

## **Part 2 – Resolution of Family Law Disputes**

This Part encourages the use of out-of-court dispute resolution processes – family dispute resolution – where appropriate. It includes obligations to disclose information to ensure that family dispute resolution is effective. It also includes obligations on family justice professionals to assess for family violence to ensure the use of family dispute resolution processes is appropriate.

It clearly states that agreements may be used to resolve disputes under the Family Law Act and sets the stage for out-of-court dispute resolution.

Family dispute resolution offers simpler, speedier, and less costly ways to resolve post-separation disputes and will further the best interests of children.

### **Division 1 – Resolution Out of Court Preferred**

The Division addresses duties and responsibilities of parties and family justice professionals in resolving family law disputes. It includes a general duty to fully disclose information for the purposes of resolving a family law dispute. Full and true information is important to ensure fair and lasting agreements. It also places a duty on family dispute resolution professionals to assess for family violence and inform clients of appropriate dispute resolution options.

#### **Section 4 Purposes of Part**

- Section 4 emphasizes that out-of-court dispute resolution processes and resolution through agreements are not simply add-ons to litigation but are the preferred option, with court as a valued, but last, resort.
- This focus on family dispute resolution signals an important shift from the Family Relations Act, which was criticized for being litigation-focused and for assuming that every dispute would end in a trial.

#### **Section 5 Duty to disclose**

- Section 5 requires full and truthful disclosure early in the process to promote early settlement by ensuring that the parties have all the information required for fair and sound decision-making. Information gaps can fuel or prolong conflict and can affect the fairness of agreements.
- It will apply to all persons involved in a family law dispute, including during the period before a court proceeding is commenced when the parties try to resolve their dispute through an agreement.

- Other sections of the act also deal with disclosure and work in conjunction with this provision.
  - Agreements made without appropriate disclosure may be set aside if challenged in the future: see for example, section 93 [Setting aside agreements respecting property], section 164 [Setting aside agreements respecting spousal support].
  - 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 under section 214 [Orders respecting agreements].
  - If a court proceeding is started, the court has the power to order disclosure under section 212 and may enforce these orders under section 213. These sections give both courts a range of tools to deal with situations where disclosure is delayed, incomplete or false.

## **Section 6 Agreements respecting family law disputes generally**

- Section 6 provides the general framework for agreements and emphasizes that agreements are a viable, independent and binding option for resolving disputes. In addition to expanding the role of agreements in family law, the Family Law Act simplifies and clarifies the rules respecting agreements.
- There are additional rules respecting specific types of agreements in other parts of the Act:
  - section 44 [Agreements respecting parenting arrangements]
  - section 50 [Agreements respecting guardianship]
  - section 58 [Agreements respecting contact]
  - section 92 [Agreements respecting property division]
  - section 127 [Agreements respecting division]
  - section 148 [Agreements respecting child support]
  - section 163 [Agreements respecting spousal support]
- This section carries over from the Family Relations Act the exception to general contract law that family law agreements are binding whether or not consideration is exchanged.
- It allows that a minor, who is also a parent or spouse, may enter into agreements with regard to matters covered by the Family Law Act. The section eliminates the current need for the minor to seek consent of the Supreme Court. These changes were made to better reflect the case law.

## **Section 7 Replacing agreements**

- Section 7 makes clear that an agreement can be used to change a previously-made agreement. It clarifies that, unless otherwise stated, the new agreement replaces only the terms changes, while the remainder of the agreement continues.
- This clarification is especially important for agreements related to the care of children because parenting arrangements will need to change as children grow and change.

## **Section 8 Duties of family dispute resolution professionals**

- Section 8 imposes obligations on family dispute resolution professionals to ensure that their clients are aware of the most appropriate and effective services for resolving their disputes, based on the clients' circumstances.

