John-Paul Boyd
Arbitration Chambers
Resolving Family Law Disputes

The new Divorce Act

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Presentation

1. All about that bill, 'bout that bill, no treble
2. Jurisdiction (ss. 3 to 6.3)
3. New duties of parties (ss. 7.1 to 7.6), legal advisers (7.7) and the court (s. 7.8)
4. Parenting after separation (ss. 16 to 16.4), contact (section 16.5) and foreign orders (s. 22.1)
5. Moving after separation (ss. 16.8 to 16.96)
6. Interjurisdictional orders about support (ss. 18.1 to 19.1)

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Materials

- The New Divorce Act – an unofficial consolidation of Bill C-78 and the 1985 Divorce Act
- A Brief Overview of Bill C-78 – a not particularly brief, nor particularly plain-spoken, summary of the key changes introduced by the bill

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Resources

- Bill C-78
  http://canlii.ca/t/53rg6
- The current Divorce Act
  http://canlii.ca/t/53z6j
- Department of Justice's "changes to family laws" page summarizing Bill C-78 with information about family violence, parenting after separation and resolving disputes out of court
  https://www.justice.gc.ca/eng/fl-df/cfl-mdf/index.html

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Bill C-78

A short history and a shorter explanation

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Bill C-78

- Tabled for first reading in the House on 22 May 2018, cleared third reading in the Senate on 18 June 2019 and received royal assent as SC 2019, c. 16 three days later
- To have come into force on 1 July 2020, but delayed until 1 March 2021
- Major amendments address parenting after separation, best interests of the child, relocation and interjurisdictional matters
- Amendments suspiciously similar to BC's Family Law Act

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Parenting after separation

- Parenting after separation traditionally handled in terms of *custody*, *access* and *guardianship*
- First federal Divorce Act introduced in 1968 and talked about *custody* and *access*, on terms very much like current act
- *Guardianship* is within the exclusive jurisdiction of provinces, and as a result our old Family Relations Act used all three terms
- Old approach continues to be used in most other provinces

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Alberta's Family Law Act

- Alberta was the first province to ditch *custody* and *access* in 2005 with its Family Law Act
- The new legislation talked about *guardians*, who are presumptively parents but might include other people, and exercise the *powers, responsibilities and entitlements of guardianship*
- It also talked about *parenting orders* that allocate the powers of guardianship and *parenting time*, and about *contact orders* for people other than guardians

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BC's Family Law Act

- We followed Alberta's lead in 2013 with the Family Law Act, which replaced the old Family Relations Act
- Under the current legislation, we talk about *guardians*, who are usually but not always parents, exercise *parental responsibilities* and have *parenting time* with their child
- We also talk about people other than guardians who may have *contact* with a child
- The legislation also introduced a brand-new test to deal with *relocation* issues

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Nova Scotia's Parenting & Support Act

- In 2015, Nova Scotia's legislation started talking about *guardians* who have *custody* and *parenting time*, and other people who might have *contact* or *interaction* with a child
- The legislation included a new test to deal with *relocation* applications, much like BC's test

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Bill C-78

- Bill C-78 was the product of many years of research, policy discussions and consultations undertaken with stakeholders, provincial and territorial governments, academics and justice system professionals
- Government says the bill has "four key objectives," to:
  1. promote the best interests of the child;
  2. address family violence;
  3. help to reduce child poverty; and,
  4. "make Canada's family justice system more accessible and efficient"

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Parenting after separation

- The federal bill can't talk about guardianship
- Instead, it talks about *spouses* who have *parenting orders* that deal with *decision-making responsibility* and *parenting time*, and about people other than spouses who might have *contact*
- Includes:
  - Important new test to deal with *relocation*, different than BC's test
  - Much expanded discussion of considerations and factors involved in determining children's best interests, and impact of family violence
  - New duties requiring spouses to protect children from their conflict

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A quick reminder

- The Divorce Act only applies to people who are or used to be married to each other
- People who aren't spouses can ask for orders about parenting, but they have to get permission first
- Only the Supreme Court can make orders under the Divorce Act
- Divorce Act orders are effective throughout Canada

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What's with those weird numbers?

- Governments are often careful about how legislation is changed to add bit – deletions aren't a problem – because they don't want to go around renumbering things unless they're introducing a whole new law
- If you want a new section between section 6 and section 7 without disrupting everything, it gets numbered as 6.1 (other new sections would get numbered 6.2, 6.3, 6.4 and so on)
- The sections would then go 3, 4, 5, 6, 6.1, 7 and 8…

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What's with those weird numbers?

