

Alberta’s Family Law Act: An Overview

Table of Contents

I. Background

Alberta’s <i>Family Law Act</i>	2
Supporting Children and Families.....	2
A New Approach to Family Law.....	3
About this Overview.....	3

II. Highlights of the Family Law Act

The Best Interests of the Child.....	4
Child and Spousal Support	4
Establishing Parentage of the Child.....	5
Parenting and Guardianship.....	6
Parenting Orders.....	8
Contact Orders for Grandparents and Others Important to the Child.....	7
Adult Interdependent Relationships.....	8
Enforcing Time with A Child.....	8

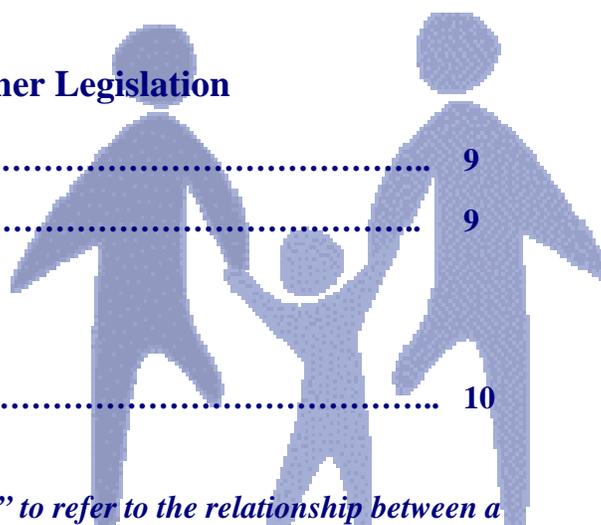
III. Relation of the Family Law Act to Other Legislation

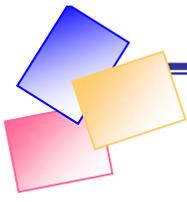
Current Legislation.....	9
Transition to the New <i>Family Law Act</i>	9

IV. For Additional Information

Key Contacts.....	10
-------------------	----

Note: This document uses the word “parents” to refer to the relationship between a mother and father and their child, unless it is describing the legal definition of “guardians” -- who in most cases are the parents.





Alberta's Family Law Act: An Overview

I. Background

Alberta's New Family Law Act

On October 1, 2005, Alberta's new *Family Law Act* will come into effect. The new *Act* is part of the Alberta Justice's Family Law Strategy aimed at creating a simple, integrated and effective family law system that promotes the well-being of children and families.

The new *Family Law Act* is based on a review of provincial family law in consultation with the legal community, service delivery agencies, and the public. The new *Family Law Act*:

- updates family law, and makes it easier and simpler for Albertans to understand
- reflects the current needs of families
- protects the best interests of the child when families break down
- encourages parents to work together to reduce the effect of conflict on children, and the emotional and financial costs to families when relationships break down
- supports, where appropriate, ways of resolving conflicts outside the court room
- addresses issues in many areas of family life important to Albertans
- is supported by services to assist families, as well as streamlined court procedures.

Supporting Children and Families

The province's *Family Law Act* provides a clear guide on the rights of family members, and helps to settle family disputes by addressing the following issues:

- the best interests of children
- establishing parentage of a child
- roles and responsibilities of parents and guardians
- parenting orders to assist parents in caring for their children after separation
- contact with grandparents and other people who may be important to the child
- enforcing access to children
- financial support for children and former spouses, or adult interdependent partners, in situations other than divorce
- responsibility of lawyers, and the general powers of the court in addressing family disputes.

The *Family Law Act* does not address child welfare matters including adoptions under the *Child, Youth and Family Enhancement Act*, children's property which is now under the *Minor's Property Act*, division of matrimonial property under the *Matrimonial Property Act*, and divorces under the federal *Divorce Act*.



A New Approach to Family Law

Working together. Alberta's *Family Law Act* supports a new and non-adversarial approach to resolving family conflict in the best interests of children and families. It is also supported by streamlined court processes.

Parents are encouraged to work together to resolve their differences, and accept family mediation or other assistance where appropriate. The *Act* gives parents different ways to resolve family conflict without having to go to court unless necessary.

Lawyers are required to discuss the different ways of resolving family matters. They are to inform parties of cooperative ways to resolve differences, and the support services available to help them do so.

