DIVORCE ACT REFORM

The Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act, S.C. 2019, c. 16 (the "Reform Act") represents the first substantive reform of the *Act respecting divorce and corollary relief*, R.S.C. 1985, c. 3 (2nd Supplement) (the "Divorce Act") since 1985. It brings the Divorce Act in line with the realities of the modern Canadian family:

- Reaffirmation that the best interests of the child is the only relevant factor in the attribution of parenting time and parental responsibilities;
- Development of a non-exhaustive list of factors to help parents, social workers, psychologists, mediators, lawyers and judges determine what is in each case the attribution of parenting time and parental responsibilities that serves the best interests of the child;
- Adoption of terminology emphasizing the parent-child relationship, instead of custody and access;
- First express recognition of family violence in the Divorce Act;
- Non-exhaustive definition of what constitutes acts of family violence, including controlling behaviour;
- Development of a non-exhaustive list of additional factors to consider if there is family violence;
- Recognition that spousal abuse is a form of violence against the child, whether the child is directly or indirectly exposed to the violent behaviour;
- Addition of a mechanism to allow automatic recalculation of support payments without judicial intervention;
- Establishment of a simplified procedure for the notification of a parent's intention to relocate and determination of the person who must resort to court in the absence of agreement;
- Establishment of a simplified procedure for the enforcement of support orders in places other than the province of residence of the payee-parent;
- Implementation of two key international family law conventions, one on child protection and the other on the recovery of support orders;
- Encouraging the use of out-of-court family dispute resolution processes; and
- Recognition of the right to a trial in the official language of one's choice across the country.

1. THE SHARING OF TIME AND RESPONSIBILITIES

1.1. LEGISLATIVE CONTEXT

The current Divorce Act refers to "custody" and "access" with respect to the relationships between spouses and their children following divorce. Over the years, this terminology has been removed from the legislation of several provinces and territories, and abandoned by family lawyers and judges. The Reform Act moves in the same direction by referring to "parenting time," "decision-making responsibility," and "parenting orders."

In its 2014 final report on the *Supporting Families Experiencing Separation and Divorce Initiative*, the Department of Justice noted that the wording in the Divorce Act differs from that used by the provinces and territories, which are increasingly choosing other wording in order to reduce conflict and encourage cooperation.

According to the Research and Statistics Division of the Department of Justice, over the past 15 years, there has been a steady decrease in the proportion of consent orders having children live primarily with their mothers (65% before 2006 to 55% in 2014–2015) and an increase in the proportion of shared custody cases (12% before 2006 to 28% in 2014–2015). The trends are similar for contested orders. There has been a slight decrease in the proportion of contested orders having children live primarily with their mothers (62% before 2006 to 59% in 2014–2015) and an increase in the proportion of cases where courts have ordered shared custody (8% before 2006 to 23% in 2014–2015).

It is worth noting that according to the 2016 census, 6.3% of Canadians, or 2.2 million, lived in a private residence in a multigenerational household, where at least three generations of the same family lived together. The number of such households is steadily increasing.

1.2. PARENTING ORDERS

Under new section 16.1, a "parenting order" is an order made by a court granting decision-making responsibility or parenting time. This replaces the concept of "custody order" in the Divorce Act. An application for a parenting order can be made by a spouse or, with leave of the court, by another parent (who is not one of the spouses) or a person other than a spouse who stands, or intends to stand, in the place of a parent.

Section 2, as amended by the Reform Act, provides that parenting time means the time that a child of the marriage spends in the care of a person referred to in the parenting order, whether or not the child is physically with that person during that entire time (e.g. child at the daycare or at school for a portion of the day). During that time, the person referred to in the parenting order has the authority to make day-to-day decisions affecting the child. These include decisions such as the child's bath time and clothing.