- Same thing goes for subsections, something between (b) and (c) becomes (b.1), (b.2) and so on
- The subsections would then go (a), (b), (b.1), (c) and (d)…
- When the new sections and subsections go past 9, things get even weirder, and get numbered like this: 16.7, 16.8, 16.9, 16.91, 16.92, 16.93, 17 and 18…

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Jurisdiction

Some small but important changes

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Jurisdiction, sections 3 to 5

- Sections 3, 4 and 5 talk about
  - When the court has jurisdiction over divorce proceedings, corollary relief proceedings and variation proceeding
  - What happens when spouses – and former spouses – magically start a proceeding on the same day in different provinces
- Federal court now just decided which court takes the case if people start proceedings on the same day
  - Usually, the court in the jurisdiction where the child normally lives wins
  - Otherwise, it's the court in the place that was the parties' last common residence

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Jurisdiction, sections 6 to 6.3

- Section 6 talks about transfers of cases about parenting orders between jurisdictions where the child normally lives in a different province
- New section 6.1 extends the idea to cases about contact orders
- New section 6.2 says that if a child is wrongfully removed from a province, the court with jurisdiction is the court where the child normally lived
- New section 6.3 talks about when Canadian court can make decisions when a child doesn't normally live here

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New duties

New duties of parties, legal advisers and the courts

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Duties of parties, section 7.1

- A **person** with parenting time, decision-making responsibility or contact must exercise those entitlements in manner "consistent with the best interests of the child"
- New best-interests test and factors appear at section 16 but application of the test is required only of the court; unlike some provincial legislation, obligation to apply best-interests test does not explicitly extend to parties

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Duties of parties, section 7.2

- A **party** to "a proceeding" under the act – divorce proceedings, corollary relief proceedings or variation proceedings – must protect children from conflict arising from the proceeding "to the best of their ability"
- "Party" includes persons other than spouses who are applying for *parenting time* or *decision-making responsibility* **and**
  - Are a parent of the child
  - Stand in the place of a parent, or
  - Intend to stand in the place of a parent

  or are applying for a *contact order*

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Duties of parties, section 7.3

- The **parties** to a proceeding must try to resolve corollary claims through a family dispute resolution process "to the extent that it is appropriate to do so"
- "Family dispute resolution process" means any out-of-court dispute resolution process, including:
  - Negotiation
  - Mediation
  - Collaborative negotiation
- No requirement that process be consensus-based and non-adversarial

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Duties of parties, section 7.4

- A **party** to a proceeding or a **person** subject to an order must provide "complete, accurate and up-to-date information if required to do so"
- Requirements to provide information:
  - Section 7.8, court may ask for information about civil protection, child protection and criminal orders and proceedings
  - Section 16.4, person with parenting time or decision-making responsibility is entitled to information about child's wellbeing
  - Sections 18.1 and 19, information for interjurisdictional support applications
  - Section 25.1, child support calculation service entitled to income information
  - Section 26.1, regulations on production of information for child support orders

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Duties of parties, section 7.5

- A **person** subject to an order must comply with the order to which they are subject
- Government commentary:

  "Some people do not comply with orders related to parenting or support. The amendment aims to encourage compliance by clearly stating the obligation to obey court orders while they are in effect."

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Duties of parties, section 7.6

- A **party** commencing or replying to a proceeding must include statement certifying they are aware of their duties in their pleading
- Government commentary:
  "Many parties represent themselves in proceedings under the Act. This amendment draws their attention to their legal obligations."

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Duties of legal advisers, section 7.7

- A **legal adviser** who acts for a **spouse** must:
  - Point out the parts of the act that aim at reconciliation, per current section 9(1)(a)
  - Discuss the possibility of reconciliation and counselling options, per section 9(1)(b)
- A **legal adviser** who acts for a **person** must:
  - Encourage resolution through "family dispute resolution process," expanding scope and application of current section 9(2)
  - Discuss family justice services, riffing on section 9(2)
  - Point out the parties' duties under the act, new
- A **legal adviser** filing a pleading must certify their compliance with these duties

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Duties of the court, section 7.8

- Section 7.8(2):

  In a proceeding for corollary relief and in relation to any party to that proceeding, the court has a duty to consider if any of the following are pending or in effect, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so:

  (a) a civil protection order or a proceeding in relation to such an order;

  (b) a child protection order, proceeding, agreement or measure; or

  (c) an order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature.

