



MOSAIC

### ***Family Law Act (FLA)***

- The FLA replaced the Family Relations Act (FRA) on March 18, 2013
- The FLA outlines your rights and responsibilities.
- You can use the FLA to help you make arrangements for the future care of your children, support payments, and division of family property and family debt.

### ***Protecting your Family***

- The new act defines family violence as:
  - Physical abuse of a family member
  - Sexual abuse
  - Attempts to physically or sexually abuse a family member
  - Emotional / psychological abuse
  - In the case of a child, direct or indirect exposure to family violence.

### ***Which Laws Apply to me?***

- Family Law Act –
  - Applies if you are married/unmarried
  - And you are asking for:
    - ✓ Guardianship & Parenting Arrangements
    - ✓ Division of Property/debts
    - ✓ Child Support
    - ✓ Spousal Support
    - ✓ Protection Orders
  
- Divorce Act –
  - Applies if you are married
  - And you are asking for:
    - ✓ Divorce
    - ✓ Guardianship and Custody
    - ✓ Child Support
    - ✓ Spousal Support

## ***What Court do I go to?***

- Supreme Court
  - Divorce
  - Property and debt division
  - Guardianship and Parenting Arrangements (parenting time and parenting responsibilities)
  - Support – child and spousal support
  - Protection Order
  
- Provincial Court
  - Guardianship and Parenting Arrangements (parenting time and parenting responsibilities)
  - Support – child and spousal support
  - Protection Order

## ***You are a “spouse” if...***

- You are married
  - you had a legal marriage ceremony (you will need an original marriage certificate to get a divorce order – under some circumstances you can start your divorce action without the marriage certificate)
  
- You are unmarried
  - you and your partner have lived together in a marriage-like relationship (common-law) for continuous period of at least 2 years
  
- You have a child together
  - You are a spouse only for the purposes of child support and spousal support – does not apply for property and debt division.

## ***New Terms under the FLA with respect to children’s matters***

- “Best interests of the child” is the only consideration
- Parenting Arrangements
  - Similar to custody and now includes parental responsibilities and parenting time
  
- Contact with a child
  - This used to be called access
  
- Protection Order & Conduct Order
  - This used to be called a Restraining Order

## ***Things to consider if you separate and live apart***

- Guardianship
- Parenting Arrangements
  - Parental Responsibilities
  - Parenting Time
  
- Contact with a child
- Financial Support – Child & Spousal Support
- Property & Debt – protecting property and protecting yourself from liability

## ***What about financial support?***

- Child Support is the right of the child and generally lasts until a child turns 19 years old.
- The Federal Child Support Guidelines tables set the amount of child support that a parent or a former spouse who is a step parent should pay.

***Child Support Calculator: [www.fmep.gov.bc.ca](http://www.fmep.gov.bc.ca)***

- Spousal Support is not a right. A spouse asking for spousal support must show that she should get it depending on circumstances during the marriage and since separation. All spouses can apply for spousal support including:
  - Married spouses that have separated
  - Common law spouses that have separated
  - Persons that have a child together, even though they have not lived together.

## ***The FLA - Division of Property & Debt***

- Family Property
  - all real and personal property owned by one or both spouses
  - all real and personal property that a spouse has beneficial interest in
  - any increase in the value of “excluded property” that happens during the relationship
  - assets that are acquired with family property/money by either spouse after separation

- Excluded Property
  - Assets acquired before the relationship started.
  - Gifts, inheritances, and some types of court awards and insurance payments, that were received during the relationship by one spouse
  
- Family Debts
  - These are debts that either spouse accumulated during the relationship that were still owing when they separated, or that have to do with taking care of family property after separation. In general, these debts must be shared equally **but this can be changed**.

### ***Who Can Help?***

- Helping with Agreements
  - Family Law Lawyer
  - Mediator – cannot give legal advice, even if they are a lawyer
  - Parenting Coordinator – will help you with parenting agreements. Cannot give legal advice
  - Family Justice Counsellor – not lawyers and cannot give legal advice
  
- Getting a court order
  - Family Law Lawyer
  - Duty Counsel
  - Legal Advice Clinic
  - Family Justice Counsellor – not lawyers and cannot give legal advice

### ***Relocation under the FLA***

- Relocation is a change in the child’s residence that can reasonably be expected to have a significant impact on the child’s relationship with another guardian or other persons having a significant role in the child's life.

### ***If the guardian wants to relocate (move)...***

The *FLA* says...

- A guardian planning to relocate must give 60 days’ notice in writing to any other guardian including the proposed location and date of relocation
  - **Exemption: must have a court order which states that he/she does not have to give notice**
  
- A court may grant an exemption from all or part of the requirement to give notice if satisfied that
  - notice cannot be given without incurring a risk of family violence by another guardian or a person having contact with the child, or

- there is no ongoing relationship between the child and the other guardian or the person having contact with the child.
- ☐ If guardian does not agree with move, he/she must file a court application for an order to stop the relocation within 30 days from the date of notice

### ***Factors in granting orders for relocation under the FLA***

- ☐ A court must be satisfied that:
  - the proposed relocation is made in good faith, and
  - the relocating parent must propose reasonable arrangements and workable arrangements for the other parent to continue the relationship with the child.
  - on the court being satisfied of the above, the relocation must be in the best interests of the child unless another guardian can show the court otherwise.

### ***What is “Good Faith”***

- ☐ Whether the quality of life of the child and/or relocating guardian will be enhanced by the move including increasing emotional well-being or financial or educational opportunities;
- ☐ Whether notice was given
- ☐ Whether there are any restrictions on relocation in an order or agreement

### ***“Reasonable Arrangements”***

- ☐ What is required is nothing “other than a reasonable and workable arrangement”

### ***“Best Interest of the Child” (test)***

- ☐ Parenting capabilities and children’s relationship with parents and new partners;
- ☐ Employment security and prospects of each spouse
- ☐ Access to and support of extended family
- ☐ Difficulty of exercising proposed access and quality of proposed access if move is allowed
- ☐ Effect upon children’s educational situation
- ☐ Psychological/emotional well-being of children;
- ☐ Disruption of children’s social and community support and routines;
- ☐ Separation of brothers and sisters

## *Protecting Your Family*

- If you or someone else in your family is at risk of family violence you can apply for a family law **protection order** in court (Provincial or Supreme Court)
- A protection order could contain the following conditions:
  - not to contact you, your children, or other family members who may be at risk of abuse;
  - to stay away from your home, your work, school, or other places where you, your children, or other family members spend time;
  - not to follow you, your children, or other family members;
  - not to have a weapon; and/or
  - that the police can go with you to your home while you get your personal belongings, or make the person named in the order leave the family home.
- Breaching conditions of protection order is considered a criminal offence and the police can arrest and charge the person that has breached the condition(s)