Under new subsection 16(6), parenting time is granted based on the principle that a child should have as much time with each spouse as is consistent with the best interests of the child. It is important to distinguish between this concept and the presumption in favour of what is often called shared custody. In its 1998 report *For the Sake of the Children*, the Special Joint Committee on Child Custody and Access stated that a presumption in favour of a particular parenting agreement would not be in the best interests of the child. The lack of a presumption is intended to allow the courts to adapt parenting orders on a case-by-case basis in the best interests of each child. Depending on the circumstances, the best interests of the child could require an equal sharing of parenting time or the allocation of parenting time to a single

person. This could be the case, for example, if there is family violence or one of the parents has health problems.

Decision-making responsibility may be granted to one or more of the persons referred to in a parenting order. In Quebec, this is the equivalent of parental authority as defined in the *Civil Code of Quebec*, CQLR c CCQ-1991 (the "Civil Code"). Decision-making responsibility involves any significant decisions about a child's well-being, including in respect of health, education, culture, language, religion, spirituality and significant extracurricular activities.

In addition to parenting time and decision-making responsibility, parenting orders may address any other relevant issue, as provided for in paragraphs 16(4)(c) and (d). The Reform Act also contains examples of matters that can be dealt with under paragraph (d), in new subsections 16.1(4) to 16.1(9), including the requirement to attend a family dispute resolution process, authorization to relocate the child (or a prohibition against doing so), requirements with respect to any means of communication between a child and another person to whom parenting time or decision-making responsibility is allocated, the requirement that parenting time or the transfer of the child from one person to another be supervised, and the prohibition against removing the child from a specific geographic area.

This prohibition may be subject to the written consent of any specified person or a court order authorizing the removal. The provisions prohibiting removal are in keeping with the current practice of the courts, developed despite the Divorce Act's silence on this subject. The prohibition against withdrawal is only imposed in exceptional circumstances, such as cases where there is a risk of abduction.

1.3. CONTACT ORDERS

Under new section 16.5, a "contact order" allows a person other than a spouse to have contact with a child. This could be any person, such as a grandparent. Usually, anyone important in the child's life will be able to have communication with the child during the parenting time allocated to a spouse. The contact order provides a solution for conflicts where such communications are difficult or even impossible.

The main distinction between a parenting order and a contact order is that a contact order does not automatically come with a right to make day-to-day decisions about the child during the contact period.

An application for a contact order can be made only as part of divorce proceedings between spouses in which an application for a parenting order has been made. In the absence of a divorce dispute concerning parenting time or decision-making responsibilities, a person other than a spouse who wishes to have contact with a dependent child must make an application under the Civil Code or other provincial legislation. This practice applies because Parliament has no jurisdiction outside the existence of a marriage and divorce proceedings between spouses.

The contact order may provide for contact in the form of visits or any other form of communication and may deal with any other matter that the court considers appropriate. In deciding on the contact order, the court must consider any relevant factors, including whether contact between the applicant and the child could otherwise occur.

1.4. PARENTING PLANS

Although this is already a standard practice, new section 16.6 explicitly recognizes that the court may include in a parenting order or a contact order any parenting plan agreed to by the parties.

There are no specific restrictions on the content of the parenting plan. The parties could therefore anticipate that the plan will evolve based on the child's needs. There are also no requirements on the form that the plan takes. It can ensue from procedures or from statements included in the court file. However, before incorporating the parenting plan, the court must ensure that it is in the best interests of the child to do so (section 16.6). If it is not, the court may amend it.

1.5. SUMMARY TABLE OF AMENDMENTS

	Parenting order	**Contact order**
Who can apply?	***Subs. 16.1(1)*** - A spouse - With leave of the court: Person other than a spouse who is a parent of the child - With leave of the court: Person other than a spouse who stands, or intends to stand, in the place of a parent	***Subs. 16.5(1)*** - With leave of the court: Person other than a spouse - e.g., brothers, sisters, grandparents
Content of the order	***Subss. 16.1(4), (6)–(9)*** - Allocation of parenting time, and/or - Allocation of decision-making responsibility, and/or - Requirements with respect to any means of communication between the child and another person to whom parenting time or decision-making responsibility is allocated, and/or - Requirement to attend a family dispute resolution process, and/or - Authorization to relocate the child, or prohibition against doing so, and/or - Requirement that parenting time or the transfer of the child from one person to another be supervised, and/or - Prohibition against removing a child from a specified geographic area without consent, and/or - Any other matter that the court considers appropriate.	***Subss. 16.5(5), (7) and (8):*** - Contact between the individual concerned and the child in the form of visits or by any means of communication, and/or - Requirement that the contact or transfer of the child from one person to another be supervised, and/or - Prohibition against removing a child from a specified geographic area without consent, and/or - Any other matter that the court considers appropriate.
Length	***Subs. 16.1(5)*** For a definite or indefinite period or until a specified event occurs	***Subs. 16.1(5)*** For a definite or indefinite period or until a specified event occurs