  In order to carry out the duty, the court may make inquiries of the parties or review information that is readily available and that has been obtained through a search carried out in accordance with provincial law, including the rules made under subsection 25(2).

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Duties of the court, sections 10 & 11

- Duty to be satisfied there is no possibility of reconciliation, and encourage reconciliation if such a possibility exists, section 10(1) and (2), continued
- Marriage counsellors not compellable and evidence of statements made during counselling inadmissible, section 10(4) and (5), continued
- Bars to divorce regarding collusion, connivance, condonation and payment of child support, section 11(1), (2) and (3), continued
- Negligible update to definition of "collusion" at section 11(4)

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Parenting after separation

New language, new concepts, new rules

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New concepts, new language

- *Custody*, *custody order* and *access* are repealed
- New terms:
  - **Contact order** – an order under s. 16.5 providing for contact between a child of the marriage and "a person other than a spouse"
  - **Decision-making responsibility** – responsibility for making "significant decisions" about child's well-being, including health, education, culture, extra-curricular activities
  - **Parenting time** – the time a child is in the care of a spouse
  - **Parenting order** – an order under s. 16.1 providing for the exercise of parenting time or decision-making responsibility by a spouse or person standing in the place of a parent in respect of a child of the marriage
- Consequential amendments to *corollary relief proceeding* and *divorce proceeding*

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New concepts, new language

- New terms:
  - **Family dispute resolution process** – out-of-court dispute resolution processes, including negotiation, collaborative negotiation, mediation
  - **Family member** – a member of the households of a child of the marriage or of a spouse, including new romantic partners who participate in household activities
  - **Family violence** – conduct that is violent, threatening or constitutes a pattern of coercive behaviour that causes a family member to fear for their own safety or that of another person, including sexual abuse, harassment, financial abuse, psychological abuse, failure to provide necessaries of life
  - **Legal advisor** – "any person who is qualified, in accordance with the laws of a province, to represent or provide legal advice to another person in a proceeding under this act"

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New concepts, new language

- New terms:
  - **Relocation** – a change in the residence of a child of the marriage or of a person with parenting time or decision-making responsibility that "is likely to have a significant impact" on the child's relationship with:
    a) persons with parenting time or decision-making responsibility;
    b) persons with a pending application for a parenting order;
    c) persons with contact

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Best interests of the child

- "Court shall give *primary consideration* to the child's physical, emotional and psychological safety, security and well-being" when considering factors
- Factors listed at s. 16(3):
  - Child's needs, given age and stage of development
  - Nature and strength of child's relationships with spouses, siblings, grandparents and "any other person who plays an important role in the child's life"
  - Each spouse's willingness to support child's relationship with other spouse
  - History of child's care
  - Child's views and preferences, unless they cannot be ascertained, giving weight to child's age and maturity
  - Child's cultural, including Indigenous, heritage

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Best interests of the child

- Factors listed at s. 16(3), continued:
  - Plans for child's care
  - Ability of "each person in respect of whom the order would apply" to care for and meet the needs of the child
  - Ability of "each person in respect of whom the order would apply" to communicate and cooperate with one another
  - Presence of family violence and its impact on
    - Ability to care for the child
    - Appropriateness of order requiring persons to cooperate
  - "Any" civil or criminal proceedings or order relevant to "safety, security and well-being" of child

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Best interests of the child

- Factors to determine impact of family violence at s. 16(3)(j) listed at s. 16(4):
  - Nature, seriousness and frequency
  - Whether pattern of coercive, controlling behaviour
  - Whether directed to child
  - Whether child directly or indirectly exposed
  - Harm or risk of harm to child
  - Compromise to safety of child or family member
  - Whether causes child or family member to fear for safety
  - Step taken by abuser to prevent further family violence and improve their ability to care for the child
  - "Any other relevant factor"

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Parenting orders

- Orders for parenting time or decision-making responsibility can be made on application under s. 16.1 by:
  - A spouse
  - "A person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent"
- Court may:
  - Allocate parenting time, allocate decision-making responsibilities
  - Impose requirements on communication between child another a person with parenting time or decision-making responsibility
  - Provide for "any other matter that the court considers appropriate"
  - Direct parties to family dispute resolution process
  - Prohibit removal of child without consent or order

