McPhail, 2001 BCCA 250 and *Aquilini v. Aquilini*, 2013 BCSC 217), so it is prudent to also claim a divorce on the ground of one year of separation.

Effective December 1, 2024, s. 23.2 of the *Divorce Act* provides that proceedings under the Act may be conducted in English, French, or both official languages. See “Official Language Selection” in this chapter.

See the Forms and Precedents section for:

- Application for Divorce Under the Civil Marriage Act (Canada) —Supreme Court Family Rules, Form F1.1
- Certificate of Divorce Under the Civil Marriage Act (Canada)— Supreme Court Family Rules, Form F1.2

B. COMMENCING PROCEEDINGS RELATED TO THE CARE OF CHILDREN [§8.36]

Section 198 of the *Family Law Act* confirms there is no time limit for filing a claim seeking a parenting or contact order under the *Divorce Act*, or an order under the *Family Law Act* for guardianship (s. 51), the allocation of parental responsibilities or parenting time (s. 45), contact with a child (s. 59), or a declaration of parentage (s. 31). However, a party may be prejudiced by delay in bringing the claim.

Further, s. 48 of the *Family Law Act* addresses the issue of informal parenting arrangements that evolve after separation and before the parties either reach an agreement or obtain an order formalizing the parenting arrangements. Under s. 48, unless inappropriate or unreasonable in the circumstances, the child’s guardian must not change the informal parenting arrangements without first consulting the other guardians who are parties to the arrangements (*F. (N.A.) v. M. (C.D.)*, 2013 BCSC 2294 (Master); *Munroe v. Elisseeva*, 2020 BCSC 1952).

When applying for guardianship of a child, an applicant must provide evidence that the appointment is in the best interests of the child (*Family Law Act*, s. 51(2)). Under SCFR, Rule 15-2.1, that evidence includes an affidavit in Form F101 with the following exhibits appended:

(1) a Ministry of Children and Family Development records check;

(2) a copy of a Protection Order Registry protection order records check; and

(3) a copy of a criminal records check.

Note the time limits set out in SCFR, Rule 15-2.1(4) regarding the swearing of the Form F101 affidavit (no more than 28 days before the date set for hearing or, if no hearing is required, no more than 7 days before the date upon which the materials in support are filed (Rule 15-2.1(4)(a)). Note also that the exhibits must be dated within 60 days of the date of the hearing or, if there is no hearing, within 60 days of the date upon which the affidavit is filed (Rule 15-2.1(4)(b)). A similar obligation exists for applications being brought in the Provincial Court. See "Additional Documents on Family Law Act Guardianship Applications in Provincial Court" in chapter 9 for a discussion of the Provincial Court process.

See the Forms and Precedents section for:

- Affidavit in Support of Guardianship Application—Supreme Court Family Rules, Form F101
- Guardianship Affidavit—Provincial Court Family Rules, Form 5

C. COMMENCING PROCEEDINGS FOR SPOUSAL SUPPORT [§8.37]

The term "spouse" is defined in ss. 1 and 3 of the *Family Law Act*. Under the *Family Law Act*, unmarried parties who have lived together in a marriage-like relationship and have a child together become spouses for the purposes of a spousal support claim even though they have not lived together for a continuous period of at least two years. The *Divorce Act* does not define "spouse", but s. 2(1) confirms that for various sections of the Act, the term includes a former spouse.

Under the *Divorce Act*, there is no time limit for married or formerly married spouses to make a claim for spousal support.

Under the *Family Law Act*, an original claim for spousal support must be brought within two years of the parties' divorce, a declaration of nullity, or, in the case of unmarried spouses, within two years of the date of separation (s. 198(2)). The relevant date for determining whether an application for spousal support has been made within the limitation period is the date the originating process was filed, whether in Supreme Court or in Provincial Court (*Reich v. Sager*, 1997 CanLII 4033 (BC CA); *Nichele v. Nichele*, 1994 CanLII 1132 (BC SC)). The

fact that a party does not pursue an application for several years does not bar the claim, provided the action was filed within the prescribed time limit.

As with all limitation periods, counsel should inform the client in writing of this two-year limitation period and ensure the limitation period is properly diarized in the lawyer's reminder system.

Notwithstanding these limitation periods, and in keeping with the *Family Law Act*'s emphasis on dispute resolution, s. 198(5) provides that the time limits in s. 198(2) are suspended during any period in which the spouses are engaged in family dispute resolution with a family dispute resolution professional, or in consensual dispute resolution under Rule 10 of the Provincial Court Family Rules. In *Welliver v. Hees*, 2016 BCSC 1837 (cited with approval in *Cao v. Wu*, 2022 BCCA 372), the court held that the suspension of the statutory limitation period under s. 198(5) is triggered only when both parties are truly engaged with a family dispute resolution professional and trying actively to resolve their dispute; simply seeking legal advice and starting settlement discussions is not enough. See "Lawyer's Certificate" in this chapter, which outlines the lawyer's s. 197 obligation to certify that the lawyer has complied with s. 8(2) of the *Family Law Act* regarding dispute resolution.

The reasoning regarding limitation periods applied in cases decided under the *Family Relations Act* (which had a one-year limitation period) may apply to cases brought under the *Family Law Act*. In *Zachata v. Zachata*, 1992 CanLII 683 (BC CA), the court dismissed the counterclaim of an unmarried spouse for spousal support filed more than one year after separation, notwithstanding that her unmarried spouse had commenced a *Family Relations Act* action within the one-year limitation period. Starting a Provincial Court action for spousal support under the *Family Relations Act* within one year of separation also did not preserve the limitation period for a subsequent Supreme Court action brought outside the one-year limitation period (*Lovricic v. Lovricic*, 1983 CanLII 377 (BC CA); *G. (K.) v. B. (K.K.)*, 2004 BCSC 892).

However, in both *Ferry v. Legebokoff*, 2013 BCSC 2054 and *D.L.M. v. R.E.G.*, 2004 BCSC 364, reconsideration allowed on another point 2006 BCSC 1275, a former unmarried spouse was estopped from relying on the one-year limitation period because of his conduct during that period that lead the other party to believe he would not rely on the strict definition of spouse in the *Family Relations Act*.