

Early Dispute Resolution in Family Law Disputes

Regulations to Accompany Bills 97 and 98

1. Introduction

In Spring 2018, Bill 97 *The Arbitration (Family Dispute Resolution) Amendment Act, 2017* and Bill 98 *The Miscellaneous (Family Dispute Resolution) Amendment Act, 2017* were passed in the Legislative Assembly. The Acts will add provisions to *The Children's Law Act, 1997*, *The Family Maintenance Act, 1997*, *The Family Property Act* and *The Queen's Bench Act, 1998* to recognize and promote early dispute resolution, and to *The Arbitration Act, 1992* to add provisions to facilitate the use of arbitration in family law disputes. Both Acts come into force on proclamation.

The Ministry of Justice is now preparing regulations to accompany the Acts and is consulting interested parties and organizations. We would appreciate your feedback and comments on the topics discussed below.

2. The Children's Law Regulations

(a) Qualifications of a Parenting Coordinator

The amendments to *The Children's Law Act, 1997* include new provisions respecting "parenting coordinators". Parenting coordinators can offer parties in high conflict relationships an avenue for resolution that does not involve court applications. Parenting coordinators are trained individuals who can help parties navigate the interpretation of existing orders or agreements with respect to for example parenting time, pick up times and locations and holidays. Parenting coordinators cannot create or change parenting arrangements, the division of parenting responsibilities, custody or access to the child.

"Parenting coordinator" is a defined term that means a person recognized by the minister as meeting the requirements set out in the regulations. A list of "recognized" parenting coordinators will be maintained within the ministry. The minimum training requirements to be recognized as a parenting coordinator in Saskatchewan will be set out in the Regulations.

In British Columbia, Alberta and Ontario individuals can be designated as a parenting coordinator. While the criteria in all three provinces are similar, only British Columbia has legislated requirements for parenting coordinators. In Alberta requirements are set by Alberta Family Mediation Society and in Ontario by the Family Dispute Resolution Institute of Ontario.

The requirements for a parenting coordinator in British Columbia are set out in section 6 of *The Family Law Act Regulation* available at the following link:

<http://www.bclaws.ca/civix/document/id/complete/statreg/331105891#section6>

In British Columbia, a person may act as a parenting coordinator if the person:

- is a member in good standing of the Law Society of British Columbia, meets all of the training and practice requirements set by the Law Society of British Columbia and maintains professional liability insurance to cover his or her practice as a parenting coordinator; OR
- is a member in good standing of the College of Psychologists, College of Social Workers, Association of Clinical Counsellors, Family Mediation Canada, Mediate BC Family roster or the BC Parenting Coordinators Roster Society, and maintains professional liability insurance to cover his or her practice as a parenting coordinator. The person must also:
 - meet the training requirements of and be eligible for membership in the Mediate BC Family Roster or Family Mediation Canada;
 - have at least 10 years experience in family related practice;
 - have completed at least 40 hours of training in parent coordination as set out in the regulations;
 - have completed at least 12 hours of family law training provided by one of the providers listed;
 - have completed at least 14 hours of family violence training as set out in the regulations; and
 - each year complete at least 10 hours of continuing professional development applicable to family dispute resolution practice.

In Alberta, the Alberta Family Mediation Society (AFMS) has created similar qualifications to those set out in the British Columbia Regulations. AFMS uses the term is a “registered parenting coordinator and arbitrator.” The requirements are available at the following link: <https://afms.ca/registered-parenting-coordinator-and-arbitrator/> and include:

- a law degree or a master level degree in one of the following areas: psychology, social work, education, conflict resolution or related;
- 5 years of experience working with family and children related issues;
- 35 hours of training in generic conflict resolution courses;
- If not a lawyer, 20 hours of family law training and 20 hours of parenting coordination training at least 3 hours of which must be domestic violence training;
- If not a mental health professional, 20 hours of child development training and 20 hours of parenting coordination training;
- 35 hours of specialized mediation and arbitration training;
- Preparation of 3 mediation reports and 3 arbitration reports;
- Maintain malpractice insurance;
- Be a member in good standing of a professional regulatory body;
- Complete 50 hours of mediation/arbitration per year; and
- 20 hours of continuing education every 2 years.

Question 1: What should be the prescribed training, experience, qualifications and practice requirements to be recognized as a parenting coordinator in Saskatchewan?

