- Section 212 provides the court authority to order disclosure of information by parties at any stage in the proceeding.
- Where the Court Rules provide rules respecting disclosure, the rules will define what disclosure is required.
- This section encourages people to make timely and appropriate disclosure knowing that the court may compel them to do so.

Section 213 Enforcing orders respecting disclosure

- Section 213 provides both courts with a broad spectrum of measures to compel disclosure, including making an order based on an attributed income, ordering payment of security or a fine, or payment to the other party for expenses incurred as a result of the non-compliance.
- Under section 92 of the Family Relations Act, the only way for a court to enforce an order for disclosure was to impose a fine. The section was ineffective and rarely used. Securing adequate disclosure can be an extremely time consuming and costly exercise for a party. The inability of courts, particularly Provincial Court whose powers are limited by the legislation, to effectively compel disclosure was identified as a significant problem that undermined early settlement and fair outcomes.
- The wide range of remedies will ensure both courts may effectively compel adequate disclosure and will deter parties from delaying full disclosure.
- In conjunction, there are other sections of the Family Law Act that promote full and frank disclosure. Section 5 provides a duty to parties to disclose even prior to starting a court proceeding. Where an order or agreement was based on false or partial disclosure, the

order may be changed or the agreement may be set aside and replaced with an appropriate order: see for example, section 93 [Setting aside agreements respecting property], section 164 [Setting aside agreements respecting spousal support], section 167 [Changing, suspending or terminating orders respecting spousal support]. Under section 214 [Orders respecting agreements], where an agreement is set aside based on non-disclosure, the court may also penalize the person if they entered into an agreement knowing they were not disclosing significant property.

Section 214 Orders respecting agreements

- Section 214 clarifies the relationship between orders and agreements.
- The section provides the following clarifications:
 - if a part of an agreement is set aside by a court, it is severed from the agreement;
 - the terms of an agreement may be incorporated into an order;
 - where an agreement is made and, later, an order is made respecting the same issue, the order replaces the agreement. However, it only replaces the agreement respecting that particular issue, the remainder of the agreement remains effective;
- This section also allows a court to penalize a person if the person entered into an agreement knowing they were not disclosing significant property. If a court sets aside an agreement for failure to disclose information, the court may order the non-disclosing party to reimburse the other party for the expenses related to securing the faulty agreement. This will encourage disclosure and protect a party who incurs expenses in securing an agreement in good faith, where the other party's non-disclosure nullifies the agreement.
- Section 214 expands upon section 11 of the Family Relations Act that allowed a court to incorporate the terms of an agreement into an order.

Section 215 Changing, suspending or terminating orders generally

- This section generally allows the court to change, suspend or terminate an order.
- This section is a catch-all and may only be used where the matter is not specifically dealt with in another part of the Act. Other parts of the Act provide for additional limits or considerations for changing specific types of orders: for example section 167 provides specific rules for changing spousal support orders.
- This section may not be used to change order respecting property or pension division. Unlike orders with regard to other matters, property or pension division is final. As a result, these orders may not be changed. Property division orders may only be appealed within the limitation period.
- Section 215 carries over section 20 of the Family Relations Act.

Section 216 Court may make interim orders

- Section 216 allows a court to make interim orders prior to a final determination of an issue.
- The section adds rules about when a court may change an interim order. Under the Family Relations Act, it was unclear whether a court could change an interim order. This resulted in hardship to a party whose circumstances have changed but is otherwise unable to adjust the order.
- Section 216 replaces and expands section 9 of the Family Relations Act.

Section 217 Interim orders before changing, suspending or terminating orders

- Section 217 authorizes the court to make an interim order pending a determination on whether an order will be changed, suspended, or terminated.
- Often a time lag exists between an application and a hearing. This section is used where the parties already have an order and application is made to change the order due to a change in circumstances. Where it may cause hardship for the person to continue to be bound by the original order, the court may make an interim order pending the hearing on whether the original order should be changed.

Section 218 Terms and conditions of orders

- Section 218 allows a court to include in an order any appropriate term or condition. The section provides both courts the flexibility to tailor orders to the circumstances.
- It does not apply to a protection order in which the terms and conditions are limited to safety-related matters. This is important to avoid confusion for police officers; it is important for them to know that all clauses in a protection order deal with safety and breaches are appropriate to be enforced as a criminal issue.

Section 219 Persons may consent to order being made

- This section provides for consent orders.
- It allows parties to come to an agreement before or during a proceeding and subject it to the rules relating to orders rather than agreements.
- This changes section 10 of the Family Relations Act in that it removes the ability of a consent order being obtained without any evidence. Since orders are given greater deference than an agreement and may only be changed under limited circumstances, this section requires the court to be satisfied that there is adequate evidence to support the consent order. Generally, this section reflects existing practice.

