



# Family Law News

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## Bill 133 – The Family Statute Law Amendment Act, 2009

There are some important changes coming in the practice of family law. The *Family Statute Law Amendment Act, 2009* received Royal Assent on May 14, 2009 and is expected to be enacted in the fall of 2009. It brings us many changes. In this article, I'll be giving you a brief review of some of those changes.

### *The Children's Law Reform Act (CLRA)*

Section 21 of the CLRA is amended to require that anyone bringing an application for custody or access to a child must file an affidavit which includes details of the following:

1. his or her proposed plan for the child's care and upbringing;
2. information respecting his or her current or previous involvement in any family, child protection or criminal proceedings; and
3. any other information relevant to the court's decision.

Section 21.1(1) provides that every person who applies for custody of a child and who is not a parent of that child must file with the court the results of a recent police check regarding the person applying. Further, a non-parent seeking custody must also file a report from the appro-

priate CAS or CCAS confirming whether the Society has any records relating to the person applying.

In cases where an application is made by a non-parent, section 21.3 requires the clerk of the court to provide the parties and the court with information in writing respecting any current or previous family proceedings involving the child or any person who is a party to the application. The clerk of the court must also provide information regarding any criminal proceedings involving any person who is a party to the application who is not a parent.

### *The Domestic Violence Act, 2000*

The *Domestic Violence Act* is repealed and section 35 of the *Family Statute Law Amendment Act* gives power to the court to make an interim or final restraining order against any person if the applicant has reasonable grounds to fear for his or her safety or for the safety of any child in his/her lawful custody.

### *The Change of Name Act*

Section 5 of the *Change of Name Act* is amended to provide that where a person is declared to be a parent of a child under the CLRA, his or her written consent is necessary to change the child's name, failing which, an application can be made to the court.

### *Family Law Act (FLA)*

The definition of "net family property" in subsection 4(1) is changed as follows:

1. 4(1)(a) now has an expanded definition of "debts and liabilities" which includes contingent tax liabilities in respect of the property as of date of separation; and
2. 4(1)(b) changes the definition of "debts and liabilities" on the date of marriage to not include any debts and liabilities that relate directly to the acquisition or significant improvement of a matrimonial home.

The most significant change to the FLA is the provision allowing the court to order a lump sum division of a pension at source. The definition of "property" under s.4(1)(c) is changed to include the imputed value, for family law purposes, of the spouse's interest in a pension plan which is now determined in accordance with section 10.1 of the FLA for the period beginning at the date of marriage and ending on the date of separation.

Section 10.1 provides that a spouse's interest in a pension plan is determined in accordance with section 67.2 of the *Pension Benefits Act*. An order can be made under sections 9 or 10 of the FLA for the immediate transfer of a lump sum out of a pension plan, but cannot provide for any other division of a spouse's interest in a plan. In determining whether to order the immediate transfer of a lump sum out of a pension plan and the amount to be transferred, the court can consider the following:

1. the nature of the assets available to each spouse at the time of the hearing;
2. how much of the spouses' NFP is

comprised of the imputed value of the pension;

3. the liquidity of the lump sum in the hands of the person to whom it would be transferred;

4. any contingent tax liabilities regarding the lump sum to be transferred;

5. the resources available to each spouse to meet their needs in retirement.

### ***Pension Benefits Act (PBA)***

There are numerous revisions to section 67 of the *Pension Benefits Act* which allow for the determination of imputed value of a spouse's pension for family law purposes. Further, a detailed process has been created to allow for the following:

1. the mechanism to apply for a preliminary determination of value before apportionment;
2. an application for a statement of imputed value, which is the portion of the preliminary value determined by the pension administrator to be subject to division, which application can be made by either the pension holder or his or her spouse;
3. the administrator must determine the imputed value and provide a statement providing the requested information;
4. upon payment of a "reasonable" fee, an application can be made under certain enumerated circumstances, for the immediate transfer of a lump sum from the plan. No more than 50% of the imputed value of the pension can be transferred.

There are many sections and subsections of the PBA that outline the mechanism for division. A detailed review of these sections is necessary prior to making a decision whether a

lump sum transfer application is appropriate in the circumstances of your case.

### ***Child and Family Services Act***

Section 57.1 of the *Child and Family Services Act* now allows the court, while making a custody order, to make a restraining order without requiring a separate application and deem the restraining order to be a restraining order made under the *Children's Law Reform Act*.

That's it for the summary. This bill provides some fairly significant changes to family law and procedure, particularly as it relates to the division of pensions and custody applications. This is one of those pieces of legislation that is a must read for all of us. Happy reading! ■

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