- The provision requires family dispute resolution professionals to screen for family violence and assess whether certain dispute resolution processes are appropriate.
- Having regard to the assessment, family dispute resolution professionals must advise parties of the processes, services, and facilities available to them;
  - to ensure that parties are making informed decisions about the range of options available for resolving family law disputes; and
  - to maximize opportunities for early, co-operative settlement in order to reduce the emotional and financial costs of separation.
- Family dispute resolution professionals also have a duty to advise parties that the best interests of the child must govern agreements and orders respecting children.
- Family dispute resolution professionals include: family justice counsellors; parenting coordinators, family law lawyers, family law mediators and family law arbitrators.
- A related section is section 197 [Complying with duties respecting family dispute resolution] which requires lawyers to certify that they have discussed appropriate dispute resolution processes with their clients prior to making a court application.

### **Section 9 Duties of parties respecting family dispute resolution**

- Section 9 allows for future development of mandatory programs and out-of-court services to assist families.
- This section allows for a flexible approach to program development and does not mandate any particular process.
- In British Columbia, some mandatory processes are already being used successfully. For example, most parents must attend a Parenting After Separation program before their first appearance in Provincial family court. As well, at some Provincial Court registries (family justice registries), parties must meet with a family justice counsellor before their first appearance in family court. Family justice counsellors provide them with information and can direct them to services and programs that will help them resolve their family law disputes effectively, often without the need to go to court.

## **Division 2 – Family Justice Counsellors**

The Division carries forward from the Family Relations Act a legislative structure for the work of family justice counsellors who are employed by government. It provides information about the role of family justice counsellors, the confidentiality of information in their possession, and the compellability of family justice counsellors in court proceedings.

### **Section 10 Family justice counsellors**

- Section 10 sets out the role of family justice counsellors who are Ministry of Justice employees who work in Family Justice Centres and Justice Access Centres throughout the province.
- The section more clearly describes the role of family justice counsellors in terms of what assistance they can provide.
- The name of these counsellors has been changed from “family court counsellor” to “family justice counsellor” to more accurately reflect their role.
- Family justice counsellors are dispute resolution professionals who, by government policy, must meet family mediation practice standards set by Family Mediation Canada.
- Section 10 carries forward section 3 of the Family Relations Act.

### **Section 11 Confidentiality of information**

- Section 11 carries forward the Freedom of Information and Protection of Privacy Act exceptions in section 3(4) and (5) of the Family Relations Act.
- This section makes clear the scope of confidentiality respecting family justice counsellors and their work to eliminate the confusion that resulted from section 3 of the Family Relations Act with respect to what information may be disclosed during and after family dispute resolution.
- The services that family justice counsellors provide are confidential because they offer dispute resolution assistance that includes settlement negotiations. Confidentiality is a critical element of negotiations to ensure that parties provide the information required to obtain a fair and lasting settlement.
- This section and the regulations to be made under it describe what information may be disclosed and to which other government employees who assist family justice counsellors, this confidentiality extends.
- The use of regulations to set out what types of information may be disclosed allows for the list to be changed to match the evolution of the service.



## **Section 12 Family justice counsellors not to be compelled**

- Section 12 protects settlement discussions assisted by family justice counsellors from disclosure in court proceedings. Non-compellability also covers those employees who have access to the confidential information because they assist the family justice counsellor. This section makes it absolutely clear that records and notes are not compellable – an area that was ambiguous under the Family Relations Act.
- Regulations will set out the exceptions to non-compellability. The use of regulations to set out the exceptions allows for exceptions to change to match the evolution of the service.

## **Section 13 Information obtained while receiving assistance**

- Section 13 states the general rule that all information disclosed during sessions with a family justice counsellor is confidential and may not be used by a party in a subsequent court proceeding.
- It also sets out some exceptions to the general rule. A party may use the information if:
  - the other party agrees to its use;
  - the information is a third party report, such as income tax returns, property assessment or best interest of the child assessments;
  - another piece of legislation requires it to be disclosed; or
  - it is a concluded agreement that resolves the family law dispute or it is the agreement that the parties signed to enter into mediation with the family justice counsellor.
- Section 3 of the Family Relations Act applied a blanket confidentiality requirement, which was a problem because in certain circumstances, such as releasing the final agreement, confidentiality was inappropriate.