(b) Determinations by a Parenting Coordinator

Section 21.6 of *The Children's Law Act, 1997*, once proclaimed, will restrict the types of determinations a parenting coordinator may make to the items prescribed in the regulations.

In British Columbia, limits on the types of determinations are found at subsection 6(4) of the *Family Law Regulations* where a parenting coordinator can make determinations in respect of:

- A child's daily routine, including the child's schedule in relation to access/parenting time;
- The education of the child, including in relation to the child's special needs;
- The participation of a child in extracurricular activities and special events;
- The temporary care of a child by a person other than a parent of the child;
- The provision of routine medical, dental or other health care to a child;
- The discipline of a child;
- The transportation and exchange of a child for the purposes of exercising access/parenting time;
- Access during vacations and special occasions; and
- Any other matters that are agreed to by the parties.

However, the parenting coordinator cannot make determinations in respect of the following, which is mirrored clause 21.6(1)(c) of our Act:

- A change to guardianship;
- A change to the allocation of parental responsibilities/custody;
- Giving access/parenting time to a person who does not have access;
- The relocation of a child;

Question 2: What should be prescribed in the regulations as matters in relation to which a parenting coordinator may make a determination?

3. The Queen's Bench Regulations

The amendments to *The Queen's Bench Act, 1998* will require parties in certain family law proceedings to make efforts to resolve disputes through an approved dispute resolution process before proceeding with the court process. Parties in certain proceedings will be required to show that they have made efforts towards early dispute resolution or participated in an approved dispute resolution process.

If parties have not already participated in dispute resolution prior to filing pleadings, participation must occur immediately after the close of pleadings before the parties can take any other steps in the court process. The Act will provide that the following processes fall within the definition of "family dispute resolution": the services of a family mediator, family arbitrator or parenting coordinator, other collaborative law services or any other process or service prescribed.

(a) Qualifications of a Family Mediator

“Family mediator” is a defined term that means a person recognized by the Minister as meeting the prescribed qualifications. A list of “recognized” family mediators will be maintained within the Ministry and be available to the public. The minimum training requirements to be recognized as a family mediator in Saskatchewan will be set out in the Regulations.

In British Columbia and Alberta individuals can be designated as a “family mediator”. While the criteria in all three provinces are similar, only British Columbia has legislated requirements for qualification as a family mediator. In Alberta requirements are set by Alberta Family Mediation Society.

In British Columbia the requirements to qualify as a family mediator as set out in section 4 of the *Family Law Regulations* available at the following link:

<http://www.bclaws.ca/civix/document/id/complete/statreg/331105891#section6>

In British Columbia, a person will qualify as a family mediator if the person:

- If a member in good standing of the Law Society and meets the following qualification requirements set by the Law Society:
 - Sufficient knowledge, skills and experience relevant to family law to carry out the mediatory function in a fair and competent manner;
 - 80 hours of approved mediation skills training;
 - 14 hours of approved family violence training;
 - 6 of the 12 CPD hours required annually must be in dispute resolution skills, training and/or theory.
- Is a member in good standing of the Mediate BC Family Roster;
- Is a member in good standing or a certified mediator with, Family Mediation Canada; or
- Meets the following requirements:
 - 2 years experience in family related practice including law, psychology, social work, clinical counselling, teaching or nursing;
 - Completed 21 hours of family law training;
 - Completed 80 hours of mediation theory and skills training including:
 - 21 hours of training on family dynamics in separation and divorce;
 - 7 hour of training on financial issues related to separation and divorce;
 - 7 hours of training focused on ethical issues related to the mediation process; and
 - 7 hours of training focused on drafting memorandum of understanding;
 - Completed 14 hours of family violence training;
 - Completed 10 hours of CPD annually; and
 - Maintains professional liability insurance.

To be recognized as a registered family mediator in Alberta by the AFMS, a person may submit his or her qualifications and experience to the registrar for consideration or must meet the membership requirements for a practising mediator, namely:

- One of the following:
 - A law degree or master level degree in one of the following: psychology, social work, education, mediation, conflict resolution or related field;
 - Bachelor degree and 200 hours of conflict resolution training;
 - 200 hours of conflict resolution training and 10 hours of mediation experience;
 - Bachelor degree in psychology, social work, education, mediation, conflict resolution or related field and 10 hours of mediation experience.
- Completed 35 hours of generic conflict resolution;
- Maintain malpractice insurance coverage;
- Complete 20 hours of CPD every 2 years.

