



Family Law

This info sheet provides some legal information to British Columbia residents about the potential impacts of wildfires on family law matters. It is meant for general information purposes only, and is not intended as a substitute for legal advice from a lawyer.

CUSTODY AND PARENTING TIME

Because of the wildfires, my ex and I had to leave town. We each went to different towns. What can I do to make sure I see my child?

The emergency will hopefully not permanently affect your final agreed or court-ordered parenting arrangements that were in existence before the fires started. However, a temporary move due to the wildfires may change parenting time on a temporary basis because of the urgency and unusual circumstances. For example, if you have an agreement or court order granting you 50/50 parenting time, you are ultimately entitled to this arrangement once things go back to normal. 50/50 parenting time may not be possible when the parents have had to flee to different towns. In these situations, the best thing to do is to come up with a written agreement regarding:

- 1) The length of time the formal parenting arrangement will be suspended due to the wildfires;
- 2) An interim agreement on how and when both parents will see the children until things go back to normal; and
- 3) A date by which both you and your ex will come back to your initial residences and resume the original parenting plan or agreement/order.

You can then turn your agreement into a consent order, which will provide you with assurance that the temporary arrangement will end at some point, and things will go back to normal.

If an agreement is not possible, you will need to apply to Provincial or Supreme Court to get a temporary custody or parenting time order determining #1 to #3 above as soon as possible.

I've always wanted to move or relocate with my child, and these wildfires are a great reason to do that quick and fast!

Not so fast, actually. Temporary wildfires are not a free pass to move a child to another location permanently. Generally, before moving with the child(ren), you will need to provide at least 60 days' notice to the other parent about:

- 1) The intended date of the move; and
- 2) The location of where the child(ren) will reside.

Your ex has 30 days to object to the move, and then you will have to go to Provincial or Supreme Court to have a judge decide whether a permanent move is in the best interests of the child. The fact that wildfires have occurred and you must move temporarily is likely not good enough to move a child permanently and change a custody arrangement. Having said that, if, for example, your houses have both burned down such that returning to the town in the short-term is not feasible (subject, obviously, to government assistance and insurance), it is conceivable that you may be excused from compliance given the sudden and involuntary nature of the forced relocation.

CHILD AND SPOUSAL SUPPORT

I had to flee the wildfires. I'm not working, and I'm not making any money. I can't afford to pay child and spousal support. What can I do?

If your inability to earn an income is due to things that are not under your control—such as wildfires—you can either (a) get your ex's agreement to suspend child and spousal support payments temporarily, or (b) apply to Provincial or Supreme Court to suspend the payments until you can return to work. You will need to address two things with your ex or the court:

- 1) The amount of time the child/spousal support payments will need to be suspended for and why; and/or

- 2) Whether you are willing to pay a higher amount of child and spousal support once you get back to work to make up for the time lost.

If your ex has registered an agreement or court order regarding child and spousal support with the Family Maintenance and Enforcement Program (FMEP), you will need to inform FMEP immediately to ensure that they do not start their collection mechanisms (which include garnishing your tax refunds, confiscating your driver's license and passport, etc.).

Always ask what a reasonable person would do in your situation. If you tell the FMEP, the judge, or your ex that the lack of support will only be temporary, and you will resume payments as soon as you get back to work, no one will fault you for a reasonable proposal. That proposal may also mean that you ask FMEP, your ex, or the court to delay the payments, or allow you to pay them in installments once you get back to work.

If you have an annual review clause, be aware that your support will likely be adjusted next year, usually on this year's income, anyway.

Because of the wildfires, I have to pay major travel costs to see my child, and I can't afford all the costs at once. What can I do?

If you must pay high travel costs—such as airline tickets, gas, rental car and accommodation—in order to see your child who is no longer in your town, you can ask the other parent to:

- 1) Share the costs of the travel 50/50 or in proportionate shares of your incomes;
- 2) Have your ex travel to your town with your child so you can see him/her and then reciprocate;
- 3) Agree to deduct the costs from any s. 7 or spousal payments.

Again, if your ex does not agree, you will need to get a court order where a judge can choose from the above, or make a different order.

