

INFORMATION BULLETIN FOR CONTRACTED PROGRAMS**Implementation of the Family Law Act**

On Nov. 23, 2011, a new family law bill was passed in the B.C. legislature. The [Family Law Act](#) replaces the former Family Relations Act and will come fully into force on March 18, 2013. The act places the safety and best interests of the child first when families are going through separation and divorce. It also clarifies parental responsibilities and the division of assets if relationships break down, encourages families to resolve their disputes out of court, and addresses family violence.

This bulletin is intended to highlight important information for victim service and violence against women counselling and outreach programs related to the implementation of the new Family Law Act (FLA). In particular, the bulletin will provide basic information to programs on the best interests of the child provisions, parenting arrangements as well as issues related to family violence, including the new family law protection order that has been created.

It is important to affirm that victim service workers and violence against women counselling and outreach workers are not expected to be experts on the family court process or family law. However, there are provisions within the FLA that are important for programs and workers to understand as they relate to service provision and information provided to clients.

At the end of this bulletin are a number of follow-up resources that programs and workers may find helpful. For additional information, we encourage you to consult these resources.

A New Approach to Family Law in BC

Overall, the FLA structures the law so that court is not the implied starting point to resolve family disputes. The act references non-court dispute resolution options, while clarifying and improving the tools that courts have available to them. Parents will be encouraged to work together to resolve their differences and use family mediation or other assistance where appropriate, taking into account their circumstances and whether there is family violence. The act gives parents different ways to resolve family conflict without having to go to court unless necessary.

Family Violence and Safety Issues

For contracted programs, perhaps the most important aspect of the FLA are new provisions pertaining to family violence. The new act will increase the court's ability to deal with family violence because it:

- requires family dispute resolution practitioners, such as lawyers and mediators, to screen for violence to ensure the processes used are appropriate;
- identifies children’s safety as an overarching objective in the best interests of the child test;
- includes the impact of family violence and consideration of civil or criminal proceedings relevant to the safety or well-being of the child as best interest factors;
- defines family violence and sets out factors to be considered in parenting cases that involve violence; and
- requires people seeking guardianship of a child to provide the court with evidence respecting their ability to care for a child, including information about their criminal and child protection history.

The FLA also creates a new type of order – a protection order – that will replace the existing Family Relations Act restraining order that has existed in BC for some time. Additional details on this protection order are provided later on in this bulletin.

Dispute Resolution

Under the new act, lawyers are required to screen for family violence in every case and, based on their assessment, provide people with information about non-court dispute resolution options that are suitable for them. They are also required to discuss the different ways of resolving family disputes and the support services available to their clients taking into account safety concerns or power imbalances.

By January 1, 2014, all family dispute resolution professionals, including mediators, parenting coordinators and arbitrators must meet minimum training and practice standards to ensure families are directed to appropriate processes conducted by qualified practitioners. As part of these standards they must take at least 14 hours of training on family violence. This is to ensure that out-of-court processes are safe and appropriate and are conducted by qualified people who have family violence training.

Definition of Family Violence

The FLA includes a new definition of family violence, which includes:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

For cases that do go to court, the FLA provides for a broader range of remedies and more case management tools for judges. For example, judges have tools to manage a case where there might be litigation harassment. As well, there are a range of conduct orders that can help a judge to manage behaviours to de-escalate conflict; for example, a judge can order a person to pay the bills for a house, or can order the parents to communicate in specific ways, such as through email.

Dispute Resolution and Family Violence

The FLA requires all family dispute resolution professionals (including lawyers, mediators and family justice counselors) to screen for family violence. Based on this assessment, they must provide people with information about non-court dispute resolution options that are suitable for them.

In some family violence cases, the available dispute resolution processes may not be appropriate considering the safety concerns or power imbalances. But the mere existence of family violence is not a bar to dispute resolution under the FLA. Sometimes, modified dispute resolution processes (i.e. not face-to-face mediation) with specially trained professionals can limit contact and address power imbalances in a way that can provide a more therapeutic or empowering experience than the adversarial court process.

In order to ensure that families are not put into inappropriate or dangerous processes, the training and practice standards under the [FLA Regulation](#) provide that all family dispute resolution professionals must have at least 14 hours of family violence training.

