

What's new with the BC Family Law Act?

By Vyvyan Tsui

Earlier this year, the Family Law Act (FLA) came into effect in British Columbia, which replaces previous family law legislation for the province.

Asset Division

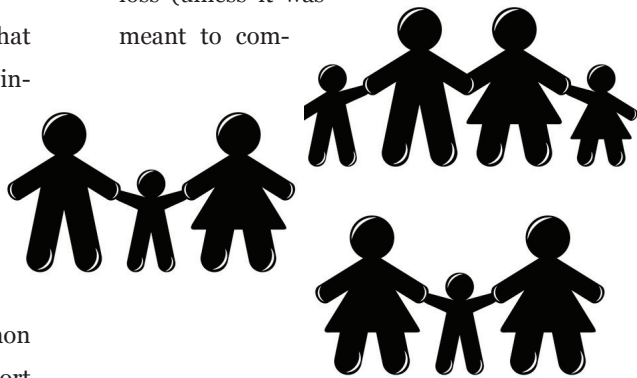
One of the major highlights of the FLA is that it expands the definition of a “spouse” to include both married spouses and unmarried (common law) spouses who have lived together in a marriage-like relationship for at least 2 years. This essentially gives the same rights to married and common-law couples. Under the previous regime, common law spouses are only entitled to spousal support but not asset division; the new regime provides for fairness in terms of family property division for both types of relationships.

It is also significant that all property owned by one spouse at the date of separation are now being considered family property and subject to division, regardless of whether such asset was used for family purposes during the relationship.

On the other hand, the FLA re-defines the boundaries of “family assets” so that certain property, called “excluded property”, is no longer divided up. Excluded property includes:

- Any property that each spouse owned before the relationship started

- Gifts and inheritances given to only one spouse during the relationship
- Compensation / Insurance payments made to one spouse only for personal injury or loss (unless it was meant to com-



pensate both spouses or involves income that was lost during the relationship)

- Property bought during the relationship using excluded property

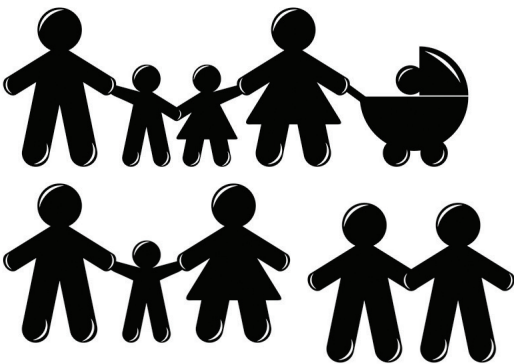
Even though these excluded assets are supposedly outside of the reach of a separated spouse, the increase in value of such assets since the relationship began may still be included in the valuation of family property.

Children

In terms of child guardianship and parenting arrangements, the FLA no longer uses the words “custody” and “access” to describe parenting time with children.

The Act now provides that “the best interests of the child” as the only consideration when decisions affecting the child is made. Factors to consider include:

- History of care of the child
- Impact of family violence on child’s safety, security or well-being
- Child’s views, unless it would be inappropriate to consider them
- Any civil or criminal proceedings relevant to the child’s safety and well- being



Alternate Dispute Resolution

The new legislation also encourages alternative ways for parties to resolve family issues outside of the courtroom where appropriate, through private agreements, mediation, counselling, parenting co-ordination and arbitration.

Parties who are entering into a marriage or a common-law relationship should be aware that the FLA does allow couples to make written agreements to opt-out of or vary the application of the legislation; for instance, to divide family property unequally or specifically exclude certain items of property or debt specifically from

family property.

Practically, this allows couples to enter into pre-nuptial or cohabitation agreements in order to enter into arrangements that better fit their unique circumstances outside of the FLA rules.

However, it must be noted that the BC Supreme Court may set aside or replace all or part of an agreement if one or more of the following circumstances exist when the parties entered into such agreement:

- A spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement
- A spouse took improper advantage of the other spouse’s vulnerability, including the other spouse’s ignorance, need or distress
- A spouse did not understand the nature or consequences of the agreement
- The agreement is significantly unfair considering: the length of time that has passed since the agreement was made; the intention of the spouses, in making the agreement, to achieve certainty; or the degree to which the spouses relied on the terms of the agreement.

As always, and especially in light of the reforms of this new provincial family law legislation, it is recommended for individuals to seek the advice of qualified legal professionals prior to entering into any agreement that may have lasting effects on their estates and family lives. **FW**

Vyvyan Tsui is a barrister and solicitor for Tsui & Cao Law Corporation.