FURTHER READING

1. *Young* v. *Young*, [1993] 4 SCR 3.
2. Examples of provincial legislation: *The Children's Law Act, 1997*, SS 1997, c C-8.2; *Family Law Act*, SA 2003, c F-4.5; *Family Law Act*, SBC 2011, c 25.
3. Department of Justice, Evaluation Division, *Supporting Families Experiencing Separation and Divorce Initiative Evaluation*, Final Report, March 2014.
4. Special Joint Committee on Child Custody and Access, *For the Sake of the Children*, Ottawa, Parliament of Canada, 1998.
5. Statistics Canada, *Families, households and marital status: Key results from the 2016 Census*, August 2017.
6. Department of Justice, Research and Statistics Division, *JustFacts – Child Custody and Access*, November 2017.

2. BEST INTERESTS OF THE CHILD

2.1. LEGISLATIVE CONTEXT

Although marriage may be on the decline, it is still fairly common given that 46% of Canadians aged 15 and older were married in 2018. In Quebec, 42% of children aged 18 and under were born to or grew up in families where the parents are married.

However, a large number of marriages end in divorce: as of July 1, 2018, 12% of Canadians and 15% of Quebecers were divorced. Of the 5 million Canadians who divorced or separated between 1991 and 2011, 38% had a child together at the time of their separation or divorce.

The 2016 Census found that children aged 14 and under make up nearly 17% of Canada's population (5,839,565 people). Three in 10 (30.3%) of these children live in a single-parent family, in a blended family or without their parents. These data further showed that over 92% of Indigenous children do not live in an intact family, which is a family consisting of two parents and their biological or adopted children.

Subsections 16(8) and 17(5) of the Divorce Act currently require the court to make custody or access orders taking into consideration "only the best interests of the child." However, the Divorce Act contains no definition of the "best interests of the child" and does not require spouses to act in the best interests of the child. Over the years, this concept has been established by case law and family-related legislation in all the provinces and territories, with the exception of Prince Edward Island. It covers various criteria, including the quality of the relationship between the child and the parent, the child's emotional, physical, psychological, social and economic needs, and the child's preferences.

In Quebec, article 33 of the Civil Code stipulates that, in addition to the child's moral, intellectual, emotional and physical needs, consideration must be given to their age, health, personality and family environment, and to the other aspects of their situation.

2.2. AMENDMENTS

During the last major reform of the Act in 1985, the key amendments addressed the marital relationship. The Reform Act's terminology ("parenting order," "parenting time," "decision-making responsibility") emphasizes the relationship that each parent has with the child. This is the approach taken in Nova Scotia, Alberta and British Columbia, and in a number of other Western countries, including Australia, New Zealand and the United Kingdom.

New section 7.1 expressly provides that persons to whom parenting time or decision-making responsibility for a child has been allocated under a parenting order or who have contact with the child under a contact order must act in a manner consistent with the best interests of the child. New section 7.2 requires parties to a proceeding to protect children from conflict arising from the proceeding to the best of their ability.

New section 16 asks the court to consider only the best interests of the child when deciding on an order involving a child. The court must give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

New subsection 16(3) adds a non-exhaustive list of the factors the court considers when determining the best interests of the child. The list includes the child's needs, the child's relationships with the important people in the child's life, the history of care of the child, the child's preferences, the child's Indigenous heritage, the child's cultural upbringing and the ability of the person subject to the parenting order to meet the child's needs. This is largely a codification of the criteria established by case law. Codification is an important tool for the courts, professionals and parents, especially those who represent themselves.