Section 220 Court may make order on behalf of child

- This section allows the court to make an order for relief on behalf of a child, if a spouse's or parent's application should have been on behalf of the child.
- Section 220 carries over section 17 of the Family Relations Act.

Section 221 Misuse of court process

- Section 221 adds a provision that provides the court with the power to prohibit or limit a party from making further applications in cases where the court feels a party is making trivial or vexatious applications or is otherwise misusing the court process.
- It provides a case management tool for courts to deal effectively with high conflict families and vexatious litigants, who often make repeated applications without adequate grounds.
- This section allows a court to restrict a party from making future applications about the same issue or limit them from coming to court until they have complied with the conditions imposed. If the person has refused to comply with an order, the court may refuse to allow the party leave to make an application to court until they have complied with their orders.
- It also provides the court with other remedies. For example, where the party has repeatedly taken their spouse to court without adequate grounds, they may be required to pay the expenses the spouse incurred as a result. Alternatively, the court may order the person to pay a fine for using the justice system inappropriately.

Division 5 – Orders Respecting Conduct

The majority of the provisions in this Division are new.

This Division provides a court with a wide range of tools to help judges manage behaviour, de-escalate tensions, promote compliance, and facilitate the settlement of disputes. It includes a collection of tools and remedies that range from preventive measures, such as sending people to counselling or programs to punitive measures, such as fines or payment of expenses to encourage compliance. Conduct orders will allow a judge to tailor processes to the needs of a particular family.

These new measures are available to both Supreme and Provincial Court. This will ensure more consistency between tools and remedies available between the two levels of court and ensure that Provincial Court, whose authority to act must be provided for in legislation, has the tools they need to effectively manage family law cases.

These tools can be used in any family law case, but will be particularly effective in managing high conflict families. Although high conflict families constitute a minority of separating or divorcing couples, they use a disproportionate amount of court resources. Some reports speculate that 10% of families demonstrating high conflict behaviour use up to 90% of family justice system resources. Further, the research shows that children in high conflict families are more likely to be damaged by their parents' ongoing conflict. These families often require a more interventionist approach to resolve the underlying issues, manage the dispute and contain their extraordinary demands on the resources of the justice system.

Section 222 Purposes for which orders respecting conduct may be made

- Section 222 enable courts to use conduct orders at any time to facilitate settlement, facilitate and manage behaviours that might frustrate a resolution, prevent the misuse of court processes and facilitate arrangements pending final determination.

Section 223 Orders respecting case management

- Section 223 provides the court with the ability to make orders to assist in effective case management.
- For example, a court may dismiss an application, adjourn a proceeding while the parties attempt to resolve a dispute or attend a program, require one judge to hear all further applications, or restrict court applications where a parenting coordinator is involved in the case.

Section 224 Orders respecting dispute resolution, counselling and programs

- Section 224 authorizes the courts to require parties to attend family dispute resolution or attend counselling, or services or programs. These interventions are often more effective and more affordable for families than court.
- Interventions such as dispute resolution, counselling and programs can be used to de-escalate conflict, resolve underlying issues, promote settlement and encourage adherence to orders or agreements. Preventative tools such as these can better address the underlying causes of conflict.

- If there are costs associated, the court may allocate the costs between the parties. The financial costs associated with dispute resolution are almost always significantly lower than the cost of court, particularly where lawyers are involved. As well, the emotional costs associated with court are high.
- There are publically-funded Family Justice Centres and Justice Access Centres located in communities across British Columbia. Family Justice Counsellors offer assistance to families upon separation by providing dispute resolution services and information and referrals to other services. As well, most separating parents are required to attend a “Parenting After Separation” course prior to filing an action in court.

Section 225 Orders restricting communications

- Section 225 allows courts to make restrictions or conditions respecting communications between the parties in order to manage behaviour and limit conflict between parties.
- For example, under this provision, an order could be made that requires the parties to communicate by email, except in emergencies, to avoid heated conversations in front of the children.
- This provision is not to be used where there is a safety risk and a protection order is more appropriate. In those cases protection orders should be sought or ordered instead.
- Under section 228 [Enforcing orders respecting conduct], repeated breaches of a conduct order restricting communications are grounds for a court to consider if it would be appropriate to make a protection order under Part 9 of the Act. Research shows that when restrictions on contact or communication are repeatedly breached, it is often an indicator of escalating risk of harm.
- The Act makes an important distinction between conduct orders and protection orders: conduct orders are tools to manage the misbehaviour of parties and are enforced in family court by the parties. Where there is safety risk due to family violence, a conduct order alone is not to be used to manage the risk. Protection orders also restrict communications (and contact) but are for the purpose of preventing violence. A protection order is enforced by the police and Crown under the Criminal Code. Where there is risk of harm, a protection order should be made since it is intended to prevent family violence and provides an appropriate justice system response.

