

Part 13 – Transitional Provisions

This Part creates rules for transitioning from using the Family Relations Act to using the Family Law Act. It deals with the application of the Act with regard to ongoing court proceedings as well as how to deal with orders and agreements made under Family Relations Act.

The Interpretation Act provides a default that the Act will be used upon it becoming effective. Therefore, all new proceedings will be brought under the Family Law Act after it comes into effect, unless otherwise is provided in these transition provisions. Any issue not specifically addressed in this Part will be dealt with under the Act once it comes into effect.

Generally, the transition provisions support the immediate use of the Family Law Act for family law disputes, even where they have been started 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 regime 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 by a court 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 effective as per their terms.

Section 250 Definition

- This section identifies the Family Relations Act as the “former Act”.

Section 251 Transition – care of and time with children

- Section 251 addresses how orders or agreements made for custody, guardianship or access under the Family Relations Act will be dealt with under the Family Law Act.
- This section provides that orders or agreements which refer to custody, guardianship, and access that were made under the Family Relations Act, before the coming into force of the Family Law Act, will be considered and interpreted according to the new language under the Family Law Act as follows:
 - A person who had custody or guardianship under the Family Relations Act will be a guardian with parental responsibilities under the Family Law Act. The time that such a person has with the child under the old order or agreement will be their parenting time.
 - A person who has access but not custody or guardianship under the Family Relations Act will have contact with the child under the Family Law Act. They will not be a guardian.
- 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 are described.

- Proceedings regarding parenting arrangements or contact that have been started, but not determined, before the Family Law Act is in force, do not need special transition sections. Section 4 of the Interpretation Act provides a default rule that the Act will be used upon it becoming effective, so cases started under the Family Relations Act will be determined under the Family Law Act.

Section 252 Transition – proceeding respecting property division

- Section 252 addresses how proceedings for the division of property commenced before the Family Law Act comes into effect are to be dealt with.
- Section 252 provides that the Family Relations Act continues to apply to agreements or orders made before the Family Law Act comes into force. This ensures that property division disputes that have been resolved may not be re-opened by virtue that new property division rules have been introduced.
- This section also provides that 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.
- This recognizes the high cost of preparing for court in property disputes. The property division schemes under the two acts are entirely different and will require different valuations and will result in different decisions. It would be unfair and financially difficult to require parties who have had valuations completed under the old rules to revisit their calculations to provide evidence under the new scheme.

Section 253 Transition – pension benefits

- This section addresses how pension benefits obtained and divisible prior to the Family Law Act coming into force will be divided.
- It states that unless an order or agreement provides otherwise, undivided pension benefits will be divided according to the rules under this Act.
- This is different than the transition proposed for other property division. The difference is that the changes to the pension regime are minor and will not likely result in very different decisions. The property division scheme is entirely different and will result in different decisions.
- Since the Bill provides greater clarity regarding pensions and is used mostly by administrators who are experts in this area of law, providing for the Bill's immediate application will streamline the process rather than complicate it.

Section 254 Transition – changing, suspending or terminating orders

- Section 254 clarifies that a party may not claim that the coming into force of this Act is a change of circumstance for the purpose of changing, suspending or terminating an order or setting aside an agreement made under the Family Law Act.
- It prevents parties from applying to change their order as a result of there being a new Act. Instead, there must be a change in circumstances with respect to their particular situation, as required by the Family Law Act.

Section 255 Transition – restraining orders

- Section 255 indicates that restraining orders made under the Family Relations Act continue in accordance with their terms and are not affected by the Family Law Act.
- The section 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. The Family Law Act protection orders offer 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 criminal justice system. This change simplifies the enforcement process by using tools that police are familiar with to promote more effective and serious enforcement.

Section 256 Transition – regulations

- Section 256 allows the Lieutenant Governor in Council to make regulations for 3 years following the coming into force of the Act to facilitate the transition from the Family Relations Act to the Family Law Act.