New subsection 16(3) proposes an overall assessment of these factors rather than a hierarchy of the child's needs and the inclusion of any other relevant factor. To resolve a conflict between the various factors, the court must rely on the primary consideration of the child's safety, security and well-being. A similar approach is set out in the family legislation of Alberta and British Columbia.

FURTHER READING

1) *Van de Pierre v. Edwards*, 2001 SCC 60.
2) Statistics Canada, *Census Profile, 2016 Census*, February 2017.
3) Department of Justice, Research and Statistics Division, *JustFacts – Child Custody and Access*, November 2017.
4) Examples of provincial legislation: *The Children's Law Act, 1997*, SS 1997, c C-8.2; *Family Law Act*, SA 2003, c F-4.5; *Family Law Act*, SBC 2011, c 25.
5) Shane Simpson et al., *An Evaluation of Alberta's Family Law Act*, 2009 CanLIIDocs 47.
6) Department of Justice, Evaluation Division, *Supporting Families Experiencing Separation and Divorce Initiative*, Final Report, March 2014.

3. FAMILY VIOLENCE

3.1. LEGISLATIVE CONTEXT

According to data from 2017, nearly 96,000 cases of intimate partner violence were reported to the police that year. In 79% of the cases, the victims were women. In other words, women represented 8 in 10 victims of violence by a current or former spouse or dating partner. Of the 933 intimate partner homicides which occurred between 2007 and 2017, nearly 80% involved female victims.

As for male victims, most were also killed by current or former legally married or common-law wives (59%) and girlfriends (27%). However, a notable proportion of these men were killed by same-sex spouses or dating partners (14%).

According to another study conducted by the Department of Justice in 2009, close to two thirds (64%) of the victims of intimate partner violence committed during or after separation stated that a child had either heard or witnessed the act.

Studies also show that the trauma of being the direct victim of family violence or being exposed to it can damage children's brain development and negatively affect them throughout life. For example, according to a longitudinal study by McMaster University, 48% of Canadian inmates were victims of physical abuse during their childhood and 52% of them were victims of psychological abuse during the same period. No differences were observed between men and women.

3.2. A NEW DEFINITION

The main amendment regarding family violence that the Reform Act makes is to add a definition to the Divorce Act identifying four categories of conduct. According to the definition, family violence means any conduct, whether or not it constitutes a criminal offence, by a family member toward another family member that is:

(1) violent;
(2) threatening;
(3) demonstrates a pattern of coercive and controlling behaviour;
(4) causes a family member to fear for their safety or the safety of someone else.

It should be noted that the word "pattern" applies only to the third category of conduct regarding coercive and controlling behaviour.

The definition recognizes that children are particularly vulnerable and that family violence has negative impacts on them. The definition indicates that for being exposed to family violence, for a child, is an act of family violence in itself.

The definition includes a non-exhaustive list of specific behaviours considered to be manifestations of the various forms of conduct as defined (physical abuse, sexual abuse, threats, harassment, psychological abuse, financial abuse, threats to harm an animal and the harming of an animal). These behaviours are similar to the ones found in British Columbia's *Family Law Act*.

3.3. CONSIDERATIONS IN DETERMINING THE BEST INTERESTS OF THE CHILD

Under new section 16, in determining the best interests of the child, the court shall consider any family violence and its impact on, among other things, the ability of the violent parent to care for the child, and the appropriateness of making an order that would require cooperation between the parties. Once evidence demonstrates the existence of family violence, the court must conduct a closer evaluation and consider a list of additional factors to determine the appropriate provisions of the parenting order (section 16(4)).

New section 7.8 requires courts to determine whether there are any orders (e.g., a civil protection order, a child protection order, an order of a criminal nature) that may affect an order made under the Divorce Act. This provision is intended to avoid situations such as one where a parent subject to an order to prevent them from contacting their child would be allowed by the family court to spend time with the child in question.

