

## Amendments to the *Family Law Act* – What’s New? (*Family Law Statutes Amendment Act, 2010*)

Amendments to the *Family Law Act* were included in Part 1 of the *Family Law Statutes Amendment Act, 2010*, and will be coming into force on August 1st, 2011. A number of amendments to the *Family Law Act General Regulation* will also come into force on August 1st, 2011. This document is intended to be a **quick reference guide to those amendments**.<sup>1</sup>

### Application to transfer a proceeding to the other Court

- The amendments make it possible for a party to make an application to the Court in which the proceeding was commenced, for an order transferring the matter to the other Court. (s. 4(3.1))

### Parentage - standard situations - no assisted human reproduction

- The legal parents of children conceived without the use of assisted human reproduction continue to be:
  - the birth mother; and
  - the biological father. (s. 7(2)(a))
- A declaration of parentage can be obtained that someone IS or IS NOT a parent. (s. 9(1))

### Parentage - assisted human reproduction (no surrogate involved) ( See Quick Reference Guide to Parentage)

- When a child has been conceived through assisted human reproduction (conceiving other than by sexual intercourse) the legal parents are:
  - the birth mother; and
  - either:
    - the male person who provided human reproductive material (sperm) with the intention of becoming a parent (if any); OR
    - the male or female person who was married to or in a conjugal relationship<sup>2</sup> with the birth mother and consented to be a parent at the time of conception (if any). (s. 7(2)(b))
- A male or female person married to or in a conjugal relationship with the birth mother at the time of conception (if any) is presumed to have consented to be a parent of the resulting child unless the contrary is proven. (s. 8.1(6))
- A person who provides human reproductive material without the intention of becoming a parent (sperm or egg donor) is not a parent of the child born as a result. (s. 7(5))

### Parentage - assisted human reproduction with surrogate birth mother

- A surrogate is a person who gives birth to a child as a result of assisted reproduction if, at the time of the conception, she intended to relinquish that child. (s. 5.1(1)(d))

---

<sup>1</sup> . Detailed information about the amendments are available in the Overview document posted at [http://justice.alberta.ca/programs\\_services/families/Pages/family\\_law\\_legislation.aspx](http://justice.alberta.ca/programs_services/families/Pages/family_law_legislation.aspx).

<sup>2</sup> For the purposes of the parentage provisions, the conjugal relationship must be a relationship of interdependence of some permanence

- At the time of birth, the surrogate birth mother is the only legal parent. (s. 8.1)
- After the child is born, if the surrogate consents, a declaration of parentage can be granted declaring that the surrogate is no longer the legal parent and naming as legal parents:
  - the person(s) who provided human reproductive material with the intention of being a parent to the resulting child; and
  - the male or female person who was married to or in a conjugal relationship with the person who provided human reproductive material and consented to be a parent at the time of conception (if any). (s. 8.2)
- The requirements for the surrogate's consent in s. 2 of the *Family Law Act General Regulation* have been amended slightly to coincide with these amendments.
- Maximum of 2 legal parents. (s. 8.2(12))

### Statutory Guardianship (see Quick Reference Guide to Statutory Guardianship)

- The amendments are a complete re-write of section 20.
- A parent is automatically a guardian if that parent, within one year from either becoming aware of the pregnancy or becoming aware of the birth of the child:
  - acknowledges that he or she is a parent of the child; and
    - no formal requirements for acknowledgment
  - demonstrates an intention to assume responsibility for the child.
    - by taking one of the steps set out in s. 20(3)
- As a result some parents, generally fathers who were in short term relationships with the birth mothers and haven't demonstrated the required intention, will be excluded from automatically being guardians.
- If a parent does not act within the time limit, but later wishes to have a role in the child's life, he or she can apply for guardianship under s. 23.

### Determination of Statutory Guardianship

- If there is dispute with regard to whether or not a parent fits within the requirements of s. 20, the Court can make a determination of about guardianship status. (s. 20(6))
- This application can also be used by a parent who is the **sole guardian** and requires a Court order confirming their guardianship status.
  - S. 17 only requires guardians to be serve, so there should be no need to give notice to the other parent, unless the Court orders otherwise.
- The determination of guardianship:
  - would be a finding of fact (the best interests test doesn't apply);
  - is designed to be summary in nature;
  - can identify the powers, responsibilities and entitlements of the guardian;
  - can be made on application by a party or on the Court's own motion; and
  - can be made within another proceeding under the *FLA* or the *Child, Youth and Family Enhancement Act*.

### Statutory Guardianship - Transitional Issues (see Quick Reference Guide to Statutory Guardianship Transitional Issues)

- A person who was a guardian of a child immediately before the amendments will continue to be a guardian, despite the amendments. (s. 20(9))

- If a parent was not a guardian immediately before the amendments, but it has been less than one year since the parent has known about the pregnancy or birth of the child, his or her guardianship may spring up after the amendments come into force, if he or she demonstrates the required intention.

### **Guardianship by Court Order**

- The amendments clarify that the only test that the Court is to apply in a guardianship application under s. 23 is the best interests of the child.
- There is no limit to the number of guardians a child can have. (s. 23(9))

### **Contact Orders**

- The amendments provide that a guardian can make an application to have the contact that a non-guardian will have with the child specified in a Court order. (s. 35(1))

### **Effect of Divorce Proceedings**

- The amendments clarify that the Court's jurisdiction to grant or vary a guardianship order, parenting order or contact order under the *FLA* continues even if divorce proceedings have been started, until an interim or final custody or access order has been granted in the divorce proceedings. (s. 45.1)

### **General Support Matters**

- The amendments provide that, where a support order or agreement is binding on the estate of a deceased payor parent, an application can be made to vary it to allow the estate to be wound up. (s. 80.1)
  - The needs of other dependents are to be considered.

### **Court authority to require parties to attend courses and programs**

- S. 5 of the *Family Law Act General Regulation* is amended to provide that the Court can require parties to attend any course or program that the Court feels is appropriate.