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Parenting orders

- Person with parenting time "has exclusive authority to make, during that time, day-to-day decisions affecting the child," s. 16.2(3)
- Court may allocate decision-making responsibility "to either spouse, to both spouses, to [a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent], or to any combination of those persons," s. 16.3
- Person with presenting time or decision-making are entitled to request information about child's well-being, health and education, s. 16. 4

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Contact orders

- Person other than a spouse may apply for contact with a child with leave, s. 16.5
- Court must consider "all relevant factors"
- Court may:
  - Make an order for contact by visits or by means of communication
  - Provide for "any other matter that the court considers appropriate"
  - Impose terms and conditions
  - Prohibit removal of child without consent or order

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Parenting plans

- **Parenting plan** is "a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parents agree," s. 16.6
- Court must "include" parenting plans in a parenting order or contact order unless *not in the child's best interests* to do so
  - If parenting plan is not in child's best interests, court may "make any modifications to the plan it considers appropriate," and include modified plan in order

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Moving after separation

New rules for moves that are and aren't relocations

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Moves that are not relocations

- Person with parenting time or decision-making responsibility who plans to move, with or without child, must notify persons with parenting time, decision-making responsibility or contact of intent to move, s. 16.8
- Notice must:
  - Be in writing
  - State date of move
  - Provide new address and contact information
- Court may grant exemption if risk of family violence

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Moves that are relocations

- Person with parenting time or decision-making responsibility who wishes to relocate, with or without child, must give 60 days' notice to "any other person who has parenting time, decision-making responsibility or contact," s. 16.9
- Notice must:
  - Be in writing
  - State date of proposed relocation
  - Provide new address and contact information
  - State proposal for exercise of parenting time, decision-making or contact after relocation

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Moves that are relocations

- Persons with contact entitled to notice 60 days before move but not entitled to object, s. 16.96
- Persons with parenting time or decision-making responsibility entitled to both, and if they don't object…

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Moves that are relocations

- Person may relocate if:
  - Relocation authorized by court **or**
  - Person with parenting time or decision-making responsibility who has received notice has not objected by filing an application to prevent the move within 30 days of receiving the notice **and** there is no order prohibiting the relocation
- Additional best-interests factors, s. 16.92:
  - Reasons for relocation
  - Impact of relocation on child
  - Time spent by child with each person with parenting time and "level of involvement in the child's life of each of those persons"
  - Compliance with notice requirements
  - Whether existing order, award or agreement restricts relocation

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Moves that are relocations

- If court "authorizes" relocation, may "provide for the apportion of costs relating to the exercise of parenting time by a person who is not relocating," s. 16.95
- Relocation of child is deemed to be a change in circumstances in application to vary parenting order or contact order, s. 17(5.2)
- Proposed relocation that is prohibited is *not* a change in circumstances for the purpose of variation applications, s. 17(5.3)

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Moves that are relocations

- Burden of proof, set out at s. 16.93:
  - If child has "*substantially equal time* in the care of each party," burden lies on **party intending to relocate**
  - If child has "*vast majority of their time* in the care of the party who intends to relocate," burden lies on **party objecting to proposed relocation**
  - In middle-ground cases, **each party has burden** of showing relocation is or is not in best interests of child
- Court may ignore substantially-equal and vast-majority tests if order sought is interim

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Interjurisdictional stuff

Boring but important changes

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Interjurisdictional support variation

- Old procedure for provisional orders and confirming orders at ss. 18 and 19 repealed
- New procedure at ss. 18, 18.1, 18.2, 18.3, 19 and 19.1 resembles single hearing procedure in provincial Interjurisdictional Support Orders Acts
- Spouse may apply for order de novo, variation order or child support recalculation by providing application to provincial authority, s. 18.1
  - Provincial authority forwards material to authority of province in which other spouse is habitually resident
  - Receiving authority serves application on respondent
  - Application heard in respondent's province

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Interjurisdictional support variation

- Similar process available when respondent lives in reciprocating jurisdiction outside Canada, ss. 19 and 19.1

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Other interjurisdictional stuff

- Bill C-78 amendments also address:
  - Convention on International Recovery of Child Support (and spousal support)
  - Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Resect of Parental Responsibility and Measures for the Protection of Children
  - Family Orders and Agreements Enforcement Assistance Act
  - Garnishment, Attachment and Pension Diversion Act
- Does not address UN Convention on the Rights of the Child

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Comments and questions?

You made it through this! Congratulations.

