

An introduction to

Alberta's *Family Law Act*

What is the *Family Law Act*?

This legislation is part of the provincial government's commitment to make family law simpler and easier for Albertans to understand.

Currently, provincial family law is spread over several acts including the *Domestic Relations Act*, *Maintenance Order Act*, *Parentage and Maintenance Act*, and parts of the *Provincial Court Act*.

The *Family Law Act* updates, amends, and clarifies existing laws to ensure they are up-to-date for Alberta families in the 21st century.

The act was introduced during the Alberta Legislature in May 2003 and passed in December 2003. **It was brought into force on October 1, 2005.**

What are the main issues addressed by the act?

- Defining and establishing the parentage of a child
- Guardianship of a child (e.g. most parents are automatically guardians)
- Parenting and contact orders (formerly custody and access)
- Enforcement of time with a child
- Financial support orders.

Why was Alberta family law changed?

The legal needs of Alberta families are constantly changing. That's why it's important to ensure provincial legislation is up-to-date to respond to those needs.

The *Family Law Act* incorporates recommendations from the Alberta Law Reform Institute and the 1998 MLA Review of the Maintenance Enforcement Program and Child Access. It also reflects proposed changes to the federal *Divorce Act*.

Alberta Justice conducted the Family Law Reform Project, which included an examination of all provincial legislation that affects family law to see how the laws can be updated, consolidated and made easier to understand. Public input on a variety of issues was also gathered in early 2002.

The project highlighted a number of areas where family law could be updated and streamlined for Albertans. Those changes were introduced in the *Family Law Act*.

For more information on the project, visit the Alberta Justice web site at <http://www.justice.gov.ab.ca/initiatives> (click on Alberta Family Law Reform Project).

How do I know if the Alberta *Family Law Act* impacts me?

The responsibility for family law is split between the provinces and the federal government.

The federal government is responsible for divorce legislation and issues involving spousal support and children in the context of a divorce.

The Family Law Act deals with many more areas of family life in a non-divorce context:

- defining who are the parents of a child, including those situations where medically assisted conception is used
- setting out the responsibilities and powers of parents and guardians of children
- enabling contact between children and grandparents or other people who might be important to the child
- enabling enforcement of time with a child
- allowing courts to make parenting orders when parents are living apart but cannot agree on their respective parenting responsibilities
- child support
- support for spouses or adult interdependent partner support.

NOTE: By law, Alberta Justice cannot provide legal advice on personal legal matters. This document is intended to provide basic information about this legislation and how it may affect you.

You may wish to consult a lawyer for more information about how this law may apply to you.

What are parenting orders and contact orders?

Some concepts have been updated by Alberta in the *Family Law Act*.

The old terminology – custody and access orders – often created the perception of “winners and losers” in the family law process. Because one of the main goals of the Family Law Reform Project was to reduce conflict and help eliminate some of the emotional costs of family breakdown, these concepts have been removed.

The courts may make a parenting order when a child has more than one guardian (usually parents) who live apart and are unable to agree on how to distribute the powers, responsibilities, and entitlements of guardianship.

A parenting order requires the allocation of parenting time and parenting responsibilities between the parents to be balanced and focused on the best interests of the child. There will be no reference to custody and access.

A contact order involves contact between the child and persons other than the guardian – such as grandparents or other people who might be important to the child. An application for in-person visitation or other contact, such as by telephone or e-mail, can be made if a guardian has denied contact with a child.

How does the *Family Law Act* affect how much child support is paid or received?

Alberta courts have generally referred to child support guidelines under the federal *Divorce Act* in cases involving unmarried or separated partners.

With this act, Alberta will formally implement child support guidelines, which will be modeled on the federal government's guidelines.

This change will ensure that child support will be calculated equally for all Alberta children regardless of the nature of their parents' relationship.

What are the "best interests of the child?"

In making most decisions involving a child, the *Family Law Act* requires the courts to take into account a number of factors, the most important of which is the best interests of the child. The court may also consider the interests of others, but the child's best interests are paramount.

A child's "best interests" include their physical, psychological and emotional well being as well as a number of other factors including:

- the history of care of the child
- the child's views and preferences
- the benefit to the child in developing relationships with both guardians
- the nature and strength of existing relationships
- any history of family violence
- any civil or criminal proceedings that may be relevant to the child's safety or well being.

How does support for an adult child work under the new law?

While child support will end at age 18 in many cases, the ability to apply for support may be extended to those older than 18 but not older than 22 when a child is pursuing a full-time education and making a reasonable contribution towards his or her education.

How does the *Family Law Act* address the needs of adult interdependent partners?

The *Family Law Act* contains provisions that address financial support for adult interdependent partners, and guardianship, support, parenting and contact orders involving children of adult interdependent relationships.

The province is responsible for legislation that outlines the legal responsibilities of individuals in relationships other than marriage.

The *Adult Interdependent Relationships Act* came into force on June 1, 2003. This law outlines the legal rights and responsibilities for Albertans involved in committed relationships other than marriage, including the mutual obligation to financially support each other.

For more information, you may wish to read Alberta's *Adult Interdependent Relationships Act* and you, which is available on the Justice web site at <http://www.justice.gov.ab.ca> (click on Publications, April 2003), or by calling (780) 427-8530 (outside of the Edmonton area, dial 310-0000 first for toll-free connection).

How will the courts establish parenting responsibilities under this act?

Under this act, both guardians (usually parents) continue to have all the responsibilities and powers of guardianship after a separation until there is an agreement between the parents to the contrary, or a court order to the contrary.

If parents are able to agree on how to exercise the powers of guardianship after separation, they may continue to do so as they did before separation, without the need for a parenting order. However, if parents cannot agree on how to exercise guardianship after separation, either parent can apply for a parenting order.

The *Family Law Act* provides flexibility in developing a parenting order by breaking down parenting time and specific parenting responsibilities between the parents. The order can also include a dispute resolution process to deal with future disputes regarding parenting arrangements. A parenting order must be made in the best interests of the child.

How is grandparent contact dealt with under this act?

For most Alberta families, grandparents and other extended family members play important roles throughout a child's life. However, in some cases, disputes between parents and grandparents result in grandparents being denied contact with their grandchildren.

In situations where the guardians (usually parents) and grandparents cannot agree on contact, the *Family Law Act* includes a process through which grandparents can apply to court for a contact order.

As is the case with parenting orders, guaranteeing contact with any family member may not take into account the specific needs and circumstances of a family. In granting a contact order, the court is required to consider the best interests of the child.

Where can I get more information?

To view the law in its entirety or purchase it on the Internet, visit the Queen's Printer online at <http://www.qp.gov.ab.ca/catalogue> (select *Family Law Act* from the online catalogue).

To purchase a copy of the act, call the Queen's Printer (780) 427-4952 (outside of the Edmonton area, dial 310-0000 first for toll-free connection).