Section 226 Orders respecting residence

- Section 226 provides that a court may make interim arrangements respecting the residence and related expenses while the parties sort out their final arrangements.
- For example, an order may be made to determine who pays the mortgage or utilities, to prevent a person from terminating utilities for a home, or to require supervision of the removal of personal belongings from the residence.
- The section provides the Provincial Court and Supreme Court with measures to diffuse conflict during a proceeding.

Section 227 Other orders respecting conduct

- The section provides further tools for courts to manage behaviour such as ordering a party to provide security to ensure they comply with an order, report to the court or another person or program to monitor compliance, or anything else the court feels is appropriate.

Section 228 Enforcing orders respecting conduct

- Section 228 provides remedies and consequences for failure to comply with a conduct order made under sections 223 to 227.
- The range of remedies is intended to enable the application of progressively more serious responses, without unduly limiting the court's discretion to make orders appropriate to the circumstances of the case. Both the conduct orders and the remedies allow judges to tailor their response to the circumstances of the particular case.
- This section also provides that where there are repeated breaches of a conduct order respecting communications a court must consider if it would be appropriate to make a protection order under Part 9 of the Act. Research shows that when restrictions on contact or communication are repeatedly breached, it is often an indicator of escalating risk of harm.

Division 6 – Enforcement Generally

This Division provides general rules related to enforcement. It also provides remedies for breaches of orders where the Act does not provide specific remedies and provides for extraordinary remedies that may be used where no other remedy under the Act would reasonably ensure compliance.

Section 229 Service need not be proved

- Section 229 provides that an order is enforceable without proof that it was served on the other party. This section clarifies that orders be effective as soon as they are made.
- Section 229 carries over section 13 of the Family Relations Act.

Section 230 Enforcing orders generally

- Section 230 provides for general enforcement of orders made under the Act.
- These remedies are similar to the Supreme Court contempt of court powers. This section promotes greater consistency between Provincial and Supreme Court remedies in family law cases.
- These orders may be used only if there is no other provision under the Act that applies for the purposes of enforcing an order. For example, the Act provides for remedies specifically tailored to breaches of orders for parenting time and enforcement must be dealt with under that section.
- The Family Relations Act offered few effective responses where the terms of family law orders or agreements are not honoured. This was a problem in both courts, but was particularly problematic in the Provincial Court, which only has authority to act as provided by legislation.

Section 231 Extraordinary remedies

- Section 231 allows for the limited use of two extraordinary remedies: police apprehension of a child and imprisonment. These two remedies may only be used when there is no other less severe remedy under the Act sufficient to secure compliance.
- Police apprehension of a child may only be ordered where a person who has parenting time or contact with a child has wrongfully withheld a child and the court determines that no other remedy (under Part 4 Division 5- Compliance Respecting Parenting Time of Contact with a Child) will be sufficient to force compliance.
- Imprisonment may only be ordered after the person has had an opportunity to be heard.
- This approach balances the need to have more severe remedies available, with the recognition that other remedies are usually more appropriate in family law cases. Although these extraordinary remedies should not be regularly used, because they have such a negative impact on children, there are rare cases where a court may require them. The Act provides a wide range of tools and remedies to ensure compliance that will be sufficient in most cases.

- This section replicates remedies available under sections 36 of the Family Relations Act which allowed for police apprehension of a child and section 128 which made breaches of certain orders an offence punishable by imprisonment under the Offence Act. Section 231 provides a simpler, more streamlined approach than that in the Family Relations Act.

Section 232 Offence Act application

- Section 232 provides that the remedies in the Offence Act no longer apply in most family law matters. . This section creates an opt-out from the Offence Act, which has been criticized as being ineffective and difficult to use in family law cases.
- The Family Law Act provides a complete code for enforcement and almost all available remedies are included within the Act.
- This streamlines and simplifies enforcement and allows for a more flexible and nuanced approach that better responds to families' interests.
- This section replaces section 128 of the Family Relations Act. Section 128 provided that violating specified provisions constituted an offence which drew in the Offence Act.

Division 7 - Appeals

This Division provides rules respecting appeals. It generally carries over the appeal provisions from the Family Relations Act.

Section 233 Appeals from Provincial Court orders

- This section provides for an appeal process from the Provincial Court to the Supreme Court.
- Section 233 carries over section 16(2), (3), (6) and (7) of the Family Relations Act. Section 16(1) is not carried over in this provision because it has been integrated into section 198 of the Act respecting time limits. Sections 16(4) and (5) of the Family Relations Act addressed procedural issues that are already appropriately found in the Court Rules and will not be carried over.

Section 234 Order under appeal remains in effect

- This section provides that, unless otherwise provided in the order, an order remains in full force while an appeal is made.
- Section 234 carries over section 14 of the Family Relations Act.