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A Brief Overview of Bill C-78, An Act to Amend the Divorce Act and Related Legislation

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Canadian Research Institute for Law and the Family

June 2018

Part I: Amendments Other than Those Relating to Interjurisdictional Agreements and Treaties

About the bill

Bill C-78 was tabled for first reading in the House of Commons on Tuesday 22 May 2018 by the Minister of Justice. The bill addresses a variety of outstanding issues that have been accumulating over the past decade or so and represents the first truly significant amendment of the *Divorce Act* since the present act became law in 1985; the Child Support Guidelines, a regulation to the act, were introduced in 1997. The bill must yet endure second reading, the committee process, the report stage and third reading in the House of Commons before proceeding to the Senate to repeat the process. There is about a year left in the current legislative session within which the bill must pass both chambers or die on the order table.

It is possible, but unlikely, that the bill will become law in its current form. Proposals for amendment may be made by both the House and Senate committees and are probable during the report stage. At present, the bill represents the will of government but is subject to change; the final form of any resulting legislation is at present unknown. Although other attempts to amend the *Divorce Act* have been tabled in the past and failed to become law, it is nonetheless important for family law lawyers and judges dealing with family law cases to appreciate the amendments proposed in the present bill.

The bill proposes a number of significant reforms that will reshape family law in Canada. The bill owes much to the legislatures of Alberta and British Columbia. Alberta's *Family Law Act* became law in 2003, repealing the former *Domestic Relations Act*, and replacing language about custody and access with "parenting orders" that allowed the court to allocate or share the "powers, responsibilities and entitlements of guardianship" among guardians, allocate "parenting time" to guardians and allowed persons other than guardians to apply for "contact" with a child. This was the same approach to terminology taken in British Columbia's 2011 *Family Law Act*, which also added a lengthy list of factors, including family violence, to be considered in determining the "parenting arrangements" that are in the best interests of the child, a test to assist the court in determining relocation applications, and a number of admonitions designed to

encourage parties and counsel to pursue dispute resolution options other than litigation. The case developing in these provinces, British Columbia in particular, may be of assistance in interpreting whatever changes may eventually be made to the *Divorce Act*.

Definitions

The bill would repeal the definitions of *custody* and *access* in section 2(1) of the *Divorce Act*, add definitions of a number of important new terms and make a consequential amendment of the definitions of *corollary relief proceeding* and *divorce proceeding*:

a) a "contact order" is an order providing access to a child for a person other than a spouse under section 16.5(1);

b) "decision-making responsibility" is a power akin to guardianship, formerly subsumed in the broad interpretation given to custody under the *Divorce Act*;

c) "family dispute resolution process" means an out of court dispute resolution process, including negotiation, collaborative negotiation and mediation, all of which are identified in the definition, as well as arbitration;

d) "family justice services" means public or private services in relation to separation or divorce;

e) "family violence" is a broadly-defined term that bears a strong resemblance to the definition provided in British Columbia's *Family Law Act* and includes physical abuse, sexual abuse, threats of harm to persons, pets and property, harassment, psychological abuse and financial abuse;

f) "parenting order" is an order under section 16.1(1) allocating decision-making responsibility and parenting time;

g) "parenting time" is the allocation of access to a spouse and includes, under section 16.2(3), the exclusive authority to make day-to-day decisions affecting a child; and,

h) "relocation" means a change in the residence of a child or spouse that may have a "significant impact" on the child's relationship with a spouse or a person with contact.

"Parenting plan" is defined at section 16.6(2) as a written agreement concerning parenting time, decision-making responsibility and contact.

Jurisdiction

The bill would provide modest updates to the jurisdictional requirements currently set out in sections 3 (divorce), 4 (corollary relief) and 5 (variation of orders for corollary relief) and the

transfer of divorce, corollary relief and variation proceedings under section 6 where a child is most substantially connected to another province. The most significant updates are that:

a) the federal court will no longer have jurisdiction where spouses commence proceedings on the same date in different provinces, but will determine the court of the province that is the "most appropriate" to hear the matter; and,

b) the "most substantially connected" test is replaced by a determination of the province that is the child's "habitual residence."

New provisions will provide tests for jurisdiction where:

a) contact orders are sought, under section 6.1;

b) a child is wrongfully removed from a province, under section 6.2; and,

c) a child is not habitually resident in Canada, under section 6.3.