Streamlined court procedures. Under the new *Family Law Act*, both the Provincial Court and the Court of Queen's Bench now share the ability to hear most matters under the *Act*. Both Courts will also use the same application forms and similar application procedures:

- The Court of Queen's Bench will continue to hear all matters under the *Family Law Act*.
- The Provincial Court now hears all matters except: declaration of parentage, declaration of irreconcilability, and exclusive possession of property, trusts and real estate.
- Both courts may ask parties to attend programs such as "Parenting after Separation" to support families in resolving all or part of the issues before going to court. Courts may also refer families to family mediation.

About this Overview

Alberta Justice has been working with the legal community, other Ministries and staff to provide the information and training needed so that everyone is ready to put the new *Family Law Act* into practice when it is proclaimed on October 1.

This *Overview* provides agencies working to promote the safety, education, and well being of children and families with highlights of:

- the new *Family Law Act*, particularly the key changes in family law made in the best interests of children and families
- the relationship of the *Family Law Act* to other legislation
- contacts for further information, and
- an electronic presentation that can be used to share information with agency staff and service delivery partners.

This *Overview* is also accompanied by *Frequently Asked Questions and Answers*, as well as brochures on the *Family Law Act* and related services to families.

The *Overview* only provides basic information, and should not be used for legal purposes.



II. Highlights of the Family Law Act

In the Best Interests of the Child

The new *Family Law Act* is centered on the best interests of the child. Under the *Act*, every child is entitled to the care of a parent (guardian) until the age of 18, unless the child is married or is an adult interdependent partner.

The *Act* now expressly states that, when making decisions involving the child, the courts must consider the child's best interests including:

- the greatest possible protection of the child's physical, psychological and emotional safety, and well as other needs and circumstances
- any family violence, and its impact on the child, family and other household members
- history of care for the child, and the child's overall well being
- child's cultural, linguistic, religious, and spiritual upbringing
- child's views and preferences to the extent possible
- nature and strength of existing relationships for the child
- ability of parents to care for and meet the needs of the child
- ability of parents to discuss and cooperate on issues affecting the child
- any civil or criminal proceedings relevant to the child's safety and well being.

Child Support and Spousal Support

The *Family Law Act* recognizes the importance of financial support to help children realize their potential as adults. It addresses financial support for all children, whether the parents are married or not. Under the *Act*,

- parents are responsible for the financial support of their children to the age of 18, or under some circumstances, to the age of 22 when a child is pursuing and making a reasonable contribution to a full-time education program
- a person such as a step-parent may pay child support if they stand in the place of a parent, and intend to treat the child as their own
- child support takes precedence over support to spouses or interdependent partners
- child support does not apply when the child is married, in an adult interdependent relationship, or has chosen to leave home and live independently.

Alberta's child support guidelines mirror the *Federal Child Support Guidelines*, and will not result in any key changes to the way financial support for children is calculated.

Parents can develop an agreement on child support or they may apply to either the Provincial Court or the Court of Queen's Bench for child support unless this has already been addressed during a divorce under Canada's *Divorce Act*. Former spouses and adult interdependent partners may also make their own agreement on the financial obligations toward one another, or may apply to either court for spousal support.

The *Family Law Act* also allows a person to apply for an order for exclusive possession of the family home in conjunction with an application for child or spousal support. However, the *Family Law Act* does not deal with the ownership of property. For married people, the *Matrimonial Property Act* will continue to guide the division of property.



For unmarried people, concepts based on trust law and unjust enrichment will continue to guide the division of property.

Parents and adult interdependent partners are to disclose their finances to address support obligations. Support orders and agreements will bind the estate of the paying person.

Establishing Parentage

In the beginning there were parents. The *Family Law Act* recognizes the importance of parents and guardians in the lives of children as the greatest influence on children's ability to learn, grow and succeed.

The Court of Queen's Bench still determines if a person is the legal parent of a child, and is the only court that can issue a formal "declaration of parentage" for all purposes of the law. However, the Provincial Court can now also find someone to be a parent of a child for the purpose of paying child support.

Determining mothers and fathers. There are seldom questions about the mother of a child, except in the case of surrogacy noted below. Where there are questions about the father of a child, a father may be presumed to be the parent of the child where:

- he was married to the mother when the child was born
- the marriage ended less than 300 days before the child was born
- he married the mother after the child was born, and acknowledges being the father
- lived with the mother for a 12 month period of time during which the child was born, and acknowledges being the father
- has himself registered as the father of the child on the child's birth certificate
- is found to be a parent by the court.

