

**Welcome to the Jungle:
Navigating Provincial Court and the Trial Process**

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Family Law Trial Fundamentals

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WELCOME TO THE JUNGLE: NAVIGATING PROVINCIAL COURT AND THE TRIAL PROCESS

INTRODUCTION

“Here There Be Dragons”

You’ve been retained on a matter that has been filed in Provincial Court. You’ve spent some time navigating the court system, and you’ve carefully and painstakingly established a map to assist you. You’re now getting to the borders of the map, and you’re unsure how to navigate and what lies beyond. The purpose of this paper is to help update your family law “map” to include Family Court and the Provincial Court process.

The following topics shall be covered:

- I. JURISDICTION
- II. PROCESS
- III. ADVANTAGES and DISADVANTAGES
- IV. VIEWS FROM THE BENCH

I. JURISDICTION

A. Legislation

Unlike the Court of Queen’s Bench, the Provincial Court of Alberta is a creature of statute only; to wit: the *Provincial Court Act*, RSA 2000, c. P-31. Section 2 of the *Act* states simply:

2(1)There shall be a provincial court for Alberta to be styled “The Provincial Court of Alberta”.

(3)The Provincial Court is a court of record.

The *Act* confirms in section 9.2 that every Provincial Court Judge has jurisdiction throughout the Province of Alberta and has all the powers or duties “conferred or imposed...by or under any Act of the Legislature or of the Parliament of Canada.” The Court has the power to find a person in contempt, and even to declare a person a vexatious litigant.¹

B. Family Law Specifics

The Provincial Court is authorized to adjudicate matters of parenting and contact, guardianship, and child and spousal support, as well as tangential family matters such as child welfare matters and

¹ S. 9.61, *Provincial Court Act*, RSA 2000, c. P-31 and s. 23, *Judicature Act*, RSA 2000 c. J-2

Emergency Protection Orders.² The Court can deal with matters affecting married parties who are separated but only under the jurisdiction of the *Family Law Act* [“the *FLA*”], as the Court has no ability to hear matters under the federal *Divorce Act* or the *Matrimonial Property Act*.³

Exceptions: Section 3(2) of the *Family Law Act* confirms the Court has all jurisdiction in all matters under the Act, with a few exceptions. The restrictions include:

- (i) Declarations of Parentage and Irreconcilability;
- (ii) Grants of Exclusive Possession of Property and Use of Household Goods;
- (iii) Any conditions of a support order which would impose trust conditions or a transfer of property, or security against a property, injunctions and orders on default.⁴

No *Parens Patriae*: The other clear restriction on the powers of Family Court is section 3(3) of the *FLA*, which confirms that the Court does not have any inherent jurisdiction and therefore cannot act in a *parens patriae* capacity. The doctrine of *parens patriae* gives the superior Court a wide discretion to make orders in the best interests of children, where there is a “legislative gap” and some particular action is required.⁵ In other words, in order for the Provincial Court to make an order, counsel must be able to direct it to specific legislation authorizing that action.

Concurrent Proceedings & Jurisdiction: Though there is a mechanism in the *FLA* to transfer proceedings from Provincial Court to Queen’s Bench, particularly if there are issues that the Court cannot adjudicate, the Act makes it clear that when an application has been commenced in Provincial Court, “a party may not make another application that is substantially the same to the same court or the other court.”⁶

Though I found no case law on this specific point, it has been my own experience that in recent years the Court has been reluctant to give up its jurisdiction, particularly where an order has already been made, unless there is something like a PN7 report needed, or concurrent property issues which can only be dealt with in Queen’s Bench.

² Generally, the *Family Law Act*, 2003 c. F-4.5, *Child Youth and Family Enhancement Act*, RSA 2000, c. C-12, and *Protection Against Family Violence Act*, RSA 2000 c. P-27.

³ S. 2(1), *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp) as amended; s. 1(a), *Matrimonial Property Act*, RSA 1980, c. M-8.

⁴ S. 3(2) *FLA*.

⁵ *Parens patriae* generally reviewed by Madam Justice Ross in *Alberta (CYFEA, Director) v. D.L.*, 2012 ABQB 562.

⁶ S. 4 *FLA*.