Duties of parties and counsel

The bill would impose a number of new duties on parties under sections 7.1, 7.2, 7.3 and 7.4:

a) persons with parenting time, decision-making responsibility or contact are required to exercise the right in a manner consistent with the best interests of the child;

b) parties are required to protect children from conflict arising from the *Divorce Act* proceeding;

c) parties are required to try to resolve a matter that could be the subject of a *Divorce Act* order through family dispute resolution processes; and,

d) parties must provide complete, accurate and up-to-date information, presumably financial information where support is at issue.

Lawyers would be required to inform of, and encourage parties to attempt, to resolve disputes through family dispute resolution processes and to inform parties of any family justice services that may help a party to resolve a dispute or comply with an order, under section 7.7(2).

Parties would be required to, as lawyers are a present, sign a certificate that they are aware of their duties under the act under section 7.6 when commencing or responding to a proceeding.

Duties of the court

The bill would require the court to consider certain other proceedings in corollary relief proceedings, under section 7.8(2):

a) any civil protection orders;

b) any child protection proceedings or orders; and,

c) and criminal proceedings, undertakings, recognizances or orders.

Collusion

The definition of *collusion* at section 11(4) is amended to exclude agreements between the parties relating to support, the division of property and parenting orders.

Best interests of the child and family violence

The best interests of the child will continue to be the only consideration applied by the court in making a parenting order or contact order, however the bill would provide a non-exhaustive list of factors to be taken into account in determining a child's best interests, of which the court would be required to "give primary consideration to the child's physical, emotional and psychological safety, security and well-being" under section 16(2). The enumerated factors are provided at section 16(3) and include:

a) the child's needs;

b) the child's relationship with the spouses, any siblings, grandparents and "any other person who plays an important role in the child's life;"

c) the spouses' willingness to support the child's relationship with the other spouse;

d) the child's views and preferences;

e) the child's cultural and linguistic heritage;

f) the ability of each person to care for and meet the needs of the child;

g) the ability of the spouses to communicate and cooperate with each other; and,

h) the presence of family violence.

As is the case with British Columbia's *Family Law Act*, a list of factors is provided at section 16(4) to assist the court in assessing the impact of family violence under section 16(3). The factors include:

a) the serious and frequency of the family violence;

b) whether there is a pattern of coercive and controlling behaviour;

c) the extent to which the family violence is directed to a child, or to which a child is exposed to family violence;

d) the risk of harm to a child; and,

e) any steps taken by the perpetrator to prevent further family violence and improve their ability to care for the child.

Parenting orders

"Parenting orders" may be made under section 16.1 on the request of:

a) a spouse; and,

b) with leave, non-spouses who are parents, stand in the place of a parent for a child or intend on standing on the place of a child.

Parenting orders may, under section 16.1(4), include orders:

a) allocating parenting time;

b) allocating or sharing decision-making responsibility, under section 16.3; and,

c) specify how communication is to occur between persons with parenting time,

as well as:

d) orders requiring the parties to attend family dispute resolution, under section 16.1(6);

e) orders requiring supervision, under section 16.1(8); and,

f) orders prohibiting the relocation of a child or the relocation of a child without consent, under section 16.1(7) and (9).

Parenting plans may be included in parenting orders under section 16.6(1).

The maximum contact principle is preserved at section 16.2(1). The right of spouses with access to information about the health, wellbeing and education of children is preserved at section 16.4.

Contact orders

Contact orders are excluded from the definition of "parenting orders."

A person other than a spouse may apply for a contact order with leave under section 16.5(3). Contact orders may include:

a) orders for visits and means of communication between the person and the child, under section 16.5(5);

b) orders prohibiting the removal of a child without consent, under section 16.5(8).

Parenting plans may be included in contact orders under section 16.6(1).

Changes of residence other than relocations

A "person," not a *spouse*, with parenting time or decision-making responsibility who intends to move, with or without a child, must give notice to other persons with parenting time, decision-making responsibility or contact under section 16.8(1). Under section 16.8(2), the notice must:

a) be in writing;

b) state the date of the move; and,

c) state the address of the new place of residence and any other contact information for the person and the child.

Relocation

A "person," not a *spouse*, with parenting time or decision-making responsibility who intends to relocate, with or without a child, must give at least 60 days' notice to other persons with parenting time, decision-making responsibility or contact under section 16.9(1). Under section 16.9(2), the notice must:

a) be in writing;

b) state the date of the proposed relocation;

c) state the address of the proposed new place of residence and any other contact information for the person and the child; and,

d) provide a proposal as to how parenting time, decision-making responsibility or contact may be exercised.