Best Interests of the Child

The FLA makes the best interests of the child the only consideration when decisions affecting the child are made. To be in the best interest of a child, the decisions must, to the extent possible, protect the child's physical, psychological, and emotional safety, security, and well-being. To determine what is in the child's best interest when making parenting arrangements, the court will consider the following factors:

- the child's emotional health and well-being;
- the child's views, unless it would be inappropriate to consider them;
- the child's relationships with parents, guardians, and other important people;
- the history of care;
- the impact of any family violence;
- consideration of whether it would be inappropriate to have an arrangement that requires the parents to cooperate; and,
- any civil or criminal proceedings relevant to the child's safety and well-being.

In addition, [section 38 of the FLA](#) provides specific guidance to the courts when considering the best interests of the child as it relates to assessing for family violence. In particular courts are now instructed to consider:

- a) the nature and seriousness of the family violence;
- b) how recently the family violence occurred;
- c) the frequency of the family violence;
- d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- e) whether the family violence was directed toward the child;
- f) whether the child was exposed to family violence that was not directed toward the child;
- g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- i) any other relevant matter.

This is intended to give a more nuanced assessment when considering what kinds of parenting arrangements might be in the best interests of a child. This is important because not all types of violence are the same and different types of violence carry different levels of future risk.

Parenting Arrangements and Responsibilities

The FLA describes parents' roles and responsibilities in less adversarial terms than the old Family Relations Act. Instead of referring to the ill-defined terms of custody and access, the act refers to guardianship, which is described in terms of parental responsibilities that allow for a more customized parenting arrangement. Under the FLA, a child's guardians are responsible for raising the child, providing day-to-day care and supporting the child's well-being and development.

Under the FLA, both parents retain guardianship of their children after separation unless they agree, or the court orders, differently. Parents are generally guardians, unless they have never lived with, or cared regularly, for their child.

[Section 40 \(2\) of the FLA](#) states:

Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parenting responsibilities with respect to the child, in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.

Practice Tip: Section 40 (2) of the FLA responds to concerns about a parent’s ability to sign their child up for counselling or a Children Who Witness Abuse (CWWA) program without the other parent’s approval. In situations where there is family violence, a guardian does not require the other parent’s consent in order to exercise their parenting responsibilities in the child’s best interest, including signing the child up for programs and services such as CWWA. Programs are urged to adjust their operational policies to take into consideration this new provision.

If parents are unable to agree on how to divide their parenting time and parental responsibilities after separation, they may apply for an order respecting parenting arrangements that define:

- each guardian’s parenting time with the children; and
- how the parental responsibilities are allocated, including how decisions about a child and their health, education and upbringing will be made and ways for guardians to address future disputes.

It is important to note that parenting arrangements can be tailored. For example, parents could equally share the parenting time and parental responsibilities. Or one parent could have most of the parenting time and parental responsibilities and the other parent could have limited parenting time and defined parental responsibilities such as the right to information about their child.

Most times, parents will continue to remain guardians and the tailoring of the parenting arrangements would be done through the allocation of parenting time and parental responsibilities. But in some cases it may not be appropriate for a parent to remain a guardian. In this case, the parent can be removed as guardian by agreement between the parents or by court order. If they are not a guardian they could still receive contact but will have no parental responsibilities.

As well, the court may make contact orders to allocate time with a child to a non-guardian, such as a grandparent, where it is appropriate. A person who is not a guardian can only become a guardian by court order. They will be required to provide information, in the form of a [section 51](#) affidavit, about their history, including criminal and child protection records checks.

When making parenting arrangements or contact orders, courts are guided by the best interests of the child and will consider important factors, including family violence.

Compliance Respecting Parenting Time or Contact with a Child

[Sections 61-63 of the FLA](#) addresses compliance respecting agreements of orders about parenting time or contact with a child. This helps to make sure that parents receive – and follow through on – the parenting time they are given. It provides for remedies to address denial of parenting time or contact and sets out when denial is not wrongful. It also provides for remedies to deal with failure to exercise parenting time.

For additional information on guardianship and parenting arrangements, consult the Ministry of Justice “Family Law Act Questions and Answers” resource ([link](#)) or the JusticeBC website ([link](#)).

New Criminally Enforceable Protection Order

In addition to the family violence measures discussed earlier, the FLA creates a new type of order under [section 183 of the FLA](#) – a protection order – that will replace the existing Family Relations Act restraining order that has existed in BC for some time. Family law protection orders may include one or more of the following provisions:

- a) a provision restraining the family member from
 - i. directly or indirectly communicating with or contacting the at-risk family member or a specified person,
 - ii. attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
 - iii. following the at-risk family member, or
 - iv. possessing a weapon or firearm;
- b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
- c) directions to a police officer to
 - i. remove the family member from the residence immediately or within a specified period of time,
 - ii. accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
 - iii. seize from the family member any weapons or firearms and related documents;
- d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- e) any terms or conditions the court considers necessary to
 - i. protect the safety and security of the at-risk family member, or
 - ii. implement the order.

