

## **Part 14 – Repeals, Related Amendment and Consequential Amendments**

This Part repeals the Family Relations Act and provides for the commencement of the Bill.

It also makes amendments to over 80 other British Columbian Acts made necessary by the changes proposed in the Family Law Act. Most of these consequential amendments are minor and housekeeping in nature. The intention of consequential amendments is to maintain the status quo, while updating the language to ensure consistency within British Columbian legislation.

An exception is the changes made to the Commercial Arbitration Act. This act is changed to the Arbitration Act and substantive changes are made to it to provide for a more defined framework for the use of arbitration in family law cases. The substantive changes to this act are explained below.

### **Arbitration Act**

#### **Section 305 (of the Family Law Act)**

- The title of the Commercial Arbitration Act is changed to the Arbitration Act to reflect the expanded use of arbitration in family law disputes.
- The Commercial Arbitration Act was previously used to conduct family law arbitrations, but it was a cumbersome fit. Family law is unique and requires special rules and safeguards to protect vulnerable parties.
- This act is amended to provide for additional provisions, tailored to family law that will allow for family law arbitration. It provides structure, rules and safeguards necessary to make arbitration effective and suitable for family law disputes.

#### **Section 307 (of the Family Law Act)**

- Section 307 makes several changes to section 2 of the Arbitration Act.
- The section clarifies that if a conflict arises in a family law dispute between the Arbitration Act and the Family Law Act, the Family Law Act provisions will trump.
- This section also requires arbitrators to consider section 37 of the Family Law Act if dealing with issues related to care and time with a child. Section 37 of the Family Law Act provides that all decisions respecting parenting arrangements must be made in the best interest of the child. This provision requires arbitrators to similarly make parenting arrangement decisions consistent with the factors set out in the Family Law Act.

#### **Section 308 (of the Family Law Act)**

- Section 308 adds a new section 2.1 in the Arbitration Act to set out specific rules respecting family law arbitrations.
- It provides that parties cannot agree to arbitrate a dispute before the issue arises. For example, a cohabitation agreement made before the parties are married cannot provide that the parties will arbitrate their family law disputes if they separate. This is to protect vulnerable parties and ensure that both parties go into arbitration willingly at the time of the event. This is important due to the binding and non-negotiable nature of arbitration.

- If the parties did make an agreement to arbitrate before the issue arose, the agreement will have no effect and the parties will be able to seek a court order instead.
- There is an exception to this rule.. Where the substantive issues of the dispute have been resolved, they may arbitrate any future disputes that have to do with implementing the decision. This allows, for example, parties to reach agreement about parenting arrangements, but provide in that agreement that future disputes about how to implement those arrangements can be determined by an arbitrator.
- A court may set aside an arbitration decision and make an order to replace it based on procedural fairness considerations, such as where improper advantage was taken of a person's vulnerability. The procedural fairness considerations are consistent with the procedural fairness test that applies to formalized agreements in the Family Law Act. This provides a safeguard to ensure a court may interfere with an arbitration decision in appropriate, but limited, circumstances.

### **Section 309 (of the Family Law Act)**

- Section 309 adds an important safeguard to section 29 of the Arbitration Act.
- An arbitration award that is inconsistent with the Family Law Act is not enforceable. This does not require the parties to specifically use the Family Law Act to govern their arbitration; parties to an arbitration can agree to use any kind of law they wish in an arbitration. But if it results in an award that is inconsistent with the principles underlying the family law, the court can make a different order if the matter is brought before the court.
- This means, for example, that a court will not be required to uphold and enforce an arbitration award that is clearly not in the best interests of the child. Nor would it likely be required to uphold an award that gives 100% of the family property to the husband without compensation, spousal support or other financial benefit to the wife, as this significantly diverges from the principles in the family law.

### **Section 310 (of the Family Law Act)**

- Section 310 modifies section 29 of the Arbitration Act by allowing a family law award to be enforced without the requiring leave of the court. Leave of the court is required for other types of arbitration awards.
- This change ensures arbitration awards are treated, for enforcement purposes, the same as family law orders or agreements.

### **Section 311 (of the Family Law Act)**

- Section 311 adds a subsection in the Arbitration Act allowing a court to change a family law arbitration award on the same basis that a family law order could be changed.
- It ensures arbitration awards are treated the same as family law orders or agreements, with respect to changing the award.
- This is important in family law, particularly with respect to parenting arrangements, because circumstances change over time and the decisions must be adapted to the changing circumstances, for example as a child's needs change as they grow up.

### **Section 312 (of the Family Law Act)**

- Section 312 amends section 31 of the Arbitration Act. It provides a specific rule respecting family law arbitrations that allows an appeal of an award on a question of law or mixed law and fact. Other types of arbitration awards may only be appealed on a question of law.
- The amendment reflects the reality of family law, which is more fact-based than other types of law.
- Section 312 ensures arbitration awards are treated, for appeal purposes, similar to family law orders.

### **Section 312 (of the Family Law Act)**

- Section 313 adds a subsection that prevents parties from agreeing to remove the ability of the court to review an arbitration award in family law disputes.
- This ensures arbitration awards are treated, for review purposes, similar to family law agreements and orders.