A person with parenting time or decision-making responsibilities receiving notice may object to a proposed relocation, and must do so by filing an application within 30 days after the day on which notice is received, under section 6.91(b)(i). The court may make orders prohibiting the relocation of a child under section 16.1(7).

A person with contact is not entitled to object to a proposed relocation.

The person delivering the notice may relocate on the date specified in the notice if:

a) the court authorizes the relocation; or,

b) no objection is filed and there is no order prohibiting relocation.

A list of factors is provided at section 16.92 to guide the court's decision to authorize a relocation, or not, including:

a) the reasons for the relocation;

b) the impact of the relocation on the child;

c) the time the child has with each person with parenting time;

d) whether the relocating party has complied with the notice requirement;

e) whether each party has complied with any obligations under "family law legislation," an award or an order; and,

f) the reasonableness of the proposal as to how parenting time, decision-making responsibility or contact may be exercised made by the relocating party.

Under section 16.93(2), the court may *not* consider whether the relocating party would relocate without the child.

Section 16.93 establishes a shifting burden of proof:

a) if the parties have "substantially equal" time with the child, the relocating party bears the burden of establishing that the relocation is in the best interests of the child;

b) if the relocating party has the child for "the vast majority of [the child's] time," the burden of establishing that the relocation is *not* in the best interests of the child lies on the objecting party; and,

c) in cases falling in the mid-range between these extremes, both parties have the burden of proof.

However, under section 16.94, the court may determine that both parties have the burden of proof if the authorizing order sought is an interim order.

Where the court authorizes a relocation, the court may make an order apportioning the cost of exercising parenting time between the parties, under section 16.95

Change of residence or relocation by persons with contact

Under section 16.96, a person with contact with a child is required to notify persons with parenting time or decision-making responsibility of their intention to change their place of residence. The notice must:

a) be in writing;

b) state the date of the move; and,

c) state the address of the new place of residence and any other contact information for the person,

but where the change may have a significant impact on the child's relationship with the person, the notice must also:

d) be delivered at least 60 days before the move; and,

e) provide a proposal as to how contact may be exercised.

Variation applications

The bill would amend section 17 to distinguish between the variation of support orders, parenting orders and contact orders. Although a change in circumstances affecting the child will continue to be the threshold test for variation applications:

a) the relocation of a child is deemed to constitute such a change, under section 17(5.2); but,

b) the prohibition of a proposed relocation does *not* constitute such a change, under section 17(5.3).

Interjurisdictional variation of support orders

The bill would repeal sections 17.1 (variation orders by affidavit where spouses live in different provinces, 18 (provisional orders) and 19 (confirmation orders) and replace those provisions with a new regime that bears some resemblance to the provincial *Interjurisdictional Support Orders Acts* currently in place throughout Canada.

Under section 18.1, If former spouses live in different provinces, either may apply to vary a support order or recalculate a child support order by sending the application to the province's designated authority, which in turn sends the application to the authority in the other spouse's province. The authority receiving the application must serve the other spouse and the application is heard in that province.

Section 19 provides a process where the applicant spouse lives outside of Canada in country to be specified by regulation. (The countries identified in the schedule attached to the regulations to the *Interjurisdictional Support Orders Acts* seem an obvious potential starting point.) The applicant sends the variation application to the country's designated authority which in turn sends the application to the authority in the other spouse's province. The authority receiving the application must serve the other spouse and the application is heard in that province.

Under section 19.1, a similar process is provided where the applicant spouse lives in Canada and the other spouse lives outside of Canada in country to be specified by regulation. The application is heard in the other country, and the decision made in that country may be registered in Canada under the law of the applicant spouse's province.

Legal effect of *Divorce Act* orders

The bill would amend section 20(2) of the act to provide that the decisions of child support recalculation services also have legal effect throughout Canada.

Recognition of foreign divorces

The will would amend section 22 of the act to replace the "ordinary residence" test with a determination of the spouse's "habitual residence" in the foreign jurisdiction for at least one year.

Recognition of foreign parenting orders and contact orders

The bill would add section 22.1 to provide that the courts of a province with a "sufficient connection" to a matter must recognize foreign orders varying or suspending parenting orders and contact orders. The court need not recognize the foreign variation order if:

a) the child is not "habitually resident" in the foreign jurisdiction;

b) the decision was made without the child being provided with the opportunity to be heard;

c) a person whose parenting time, decision-making responsibility or contact was impacted by the decision was not provided with the opportunity to be heard;

d) the decision is contrary to public policy in Canada; or,

e) the decision cannot be reconciled with a later decision qualifying for recognition.