If these presumptions of parentage for the father do not apply, "a declaration of parentage" can be made in the Court of Queen's Bench.

Surrogacy and Assisted Conception. Sometimes a couple may become the parents of a child in a different way. This may involve a surrogate mother, or assisted conception.

The person who gives birth to the child is the legal mother of the child, except for adoptions. When an adoption order is made, the adopting mother becomes the sole legal mother of the child from birth. In addition, under the *Family Law Act*, the court can now declare that, with the consent of the surrogate mother, the genetic mother is the sole legal mother of the child. However, surrogacy agreements themselves are not enforceable, and cannot be used as evidence of the surrogate mother's consent.

Under the *Act*, the presumptions of parenthood apply to fathers even in circumstances of assisted conception. However, persons who only donate sperm for assisted conception do not become the legal parent of the child.

Testing. When establishing parentage, the court may ask for a blood or DNA test to be carried out but only with the consent of the affected adult. If someone refuses to participate in these tests, the court can draw any inference considered appropriate to establish the parentage of a child.



Parenting and Guardianship

Parents and Guardians

What do children need to thrive? Children need family environments that are safe, loving and nurturing with family members who value them. Under Alberta law, continued in the *Family Law Act*, a child's guardians are responsible for raising the child, providing the day-to-day care, and supporting the child's well-being and development.

In most cases, parents are automatically the guardians of their child. However, a parent is not always a guardian, and a guardian is not always a parent.

Both parents are automatically guardians of their child if they:

- were married when the child was born, or married each other after the child was born
- lived together for at least 12 months during which time the child was born
- lived together in a relationship of some permanence when the child was born.

If a parent is in one of these categories, they will always be guardians even if the relationship with the other guardian ends.

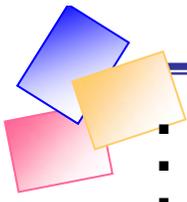
If the parents of the child are NOT living together in one of these relationships when the child is born, they would initially each be considered guardians. Where the child usually resides will determine if they will continue to be guardians. One of these parents could become the sole guardian if the child acquires a usual residence with that parent without having lived with the other parent for a year. It is also possible for both parents to continue to be the child's guardian if the child has a usual residence with both parents. After a year of usual residence the guardianship becomes permanent. Guardianship would then not end even if the child no longer lived with that parent.

Parents can also make an agreement about guardianship. A parent who is not automatically a guardian of a child can apply to the court for appointment as guardian. A court order can always be made to appoint a parent, or a third party such as a grandparent, as a guardian of a child. A court order can also be made to remove a parent, or third party such as a grandparent, as guardian of a child.

Roles and Responsibilities of Guardians

The *Family Law Act* now describes the roles and responsibilities of guardians generally associated with raising a child. Guardians must exercise their powers and responsibilities in the best interest of the child, including:

- nurturing the child's physical, emotional and psychological development
- ensuring the child has basic necessities: food, clothing, shelter and medical care
- making day to day decisions about the care and well being of the child
- deciding the child's place of residence
- making decisions about the child's education and after school activities
- making decisions about the child's cultural, linguistic, and spiritual upbringing
- deciding whom the child is to live and associate with



-
- consenting to health treatments
 - settling legal proceedings related to the child
 - appointing someone to act on behalf of the child in case of an emergency or illness
 - receiving and addressing information about the child's health, education and other matters.

In addition, under the *Act*, guardians have a duty to cooperate with each other on matters relating to the child. They also have the right to be informed and consulted, and an obligation to inform and consult the other guardian on decisions about the well being of the child.

If a guardian passes away without appointing a testamentary guardian, the surviving guardian may take on all the powers of guardianship unless otherwise specified by the parenting order.

Parenting Orders

Under the *Family Law Act*, both parents share guardianship of their children after separation until they agree, or the court orders, to the contrary. If parents are unable to agree on their responsibilities after separation, they may apply for a parenting order.

For most people, this represents the greatest area of change in family law. Parenting orders help separated parents to build a parenting system for their children, and reduce the financial and emotional costs to children and families when relationships break down. Parenting orders reflect the responsibility of *both* parents towards children, and replace “custody and access” orders which sometimes created the perception of winners and losers.