A family law protection order can be made on application of a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court’s own initiative. Applications for protection orders can be made without notice to the person who the order would potentially apply to and may be made whether there is an existing family law court action or not. Due to liability issues, victim service and violence against women counselling and outreach workers are reminded that they are not to make applications in family court on behalf of clients.

Unlike the old Family Relations Act restraining orders, family law protection orders are criminally enforceable under section 127 of the Criminal Code. What this means is that breaches of family law protection orders can be treated as criminal offences, meaning that the police can arrest the person named in the order if they disobey it and Crown counsel can charge that person with a criminal offence.

Unlike the old Family Relations Act orders, family law protection orders will all have expiry dates of one year unless the court specifies otherwise. Existing Family Relations Act orders will continue to be valid but will not have the added benefit of being criminally enforceable.

As with other protection orders (including peace bonds and other criminal court orders), family law protection orders will be entered into the [Protection Order Registry](#).

Criminal Code of Canada – s. 127

Disobeying order of court

127. (1) Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

- a) an indictable offence and liable to imprisonment for a term not exceeding two years; or
- b) an offence punishable on summary conviction.

Practice Tip: Discuss with clients who have old Family Relations Act orders the benefits of applying to the courts to obtain a new family law protection order that is criminally enforceable. For more information on applying for family law protection orders, consult the “For Your Protection: Peace Bonds and Family Law Protection Orders” brochure ([link](#)).

[Section 189 of the FLA](#) provides direction in cases where there are conflicting orders in effect. The FLA gives priority to safety-related protection orders including:

- protection orders under the Family Law Act;
- protection orders under the Child, Family and Community Service Act;
- Criminal Code protection orders (e.g. peace bonds or bail conditions); and
- safety related orders made under legislation from another province.

Protection Orders under the Child, Family and Community Service Act

To ensure there is a consistent and effective approach in cases where safety is at risk, breaches of protection orders under s.28 or s.98 of the Child, Family and Community Service Act will now also be criminally enforceable under s. 127 of the Criminal Code.

If there is a conflict or an inconsistency between a protection order listed above and another order made under the FLA, the other order is suspended, to the extent of the conflict or inconsistency, until:

- a) either the other order or the protection order is varied in such a way that the conflict or inconsistency is eliminated, or
- b) the protection order is terminated.

Practice Tip: In cases where there are overlapping conditions in multiple protection orders, or a protection order and another order under the FLA, the most restrictive safety related conditions apply. For example, a protection order with specific no contact clauses would supersede a previously made order regarding parenting time or contact.

To better explain the new family law protection order to clients, the Division has worked with the Legal Services Society to update the popular brochure “For Your Protection: Peace Bonds and Family Law Protection Orders” ([link](#)).

Practice Tip: Victim service and violence against women counselling and outreach workers are reminded about the importance of working with clients to ensure that protection orders covering children are provided to the child’s school and/or daycare. Copies of protection orders naming the client should also be provided to a client’s place of work and to any medical facilities where a client is receiving services.

Additional Resources

In addition to the information provided in this bulletin, the Division is taking a number of steps to facilitate implementation of the FLA:

- Revising key Division publications, including the Help Starts Here series ([link](#));
- Working with Legal Services Society to update resources such as the brochure “For Your Protection: Peace Bonds and Family Law Protection Orders” ([link](#)); and,
- Updating the online domestic violence safety planning training.

For additional information on changes to the FLA, there are a number of excellent resources available to programs, workers and clients:

- Ministry of Justice – Overview of the Family Law Act ([link](#)) including clause by clause interpretation ([link](#)), a Q&A for commonly asked questions ([link](#)), and the JusticeBC website ([link](#)).
- Legal Services Society – Guide to the new BC Family Law Act ([link](#)), family law in BC website ([link](#)) and revised safety publications for clients ([link](#)).
- Ending Violence Association of BC – Information bulletin on the Family Law Act ([link](#)).
- John-Paul Boyd – A Very Brief Introduction to the Family Law Act for Justice System Workers and Advocates ([link](#)).

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