

The new

BC Family Law Act

frequently asked questions

The BC Family Law Act will come into effect on March 18, 2013.

The information in this fact sheet is based on information provided by the BC Ministry of Justice. For more information about the upcoming changes to the law, see the Family Law in BC website at www.familylaw.lss.bc.ca and the Legal Services Society publication *Guide to the New BC Family Law Act*.



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

March 2013

How does this affect my court case?

I already have a family court case. Can the new Family Law Act change anything?

Yes, once it comes into effect, the BC Family Law Act will affect some issues in family cases that have already started. See below for more information.

I already have an agreement or court order. Do I need a new one?

No. Agreements or court orders that are already made will stay in place. You don't need a new agreement or order.

I already have an order or agreement. Can I go back to court to ask for different guardianship or parenting arrangements because there is a new act?

No, you can't apply to change your order or agreement just because there are new laws.

What happens to my restraining order made under the existing Family Relations Act?

You won't lose the protection of your restraining order under the Family Law Act. You can also apply for a new family law protection order under the Family Law Act. It might offer you better protection since it is enforced through the Criminal Code. This means disobeying it is a criminal offence.

Should I start a case now, or should I wait for the new act?

That will depend on the details of your case. Only a lawyer who knows your case can answer this question.

Issues about children

Does the new act affect issues about my children if I already have a family court case in Provincial Court?

Yes, in Provincial Court all child-related issues will be based on the new act. So, you won't get orders for custody and access, because the new law uses different words.

Does the new act affect issues about my children if I already have a family court case in Supreme Court?

Not if you applied for orders under the federal Divorce Act in Supreme Court. In that case, nothing will change. But if you applied for orders under the provincial Family Relations Act in Supreme Court, all child-related issues will be based on the new act.

I am separated from my child's other parent and my child lives with me full time. I don't have a formal agreement or order. Does the new act change things for the other parent?

Under the new act, if the other parent has ever lived with the child or has regularly cared for the child, he or she is a guardian. If the other parent has never lived with the child and doesn't regularly care for the child, he or she isn't a guardian. However, a parent who isn't a guardian can apply to court for contact with the child.

What if I want a formal agreement or order about our informal parenting arrangements?

If you have informal parenting arrangements in place and the other parent is also a guardian, you can only change or formalize those informal arrangements by making an agreement or getting a court order.

What if the other guardian won't agree to this?

You can apply to court for an order to formalize or change your informal parenting arrangements. For example, if you've had total responsibility for your child and the other parent won't agree to put this arrangement in writing, you can apply to court for an order to limit the other parent's parenting role, or even to remove guardianship from that parent if appropriate. (Only an agreement or court order can take away guardianship.)

Property and debt

Does the new act change anything about property in an existing family court case?

No, for cases that are already in the system, property division will still be based on the Family Relations Act, unless the parties agree to use the Family Law Act. The exception is pension matters, which must be based on the new act.

I already have an agreement to divide my property. It would have been done differently under the new act. Can I apply for a new order?

No. Property division issues that have been resolved either by agreement or order under the Family Relations Act cannot be re-opened just because there is a new act.

Is property divided differently if you were married or if you lived common-law?

Under the Family Law Act, couples who have lived together in a marriage-like relationship for two or more years are considered spouses and will be treated the same as married couples. Previously, the Family Relations Act treated unmarried couples differently than married couples when it came to dividing property (no matter how long they had lived together).

Under the new act, spouses will generally share the family property that either of them own at the time of separation. This doesn't include property that either person owned before the relationship (except any increase in the value of that property).

If couples don't want the property division rules to apply to them, they can agree to opt out and divide their property as they see fit. The court will have less ability to overturn these agreements.

What does the new act say about debts?

The Family Law Act says that spouses (married and those living in a marriage-like relationship for two or more years) share responsibility for family debts. Family debts are debts taken on by either spouse during the relationship.

New legal terms

What if my agreement/order that I already have uses the terms custody and access?

The agreement or order will stay in place. You don't need a new agreement or order.

What happens if I need to change my agreement that uses those terms?

If you already have an agreement, you can decide together what terms to use in a revised agreement. You can stick with the terms you are using or use the new Family Law Act terms.

What happens if I need to change my order that uses those terms?

If your order is under the Divorce Act, you'll continue to use the terms custody and access.

If your order is under the Family Relations Act, you'll have to use the new terms. So, if you have custody or guardianship, you'll be a guardian with parenting time and parental responsibilities. If you don't have custody or guardianship but have access, you'll have contact with a child.

My agreement or order says I have custody or guardianship. Will this change under the new act?

If your original order or agreement gave you custody or guardianship, you're automatically a guardian of the child under the Family Law Act and you have parenting time and parental responsibilities.

My agreement or order says I have sole guardianship or sole custody. What will this mean under the new act?

Most sole guardianship agreements or orders under the Family Relations Act also say that the parent has sole custody. In this situation, you're still the only guardian under the Family Law Act and you have parenting time and parental responsibilities. The time the other parent spends with the children will now be considered contact with a child.

New legal terms

My agreement or order says I have sole guardianship but joint custody (or joint guardianship and sole custody). What will this mean under the new act?

In these situations, the other parent is also a guardian of the child under the Family Law Act. Your parenting arrangements won't change. Each parent continues to have the parenting time and parental responsibilities (or restrictions) as in the original agreement or order.

Support payments

Will the Family Law Act change child support amounts?

No. The Family Law Act won't change child support amounts. In BC, we use the Federal Child Support Guidelines and the child support tables for British Columbia.

Will the Family Law Act change spousal support amounts?

No. The Family Law Act won't change spousal support amounts.

For more information

From the Legal Services Society

*Living Together or Living Apart
Guide to the New BC Family Law Act*

Read these and other LSS publications

www.legalaid.bc.ca/publications

Online

Family Law in BC

www.familylaw.lss.bc.ca

Clicklaw

www.clicklaw.bc.ca

Follow us on   @legalaidbc