Parenting orders define:

- when parents are to share their time with the children (which may be a schedule)
- how parents are to share their responsibilities toward children
- ways for parents to address future disputes, if agreed to by the parties
- any other provisions that may be appropriate and in the best interests of the child;

When making a parenting order, courts are guided by the best interests of the child, and consider important factors including family violence. In addition, a parent who has reason to believe there is a serious risk to the child's safety and well being can apply to the court to have an existing order reviewed.

Courts will generally only intervene as necessary and appropriate. Therefore, parenting orders may range from very minor to very significant court interventions. For example, a parenting order may just involve ways of resolving one or two issues for parents who generally agree on most things. However, a parenting order may also grant exclusive guardianship powers to only one parent, while the other parent loses even the right to be informed about decisions.



Contact Orders

The *Family Law Act* recognizes that children also need strong connections to grandparents and others who play an important role in their lives, and help provide the foundations for learning and growing.

Courts make “parenting orders” to define when guardians share time with children. Courts make “contact orders” to define how grandparents, or others spend time with children. Contact orders may include visits, telephone calls, emails and letters.

Under the *Family Law Act*, grandparents have an unrestricted right to apply for contact with grandchildren when parents are separated or one of the parents is deceased. Parents who are not guardians, or persons standing in the place of parents, may also have such an unrestricted right to apply for a contact order.

All other persons must require leave of the court to apply for a contact order. They must outline the importance of their relationship to the child, and why it is necessary to have the contact order to stay in touch with the child.

Adult Interdependent Relationships

In Alberta, the *Adult Interdependent Relationships Act* defines or sets out who is considered to be in a type of committed relationship other than marriage.

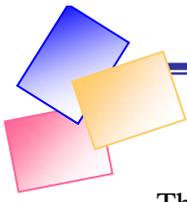
Under the *Adult Interdependent Relationship Act*, adults are in an interdependent relationship other than marriage when they:

- have an agreement to that end
- have lived together in a relationship of interdependence for at least three years, or
- have lived together in a relationship of interdependence of some permanence (which could be for less than three years) but have a child from the relationship by birth or adoption.

Under the *Family Law Act*, Albertans in an adult interdependent relationship may apply for child support, adult interdependent support, and guardianship as well as parenting and contact orders with children. An adult interdependent partnership may be ended when the individuals enter into a written agreement to end their relationship, marry one another or someone else, or enter into an adult interdependent agreement with another person.

Enforcing Time with a Child

Enforcement provisions in the *Family Law Act*, allow a court to enforce parenting or contact orders under the *Family Law Act*, existing custody or access orders under other provincial *Acts*, or similar orders from other provinces, as well as *Divorce Act* custody and access orders.



The means for enforcing time with a child have not changed. They are:

- providing appropriate compensatory time with the child
- reimbursing the applicant for the necessary expenses incurred as a result of denying time with the child
- paying a penalty of up to \$100 per day to a maximum of \$5,000 for denying time
- serving time in prison for up to 90 days for denying time and refusing to pay the penalty.

Police officers, given an enforcement order, can continue to take reasonable steps to find the child and uphold the rights of parents to spend time with their children.

III. Relationship of the Family Law Act to Other Legislation

Current Legislation

The *Family Law Act* replaces the *Domestic Relations Act*, the *Parentage and Maintenance Act*, the *Maintenance Order Act*, the family law provisions of the *Provincial Court Act*, and part of the *Child Youth and Family Enhancement Act* that deals with private guardianship. The *Family Law Act* also amends other legislation.

The Family Law Act does not address:

- child welfare matters under the *Child, Youth and Family Enhancement Act*
- adoptions under the *Child, Youth and Family Enhancement Act*
- a divorce action under the federal government *Divorce Act*
- children's property under the *Minor's Property Act*
- division of property under the *Matrimonial Property Act*
- the definition of adult interdependent partners under the *Adult Interdependent Relationship Act*.

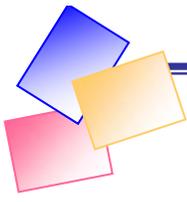
When making a family law application to the Provincial Court or Court of Queen's Bench, family members cannot apply to both courts on the same matter. The first application filed and served will generally proceed. In addition, matters can be transferred between courts when needed and where it makes sense to do so.

The court will continue to have the power to proceed in a party's absence, and to control frivolous or vexatious applications.