FURTHER READING

1) Melissa Lindsey, *Violence Perpetrated by Ex-spouses in Canada*, Ottawa, Department of Justice, Research and Statistics Division, 2014.
2) M. Burczycka, S. Conroy and L. Savage, The Canadian Centre for Justice Statistics, *Family violence in Canada: A statistical profile, 2017*, December 2018.
3) McMaster University, *Half of people in Canadian prisons were abused as children: McMaster research*, January 2018.
4) Definition of "family violence" in *Family Law Act*, SBC 2011, c. 25.

4. DIVERTING SPOUSAL DISPUTES FROM THE COURT SYSTEM

4.1. LEGISLATIVE CONTEXT

Although the number of family cases heard by the courts decreased between 2012–2013 and 2016–2017, the share of family cases among all matters remains constant. In 2016–2017, family matters accounted for approximately 38% of the cases heard by courts in the 10 provinces and territories that took part in the Civil Court Survey.

According to a 2016 report by the Canadian Forum on Civil Justice, within a three-year period, 5.1% of Canadian adults—more than one million people—will have family-related legal problems. Those who choose to settle their issues through the courts face high costs and lengthy delays.

4.2. FAMILY DISPUTE RESOLUTION PROCESS

In order to facilitate access to justice, new section 7.3 requires the parties to try, to the extent that it is appropriate to do so, to settle their disputes through a family dispute resolution process. The new, non-exhaustive definition of "family dispute resolution process" contained in the Divorce Act includes negotiation, mediation and collaborative law.

A parallel obligation is imposed on counsel to encourage their clients to use a family dispute resolution process, unless clearly contraindicated by the circumstances of the case. For example, in the event of a power imbalance between the spouses or in cases involving family violence, counsel will not be required to encourage the use of alternative dispute resolution processes.

Lastly, under new subsection 16.1(6), in any parenting order it makes, the court may impose an obligation on the parties to use family dispute resolution processes where provincial legislation provides for it. However, in assessing the appropriateness of an order that requires cooperation between the parties, the court must consider whether there is any family violence (new subsection 16(3)).

4.3. ADMINISTRATIVE CALCULATION OF CHILD SUPPORT

Nine provinces and territories have entered into agreements with the federal government under the Divorce Act to provide provincial child support services.[1] New section 25.01 expands the jurisdiction of these services. Spouses will be able to use them instead of the court to determine the initial amount of child support and to obtain a recalculation.

In all cases, whether for the initial calculation or the recalculation, the services will have to follow the applicable guidelines. If one or both spouses disagree with the initial calculation or recalculation, they may apply to the court (new subsections 25.05(5) and 25.1(4)).

[1] Nine agreements have been entered into under current section 25.1 of the Divorce Act with the following provinces and territories: Manitoba (July 2006), Prince Edward Island (August 2006), Newfoundland and Labrador (2002 and 2007), Alberta (December 2009), Quebec (June 2014), Nova Scotia (October 2014), Yukon (June 2015), Ontario (April 2016), and Saskatchewan (July 2018).

FURTHER READING

1) Statistics Canada, Civil Court Survey, 2016/2017, April 2019.
2) Action Committee on Access to Justice in Civil and Family Matters (Cromwell Committee), *Access to Civil & Family Justice: A Roadmap for Change*, Ottawa, Action Committee on Access to Justice in Civil and Family Matters, October 2013.
3) Trevor C.W. Farrow, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, Ottawa, Canadian Forum on Civil Justice, 2016.
4) An example of provincial legislation providing family dispute resolution processes: *Family Law Act*, SBC 2011, c. 25.

5. RELOCATION

5.1. LEGISLATIVE CONTEXT

According to census data, separated or divorced individuals are more mobile than those who are married. A review of Canadian case law on relocation showed that in almost all cases (92%) it was the mothers who wanted to move.

According to Canadian case law, the main reasons for the request to relocate were to improve the economic situation or job opportunities, or to be closer to family or a new intimate partner.