A person who is a practicing mediator may then qualify for registered family mediator status in one of the following categories if additional requirements including up to 40 hours of specialized training, 50 hours of mediation per year and continuing CPD are also met:

- General family specialty
- Separation and divorce specialty: also requires additional hours of mediation experience and 3 real mediation reports;
- Family Business Specialty
- Parenting Specialty
- Child Consultant: also requires specific assessment requirements and 30 hours per year spent meeting with children.

Question 3: What should be the prescribed minimum training, experience, qualifications, and practice requirements for family mediators in Saskatchewan?

(b) Exemptions

Some parties may be exempt from participating in family dispute resolution as set out in subsection 44.01(6). Application for an exemption can be made to the court either at the same time or after pleadings are filed. Subsection 44.01(6) contemplates that someone other than the court, who is prescribed person or class of persons, may provide the exemption and file a certificate to indicate the requirements of the Act have been satisfied. In some circumstances, for example where there is a history of family related violence, there may be someone with the relevant knowledge to provide a certificate of exemption.

This might include Victim Service Coordinators or others who work regularly with victims of interpersonal violence. It could be one prescribed person or class of persons who will be authorized to grant all out of court exemptions.

Question 4: Other than the court, what persons or class of persons should be able to provide a certificate of exemption from participating in family dispute resolution?

(c) Types of Family Dispute Resolution

Subsection 44.01(1) of *The Queen's Bench Act, 1998*, defines what will qualify as a "family dispute resolution" for the purposes of that section. The definition recognizes the services of a family mediator, family arbitrator parenting coordinator and other collaborative law services. The definition provides that additional processes or services may be prescribed in the regulations.

Question 5: Are there any other dispute resolution processes or services that should be prescribed as included in the definition of "family dispute resolution"?

4. The Arbitration Regulations

(a) Qualifications of a Family Arbitrator

The amendments in Bills 97 and 98 do not require, but may encourage parties who would like to use arbitration instead of a court process to proceed towards resolution in that venue. The new provisions will require that where arbitration is pursued in a family law dispute a "family arbitrator" must be used. The requirements for qualifying as a family arbitrator will be set out in the regulations. In their Arbitration Acts, British Columbia and Ontario have both created provisions specific to arbitration in family law matters. British Columbia has also legislated the requirements that an arbitrator must meet to qualify as a family arbitrator

The requirements to be a family arbitrator in British Columbia are set out in section 5 of the *Family Law Regulations* available at the following link:

<http://www.bclaws.ca/civix/document/id/complete/statreg/331105891#section6>

In British Columbia, a person will qualify as a family arbitrator if he or she meets the following requirements:

- Is a member in good standing of the law society and meets the requirements set for a family arbitrator by the law society which includes:
 - 10 years practice as a lawyer or equivalent as a master or judge;
 - Sufficient knowledge, skills and experience relevant to family law to carry out the arbitral function;
 - 40 hours of training in arbitration;
 - 14 hours of family violence training; and
 - 6 hours of CPD annually in the area of dispute resolution; or
- A person to whom the following apply:
 - A member in good standing of the college of psychologists or the college of social works;
 - At least 10 years experience in family related practice;
 - Completed 40 hours of training in arbitration theory and skills;
 - Completed 30 hours of family law training;
 - Completed 14 hours of family violence training;
 - 10 years of CPD annually; and

- Maintains professional liability insurance.

In Ontario, there are no legislative requirements, however the Family Dispute Resolution Institute of Ontario (FDRIO) requires the following qualifications to recognize an individual as a certified specialist in family arbitration:

- Be a member in good standing of the FDRIO and the Family Arbitration section;
- Complete the following education and training in family arbitration:
 - 40 hours or 5 days on family arbitration process and skills;
 - 30 hours or 4 days on family law (lawyers are exempt);
 - 21 hours or 3 days on screening for domestic violence and power imbalances;
 - 14 hours on family relations (mental health professional exempt);
- Have arbitrated or co-arbitrated at least 5 family cases;
- Meet with the certification committee where required and answer inquiries about the person; and
- CPD of 10 hours annually.

Question 6: What should be the prescribed training, experience, qualifications and practice requirements to be recognized as a family arbitrator in Saskatchewan?

5. Conclusion

If you have any comments regarding the topics and proposed provisions considered in this consultation document please provide them prior to **December 31, 2018** by email to:

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Thank you in advance for your contributions.

Please be aware that your responses will form part of the public record and may be used in the ongoing development of this legislation.