Transition to the new Family Law Act

To support families during the transition to the new *Family Law Act* on October 1, 2005:

- actions started under former family law legislation will continue under that legislation although parties can consent to using the new *Family Law Act*
- previous orders will remain in force and treated as *Family Law Act* orders
- changes or variation applications will be commenced under the new *Family Law Act*.



IV. For Further Information

Alberta Justice cannot provide legal advice on personal legal matters.

However, Albertans can obtain additional information or assistance with family law matters as noted below.

For Additional Information On:	Please Contact:
---------------------------------------	------------------------

The Family Law Act

Alberta Justice and Attorney General web site at www.justice.gov.ab.ca/.

Copies of the Family Law Act and Regulations

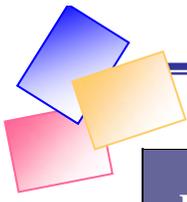
Alberta Queen's Printer web site at <http://www.qp.gov.ab.ca>

Questions or legal advice on personal family law matters

Your lawyer, or if you do not have a lawyer:

The Law Society's Lawyer Referral Service toll free in Alberta at 1-800-661-1095.

This program helps people find a lawyer for the services they need. After calling the toll free number, and outlining your family law concerns, the operator will give you the names and numbers of three lawyers practicing family law in your area. You may contact any or all three of the lawyers, indicating you were referred by the Lawyer Referral Service, and make an appointment to discuss your situation. There is no charge for the first half hour of the consultation. You can then decide to hire the lawyer at the full fee rates, and the lawyer can decide whether to accept your file.



For Additional Information On:	Please Contact:
--------------------------------	-----------------

Questions or legal advice on personal family law matters

Law Society of Alberta at <http://www.lawsocietyalberta.com/>

You can use the Lawyer Search Services on the website to find a lawyer that can assist you with your concerns.

Legal Aid Society of Alberta --Alberta Law Line website at www.albertalawline.ab.ca or by calling (780) 644-7777 in Edmonton or toll free 1-866-845-3425.

The Legal Aid Society provides free legal information and referrals for all callers, and free legal advice for financially eligible Albertans who would not otherwise be able to obtain legal advice.

Student Legal Services at www.slsedmonton.com

Student Legal Services of Edmonton is a non-profit, charitable organization of about 300 volunteer law students who provide year-round free legal services for those unable to afford a lawyer.

Calgary Legal Guidance at www.clg.ab.ca for assistance with family law issues if you do not have a lawyer and are not eligible for legal aid.

Family Law Information Centres by calling Edmonton at (780) 415-0404, or Calgary at (403) 297-6600

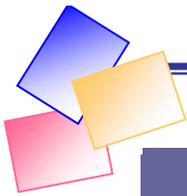
The Family Law Information Centres provide assistance with Child Support Guidelines, and making court applications without the assistance of a lawyer.

Enforcement of support orders if a person is not paying child or spousal support

Maintenance Enforcement Program by calling (780) 422-5555.

Child welfare protection concerns, or adoptions

Alberta Children's Services website at www.child.gov.ab.ca/ or call (780) 422-3004.



**For Additional
Information On:**

Please Contact:

**People on low
income who need
help getting a child
support order**

Alberta Human Resources and Employment website at www.gov.ab.ca/hre or call (780) 415-0733 to connect with the Child Support Services Program.

**Personal care of
Dependent Adults**

Alberta Seniors and Community Development
Office of the Public Guardian by calling
310-000 toll free to connect to any of the offices in Alberta.

**Financial matters
on children's
estates or
Dependent Adults**

Office of the Public Trustee by calling
(780) 427-2744.

**Parental
registration of
children at school**

Alberta Education web site at www.education.gov.ab.ca or
by calling (780) 427-7219.

To find a mediator

Family Justice Services

Calgary

Room 606, John J. Bowlen Bldg.
620-7th Avenue SW
T2P 0Y8
Phone (403) 297-6981

Edmonton

Room 8077, John E. Brownlee Bldg.
10365-97 Street T5J 3W7
Phone (780) 427-8329 - Mediation
Or (780) 427-8343 - Court Counsellors

Elsewhere in Alberta

Court House
4909-48 Avenue
Red Deer T5N 3T5
Phone (403) 340-7187



Or the Alberta Family Mediation Society website at www.afms.ca

Please note that all government departments can also be reached toll free by calling the RITE line at 310-0000.