## **Division 3 – Parenting Coordinators**

This Division provides specific legislative supports for parenting coordination. Parenting coordination is a relatively new process that involves aspects of settlement negotiation, mediation and adjudication. It developed initially in the United States as a way to give families experiencing high levels of conflict an option other than court to assist in the management and implementation of a parenting agreement or order. It is being used in British Columbia and other provinces. It does not involve creating or changing parenting arrangements, but attempts to help parents resolve any disagreements that arise with regard to how parenting agreements or orders are put into effect. It requires a legislative framework because it involves a form of adjudication.

### **Section 14 Parenting coordinators**

- Section 14 establishes that requirements to be a parenting coordinator will be set out in the regulations.
- Parenting coordination is a relatively new dispute resolution mechanism that is being practiced in British Columbia. Parenting coordinators help high-conflict families implement agreements or orders respecting parenting arrangements using a mediation-arbitration approach. It is being used in many other jurisdictions in North America and originated in the United States.

### **Section 15 When parenting coordinators may assist**

- Section 15 establishes the general rules respecting when a parenting coordinators may act, how long the parenting coordinators may act for, and how parenting coordination ends.
- Parenting coordinators do not assist the parties in coming to agreement about their parenting arrangements; they help parents carry out their already determined parenting arrangements.
- A parenting coordinator may become involved by way of a written agreement or court order.
- This section allows judges to order parenting coordination whether or not the parties consent. It is important to give judges the authority to require attendance because the couples who benefit most from this process usually have high levels of conflict and are unlikely to agree to attend.
- The term of a parenting coordination process is limited because it not designed to be permanent but to end when parents become able to resolve disagreements on their own.

### **Section 16 Information sharing for parenting coordination**

- Section 16 ensures that parenting coordinators will be able to obtain the information they need to make determinations.

## **Section 17 Assistance from parenting coordinators**

- Section 17 establishes that parenting coordinators may resolve issues that arise in implementing parenting agreements and orders in two ways. They may help the parties negotiate a resolution and, where resolution through agreement is not possible, they may, within a limited scope, make a binding decision for the parties. The limited scope is set out in section 18.
- For example, if the parenting arrangements say that dad will pick up the children on Thursday, but the parents cannot agree where the pickup will be, the parenting coordinators could decide and the parties would be bound by that decision.

## **Section 18 Determinations by parenting coordinators**

- Section 18 establishes the rules relating to determinations made by parenting coordinators.
- Parenting coordinators may only make determinations respecting implementation of an agreement or order respecting parenting arrangements, contact with the child, or other matters which are included in the regulations. They may not make any decisions respecting property. Providing for the possibility of allowing parenting coordinators to determine other matters by way of regulations provides flexibility to make changes as the practice evolves.
- The scope of the matters for which a parenting coordinator may resolve or determine must be set out in the agreement or included in an order.
- Section 18 provides that, in making determinations, a parenting coordinator must consider only the best interests of the child.
- A parenting coordinator may make determinations at any time, including without having attempted consensual resolution first, if appropriate.
- The section allows for oral determinations, but they must be put in writing as soon as practicable.
- A determination is binding on the parties from the date it is made, or another date specified by the parenting coordinators.
- If filed in the court, a parenting coordinator's determination is enforceable as though it were an order. This is the same way agreements respecting parenting arrangements are treated in the Act.

## **Section 19 Confirming, changing or setting aside determinations**

- Section 19 allows parties to ask a court to review determinations made by a parenting coordinators.
- This section limits the grounds on which the court may change or set aside determinations made by parenting coordinators in order to enhance the success of out-of-court settlement processes.
- These limits are similar to those covering family law arbitration awards.