PROPERTY AND DEBT DISPUTES

My ex and I are involved in a dispute over our property, which is now damaged because of the fire or evacuation. What should I do?

The BC *Family Law Act* states that spouses are generally entitled to half of the assets and debts accumulated during the marriage. The value of those assets is generally determined at the time of a court

trial or an agreement between the parents. So if the value of the property went from \$1,000,000 to \$500,000 due to the fire and your trial is tomorrow, you will each likely obtain \$250,000 for whatever is left (the present value).

If the damage is repairable and circumstances require you to pay to repair the property, however, you can always ask a judge to hold your ex responsible for (generally) half of the expenses you had to incur to have the property fixed and returned to its normal state. You may also be entitled to funds from insurers or possibly government relief which you can split.

If someone failed to adequately maintain property insurance without informing the other party, it is possible that they may be pursued for the resulting damages.

This info sheet was produced by Leena Yousefi as a pro bono service. Leena is a family lawyer and the founder of YLaw Group, a family law firm in Vancouver, BC.

Resources

RED CROSS: call 1-800-863-6582 to register with Red Cross and make sure you are accounted for during the wildfires emergency. You may be able to receive up to \$600 per household to assist with evacuation costs. Visit the Red Cross Assistance FAQs webpage at www.redcross.ca/how-we-help/current-emergency-responses/british-columbia-fires/bc-fires--assistance-faqs.

FAMILY MAINTENANCE ENFORCEMENT PROGRAM (FMEP):
> (250) 220-4040 or 1-800-663-3455

ACCESS PRO BONO'S LAWYER REFERRAL SERVICE can assist you in finding a lawyer. You can receive a free half-hour consultation:

- > Lower Mainland: (604) 687-3221
- > Toll free: 1-800-663-1919
- > Book online: <https://www.accessprobono.ca/our-programs/lawyer-referral-service>

LAWYER REFERRAL SERVICE can assist you in finding a lawyer. You are entitled to a 30-minute consultation at \$25 with tax.

- > Lower Mainland: (604) 687-3221
- > Toll free: 1-800-663-1919

POVNET:

- > www.povnet.org to search for a legal advocate in your area.

FOR ADDITIONAL INFORMATION ON FAMILY LEGAL MATTERS:

BC FAMILY JUSTICE SERVICES INFO LINE:
> (604) 660-2192; 1-888-216-2211 (toll-free)

DIAL-A-LAW:
> (604)-687-4680
> 1-800-565-5297 (toll-free)
> www.dialalaw.org

LSLAP:
> www.lslap.bc.ca/manual.html

THE PEOPLE'S LAW SCHOOL:
> www.peopleslawschool.ca/publications

LEGAL CLINICS MAY BE ABLE TO ASSIST:

ACCESS PRO BONO'S SUMMARY LEGAL ADVICE PROGRAM:
30 minutes of free legal advice.

- > 1-866-762-6664 to receive legal advice ASAP over the phone
- > (604) 878-7400 to set up an appointment

ATIRA WOMEN'S RESOURCE SOCIETY:
> (604) 331-1407

BATTERED WOMEN'S SUPPORT SERVICES:
> (604) 687-1867; or 1-855-687-1868 (toll-free)

BC MEN'S RESOURCE CENTRE:
> (604) 878-9033

COLLABORATIVE FAMILY LAW GROUP:
> (604) 878-1493

JUSTICE ACCESS CENTRE (JAC):
> Nanaimo: (250) 741-5447; 1-800-578-8511
> Vancouver: (604) 660-2084; 1-800-663-7867
> Victoria: (250) 356-7012; 1-800-663-7867

LAW CENTRE (VICTORIA):
> (250) 385-1221

LEGAL AID BC:
> (604) 408-2172 (Vancouver); or 1-866-577-2525 (toll-free)

MEDIATE BC SOCIETY:
> (604) 985-5355 (Greater Vancouver); or 1-877-811-1190 (toll-free)

PARENT SUPPORT SERVICES SOCIETY OF BC:
> 1-877-345-9777 (provincial line); or 1-855-474-9777 (GRG support line)