The current Act does not contain a special regime applicable to the relocation of the child or one of the persons with "custody." British Columbia and Nova Scotia are the only provinces to have included procedures related to relocation in their family laws.

In a survey of lawyers and judges who attended the 2016 National Family Law Program, more than 98% of the 217 respondents indicated that family cases are more difficult to settle when a relocation is involved. About 96% of lawyers added that a proposed move increases the likelihood that a case will require a trial and judicial intervention to be settled.

In its landmark decision in *Gordon* v. *Goertz*, the Supreme Court of Canada held that any dispute concerning a relocation of the child should be settled based on the best interests of the child test. To guide the courts, the Supreme Court provided a non-exhaustive list of relevant factors, including the desirability of maximizing contact between the child and both parents, the child's physical, emotional, social and economic needs, and his or her wishes and preferences. The Court did not specify the order of importance of these various factors, leaving all latitude to the courts. The Court added that the reason for the relocation should be considered only in exceptional cases.

The Supreme Court's decision has led to several, sometimes contradictory, lines of authority. Following one of the main trends, relocation is refused if custody is shared equally.

5.2. A NEW RELOCATION REGIME

To reduce the use of court time and encourage discussion between spouses, a new notice system has been introduced that distinguishes between relocation and a change of residence. A relocation is any change in residence of a dependent child or a person with a parenting order (or whose application is underway) that is likely to have a significant impact on the child's relationship with anyone who has a parenting order or a contact order (section 2 of the Divorce Act, as amended).

5.2.1 Notice

According to new section 16.9, anyone with a parenting order considering a relocation must provide at least 60 days' notice to any person with parenting time, decision-making responsibilities or contact with the child. The notice requirements and timeframe are similar to the requirements of the British Columbia *Family Law Act* and the Nova Scotia *Parenting and Support Act*.

New subsection 16.9(2) requires that the notice set out the expected date of the relocation, the address of the new place of residence and contact information of the person or child, a proposal as to how parenting

time, decision-making responsibility or contact, as the case may be, could be exercised, and any other information prescribed by the regulations.

Notice is required even when a parent wishes to move without the child in question. Whether or not the parent is accompanied by the child, the move could affect the existing parenting arrangement and the relationship between the parent and the child. Under new subsection 16.9(3), the court may waive part of the requirement to give notice, particularly where there is a risk of family violence.

Any person receiving a notice of relocation may object, within 30 days of receipt of the notice, by way of court application or by sending a form indicating the reasons for the objection and their opinion on the proposal as to how parenting time, decision-making responsibility or contact, as the case may be, could be exercised.

5.2.2 Factors to consider

If an out-of-court settlement is not possible, the court will have to decide the matter according to the best interests of the child. In addition to the overall best interests of the child criteria in new section 16, under new subsection 16.92(1), the court will have to consider seven other criteria: the reasons for the relocation (contrary to *Gordon* v. *Goertz*), the impact on the child, the amount of time spent with the child by each person who has parenting time, whether the person who intends to relocate the child complied with any applicable notice requirement, any restriction on the geographic area in which the child is to reside, the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, and whether each person who has parenting time or decision-making responsibility has complied with their obligations under legislation, an order, arbitral award, or agreement.

However, under new subsection 16.92(2), the court is not to consider, if the child's relocation were to be prohibited, whether or not the person who intends to relocate would do so without the child. This has been a controversial issue in case law to date, as it is seen as placing the parent in a double bind. If the person says that they would not move without the child, this could be interpreted as a sign that the relocation is not important enough. If the person claims that they would move without the child, the court may conclude that the emotional ties with the child are weak.

5.2.3. Burden of proof

With respect to the burden of proof, new section 16.93 provides the following.

1. If the parenting time of the parties is substantially equal, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

2. If the child spends the vast majority of their time with the party who wishes to relocate, the party opposing the relocation has the burden of proving that it is not in the best interests of the child.

In any other case, it is up to each party to demonstrate that the relocation is or is not in the child's best interests. The approach is similar to legislation in Nova Scotia and case law on relocations.

