



MRP Toolkit Training

Centre for Excellence for Matrimonial Real
Property

Alberta Family Law

August 27, 2014



Outline

- Courts in Alberta
- Federal and Provincial Laws
- Services
- Implementation of federal *FHRMIR Act* in Alberta



Alberta's Court System

Three Courts in Alberta deal with family law

- Provincial Court of Alberta
- Court of Queen's Bench
- Court of Appeal



Provincial Court of Alberta

- Criminal, Civil, Traffic, Family and Youth
- Family and Youth in Edmonton and Calgary
- Regional Courts (base and circuits)
- Justices of the Peace



Court of Queen's Bench of Alberta

- Superior (trial) court of record
- No divisions
- Masters
- General and inherent jurisdiction
- Located in 11 municipalities



Court of Appeal of Alberta

- Superior (final) Court in the province
- 14 Judges – usually sits in panels of 3
- Hears appeals from Court of Queen's Bench, plus other bodies
- Sits in Edmonton and Calgary



Federal and Provincial Family Laws

Constitution Act, 1867

- Section 91(24) – “Indians and Lands reserved for Indians”
- Section 91(26) – Marriage and Divorce
- Section 92(13) – Property and Civil Rights in the Province



Federal and Provincial Family Laws

Federal Laws

Divorce Act

- Divorce judgment
- Child custody and access
- Child support
- Spousal support



Federal Laws

- *Civil Marriage Act*
- Passed in 2005 and amended in 2012



Federal and Provincial Family Laws

Family Homes on Reserves and Matrimonial Interests or Rights Act

- Emergency protection
- Right to consent to disposal/encumbrance of family home on reserve
- Exclusive occupation
- Sharing in value of matrimonial interests or rights on relationship breakdown or death
- Jurisdictional rules



Federal and Provincial Family Laws

Provincial Laws

Family Law Act

Maintenance Enforcement Act

Matrimonial Property Act

Protection Against Family Violence Act

Child, Youth and Family Enhancement Act

Adult Interdependent Relationships Act



Federal and Provincial Family Laws

Family Law Act

- Parenting orders
- Contact orders
- Guardianship
- Enforcement of time with a child
- Child support
- Support for spouses and partners
- Child Status/parentage
- Child Support Recalculation



Federal and Provincial Family Laws

Maintenance Enforcement Act

- Enforcement of support
- http://justice.alberta.ca/programs_services/mep/Pages/default.aspx

Matrimonial Property Act

- Division of property for married people



Federal and Provincial Family Laws

Protection Against Family Violence Act (PAFVA)

- Available without notice (ex parte)
- JPs (24/7) or Provincial Court judges
- Legal Aid assistance for EPOs or on review
- New provisions – Domestic Violence Death Review Committee
- Etc.



Federal and Provincial Family Laws

Child, Youth and Family Enhancement Act

- Children in need of intervention
- Apprehension Order
- Initial Custody Hearing
- Family Enhancement Agreement (“FEA”)
- Supervision Order (“SO”)
- Temporary Guardianship Order (“TGO”)
- Permanent Guardianship Order (“PGO”)
- Adoptions



Services

- Resolution Services
- <http://www.albertacourts.ab.ca/fjs/index.php>
- Family Law Information Services
- <http://www.albertacourts.ab.ca/fjs/flic.php>
- Child Support Recalculation Program
- http://justice.alberta.ca/programs_services/families/recalculation/Pages/default.aspx



Services

- **Legal Aid of Alberta – Family Law Office**
- Calgary, Edmonton, Lethbridge, Wetaskiwin and Red Deer (Central AB)
- Represents clients with family related legal matters at all levels of court.
- Offers the services of Family Resource Facilitators (FRF).
- Operates the Emergency Protection Order Programs in Edmonton (EPOP) and Calgary (CPOP), and represents clients seeking protection orders granted under the Protection Against Family Violence Act (PAFVA).
- Represents youth confined under the *Protection of Children Abusing Drugs Act* (PChAD)



Services

- Legal Counsel for Children and Youth (LRCY)
- http://advocate.gov.ab.ca/home/LRCY_home.cfm
- Child Support Services – Alberta Human Services
- <http://humanservices.alberta.ca/financial-support/2072.html>



Family Law and First Nations

- Section 88 of the *Indian Act* – provincial laws of general application
- Provincial Family Law applies on reserve with some exceptions
- *Protection Against Family Violence Act* – exclusive occupation of the family home



Key Differences Between FHoR and PAFVA

<p>Definition of Family Violence</p>	<p>Is limited to 6 specified acts or omissions</p> <p>Victim can be “anyone who habitually resides in the home”</p>	<p>Is open-ended – “Family violence includes...”</p> <p>Victim must be a family member but “family member” is broadly defined</p>
<p>Who can apply</p>	<p>A spouse or common-law partner, or a representative of spouse or common-law partner</p>	<p>A victim, a representative of a victim, police, a peace officer, the Director CYFE Act or any person designated by Minister HS</p>



Key Differences Between FHoR and PAFVA

Relief Available	Exclusive occupation Order to vacate or remove violator from home Order prohibiting attendance near the home Supervision by peace officer Any other order for immediate protection (within Federal jurisdiction?)	Order prohibiting attendance at or near any specified place Order prohibiting contact and communication Seizure of weapons Exclusive occupation, order to vacate, etc. but these are not enforceable on reserve Any other order for immediate protection, within provincial jurisdiction
Duration of Order	90 days max	1 year max



Key Differences Between FHoR and PAFVA

Reviews	<p>An order must be sent for review immediately and reviewed within 3 working days (or as soon as a justice is available)</p> <p>Review Court may extend order beyond 90 days</p>	<p>An order must be sent for review immediately and reviewed within 9 working days</p> <p>Review Court may grant 1 year extensions</p>
Application to vary or revoke	<p>May be made on 21 days notice</p>	<p>Governed by Alberta Rules of Court</p>
Confidentiality	<p>Only the Review Court may prohibit publication or exclude the public from a proceeding</p>	<p>Both courts may prohibit publication or exclude the public</p>



Key Differences Between FHoR and PAFVA

On a Review	Court can either confirm or direct an oral hearing	Court can confirm, revoke, order an oral hearing, or revoke and make a QBPO
Offence	1 st offence - \$2,000 or 3 months in jail or both Subsequent offence - \$5,000 or one year jail or both	1 st offence - \$5,000 or 90 days jail or both 2 nd offence – 14 days to 18 months jail 3 rd or subsequent – from 30 days to 24 months



Implementation

- Interdepartmental Committee
- Designation of judges
- Regulation for EPO process
- Rules of Court
- Forms
- Education of judges, clerks, police



Implementation

First Nations' laws

- what the Act requires
- Early notice and copies



Questions???