

Changes from White Paper to Bill

Based on feedback on the white paper proposals, the following policy changes were made:

Support obligations after death:

- The white paper proposed that support would continue after the payor's death unless the parties agreed or the court ordered otherwise.
- The bill takes the opposite approach – parties may agree or court may order that support continues after payor's death but if there is no such agreement or order, support ends when the payor dies.

Criteria for common-law spouse to qualify for property division:

- The white paper proposed that common-law spouses who live in a marriage-like relationship for at least 2 years Or live together in a marriage-like relationship of any length if they have a child together would be covered by the Act's property division scheme.
- The bill narrows this to cover only common-law spouses who live in a marriage-like relationship for at least 2 years.

Agreements for division of pensions

- The white paper proposed that an agreement between spouses to divide a pension between them, must leave the spouse who owns the pension with at least one-half of the pension benefits.
- The bill removes this requirement and allows spouses to agree that one spouse will transfer more than half, which could include all, of the pension benefits to the other spouse.

Exception to general rule that separated parents are guardians:

- The white paper proposed that a parent who has never resided with his or her child would not automatically be a child's guardian.
- The bill takes a more nuanced approach by providing that where a parent has never resided with his or her child, that parent may still be a guardian if he or she regularly cares for the child.

Relocation – dispensing with requirement to notify others of pending relocation of child:

- The white paper proposed exceptions to the notice requirement but did not require a court order dispensing with the requirement to give notice.
- The bill sets out the same exceptions to the notice requirement but requires a court order dispensing with the requirement to give notice.

Children's lawyer:

- The white paper requires court to order the parties to pay for the children's lawyer.
- The bill allows, but does not require, the court to do so.

Standby guardianship:

- The white paper proposed that standby guardianship would only be available where a child has only one guardian.
- The bill does not contain that restriction.

Treatment of child support agreements and consent orders:

- The white paper deals only with treatment of consent orders for child support.
- The bill extends similar treatment to child support agreements.

Recognizing and declining to recognize non-Canadian declaratory orders of parentage:

- The factors included in the white paper were replaced in the bill with the factors used in the new *Uniform Child Status Act*.

Automatic guardianship of institutional guardians (PGT and MCFD directors):

- The white paper proposed eliminating this and providing the PGT with authority to act to protect a child's financial interests. MCFD already has power to act under the CFCSA.
- The bill moves this provision from the *Family Relations Act* to the *Infants Act*, rather than eliminating it.

Transition:

- The white paper proposed that the Family relations Act would continue to apply to cases started, but not resolved, when the new Act comes into effect unless the parties agreed that the new Act would apply.
- The bill uses this approach for property division claims, but for other claims the policy is to bring them under the new Act as soon as possible by having the new Act apply to most other cases not yet resolved when the new Act comes into effect.

Many other provisions are worded or structured differently from those in the white paper, but these changes do not reflect changes in policy and were made to clarify provisions and to improve their readability. For example:

Setting aside agreements:

- The white paper said that the provisions for setting aside agreements on procedural fairness grounds would apply to all agreement but the bill limits those provisions to covering property and support agreements.
- This isn't a change in policy because those provisions aren't required for either parenting agreements, which are subject to change if not in the child's best interests, or child support agreements, which are subject to change if not in accordance with the child's support guidelines, regardless of whether or not they are procedurally fair.

Definition of family violence:

- The white paper definition contained a reference to “financial abuse” but the bill only refers to “unreasonable restrictions on, or prevention of, a family member’s financial or personal autonomy”.
- This isn’t a change in policy because the types of things that a court would consider under “financial abuse” are expected to still be considered under the current changed wording.

Parental responsibilities:

- The white paper did not include a specific reference to aboriginal identity as part of the list of parental responsibilities. It read only: “46(d) to make decisions regarding the child’s cultural, linguistic, religious and spiritual upbringing and heritage”.
- The Bill includes an expanded parental responsibility to specifically include reference to a child’s aboriginal identity. (Currently section 41(e)).
- This is not a policy change because it was expected that the aboriginal identity would have been included within the “child’s cultural” upbringing and heritage. It was added to clarify only.

Applications for guardianship:

- The white paper did not contain any specific reference to evidence being needed about the best interests of a child in a guardianship application.
- The bill added a requirement for applicant to provide evidence respecting BIOC.
- This is not a policy change because the decision was always to be about what was in the BIOC and a judge could have always asked for this information.

Variation of interim orders and interim variation of final orders:

- The white paper was silent on the factors to consider when making these types of orders.
- The bill added provisions to clarify because courts have not acted consistently in this area.
- This is not a change in policy as it really is just a codification of case-law that would have applied in any event.

Parentage enforceability of surrogacy agreements:

- The white paper said that surrogacy agreements were unenforceable.
- The bill is silent on whether it is enforceable although has added a section that indicates the surrogacy agreement is not to be considered as the consent of the person giving birth. That is to be a separate consent. There is a section that allows evidence of the intention of the parties to be brought in an application for a parentage declaration.
- This is not a change in policy because the policy was intended to ensure that the person giving birth could not be forced to give her consent to give up the child. It was not intended to speak to whether the fees that are part of the surrogacy agreement can be collected.
- Feedback indicated that the meaning was unclear so the changes were made to the wording.

Testamentary guardianship:

- The white paper is silent on whether another guardian automatically takes over when the other guardian dies.

- The bill says that if deceased didn't appoint someone else, a surviving guardian takes over unless an order provides otherwise.
- This is not a policy change because it was thought that this is what would likely happen in any event.

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