If the court authorizes a relocation, new section 16.95 stipulates that it may determine that the costs associated with the exercise of parenting time by any person who does not relocate are to be divided between that person and the person who relocates the child. This provision is intended to compensate the

non-relocating parent for expenses incurred to exercise their parenting time (which may be different from previous expenses), such as gas, bus, train or plane tickets, or accommodations. The way in which expenses are to be shared will be determined on a case-by-base basis.

5.2.4. Change of Residence that does not constitute a relocation

For any change of residence by a person with a parenting order, under new section 16.8, that person must notify any other person who has parenting time, decision-making responsibility or contact with the child of their intention. There is no timeframe stipulated for providing the notice.

The notice must set out the new place of residence, the new contact information, and the date on which the change is expected to occur. The court may order that this requirement does not apply, particularly where there is a risk of family violence. There can be no objection to a simple change of residence.

5.3. CHANGE IN PLACE OF RESIDENCE BY A PERSON WITH A CONTACT ORDER

A person with a contact order who is considering a change in their place of residence that is likely to have a significant impact on their relationship with the child must give 60 days' notice to anyone with parenting time or decision-making responsibility in respect of the child (new section 16.96). There is no specific timeframe for issuing a notice regarding any other type of change in place of residence.

The notice must include a proposal on how contact could be exercised in light of the relocation. The court may order that this notice requirement does not apply, particularly where there is a risk of family violence.

However, there can be no objection to such a move since the person is moving without the child. The notice is required to inform the parents and the child and to plan for any necessary adjustments.

5.4. SUMMARY TABLE OF AMENDMENTS

	The individual considering a move has… ↓	Timing of notice	Notice recipient	Content of notice	Objection
Relocation / Change in place of residence likely to have a significant impact on child's relationship with the person	**Parenting time / decision-making responsibility (parenting order)**	***S. 16.9*** Min. 60 days Exemption possible, e.g., family violence	***S. 16.9*** Person with parenting time, decision-making responsibility or a contact order	***S. 16.9*** - Expected date of relocation - New address and contact information - Proposal as to how parenting time, decision-making responsibility or contact could be exercised - Other information prescribed by the regulations	***Ss. 16.91–16.93*** Within 30 days of receipt of notice, stating - Reasons for objection - Opinion on proposal for the exercise of parenting time, decision-making responsibility or contact - Other information prescribed by the regulations
	Contact (contact order)	***Subs. 16.96(2)*** Min. 60 days Exemption possible, e.g., family violence	***Subss. 16.96(1) and (2)*** Person with parenting time or decision-making responsibility	***Subss. 16.96(1) and (2)*** - Expected date of relocation - New address and contact information - Proposal as to how contact could be exercised - Other information prescribed by the regulations	Objection not possible
Change of Residence	**Parenting time / decision-making responsibility (parenting order)**	***S. 16.8*** None specified Exemption possible, e.g., family violence	***S. 16.8*** Person with parenting time, decision-making responsibility or a contact order	***S. 16.8*** - Expected date of relocation - New address and contact information	Objection not possible
	Contact (contact order)	***Subs. 16.96(1)*** None specified Exemption possible, e.g., family violence	***Subs. 16.96(1)*** Person with parenting time or decision-making responsibility	***Subs. 16.96(1)*** - Expected date of relocation - New address and contact information	Objection not possible

FURTHER READING

1) *Gordon v. Goertz*, [1996] 2 SCR 27.
2) Nicholas Bala, L. D. Bertrand, A. Wheeler, J. J. Paetsch and E. Holder, *A Study of Post-Separation/Divorce Parental Relocation*, Ottawa, Department of Justice, 2014.
3) Canadian Research Institute for Law and the Family, *The Practice of Family Law in Canada: Results from a Survey of Participants at the 2016 National Family Law Program*, Ottawa, Department of Justice, October 2016.
4) *Family Law Act*, SBC 2011, c 25, ss. 65–71; *Parenting and Support Act*, RSNS 1989, c 160, s. 18E.