Child support calculation services

New sections 25.01 and 25.1 would allow the federal government to work with provincial governments to create child support calculation and recalculation services intended to determine the amount of child support payable under the Guidelines through an administrative process. Provisions are made for the appeal of such orders by spouses disagreeing with the services' calculations and recalculations.

Part II of this overview will concern the portions of Bill C-78 touching on the Convention on the International recovery of Child Support and Other Forms of Family Maintenance, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act.

A Brief Overview of Bill C-78, An Act to Amend the Divorce Act and Related Legislation

John-Paul E Boyd
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June 2018

Part 2: Amendments Relating to Interjurisdictional Agreements and Treaties

Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

Also known as the Hague Child Support Convention, this 2007 multilateral agreement is intended to "improve cooperation among States for the international recovery of child support and other forms of family maintenance," and establishes a procedure under which a person may:

a) apply for a support order *de novo* in another signatory state, referred to in the convention as "Contracting States;" and,

b) secure the recognition and enforcement of support orders made by the courts of one signatory state in other signatory states.

Under article 2, the convention applies to spousal support orders, in limited circumstances, and to child support orders "arising from a parent-child relationship" respecting children under the age of 21.

The bill would add a number of new provisions to the *Divorce Act* to provide the legislative framework necessary to implement the Hague Child Support Convention.

The bill would give the convention the force of law in Canada under section 28.1(1), and the convention would prevail in the event of any inconsistencies between it and any federal legislation under subsection (2).

Payees, including potential payees, residing in a signatory state may seek:

a) a support order *de novo*, under section 28.5(2)(a);

b) an order varying a support order, under section 28.5(2)(a);

c) the recognition of a foreign support order that has the effect of varying domestic child support order, under section 28.4; and,

d) the calculation or recalculation of child support, if a child support service exists in the payor's province of habitual residence, under section 28.5(2)(b),

by applying to the central authority in the province in which the payor is habitually resident. Payees may also apply directly to the courts of the payor's province of habitual residence for the recognition and enforcement of foreign support orders under section 29.3.

Payors residing in a signatory state may seek:

a) an order varying a support order, under section 29.1(2)(a);

b) the calculation or recalculation of child support, if a child support service exists in the payee's province of habitual residence, under section 29.1(2)(b); and,

c) the recognition of a foreign order that has the effect of suspending or limiting the enforcement of domestic child support order, under section 29,

by applying to the central authority in the province in which the payee is habitually resident. Payors may also apply directly to the courts of the payee's province of habitual residence for the recognition and enforcement of foreign orders that have the effect of suspending or limiting the enforcement of a domestic child support order under section 29.4.

Support orders that are made by the courts of signatory states and have been recognized by a domestic court will have legal effect throughout Canada.

Convention on Jurisdiction, Applicable Law Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children

This succinctly-titled convention, also known as the Hague Convention on Parental Responsibility and Protection of Children, was made in 1996 and establishes procedures:

a) to determine the signatory state which has jurisdiction "to take measures" to protect a child or the child's property;

b) to determine the law to be applied by signatory states with jurisdiction; and,

c) for the recognition and enforcement of "measures of protection" among signatory states.

Under article 3, *measures* is given an expansive meaning that includes determining a parent's right to:

a) exercise parental responsibilities in respect of a child;

b) custody of a child, including the right to decide the child's place of residence;

c) guardianship of a child; and,

d) manage a child's property.

Under article 2, the convention applies to children under the age of 19.

The bill would add a number of new provisions to the *Divorce Act* necessary to address the Hague Convention on Parental Responsibility and Protection of Children.

The bill would give the convention the force of law in Canada under section 30.1(1), subject to certain provincial limitations expressed at section 30.3, and the convention would prevail in the event of any inconsistencies between it and any federal legislation under subsection (2).

The bill would supplement the jurisdictional rules in sections 4, 5, 6 and 6.1 of an amended *Divorce Act* with respect to applications for parenting orders under section 16.1 of the act, contact orders under section 16.5 and variation orders under section 17 as follows:

a) the courts of a province will *not* have jurisdiction where a child is habitually resident in a signatory state, under section 30.4, unless

    i. the child is present in the province and the child is a refugee or a displaced person under article 6 of the convention, under section 30.6,

    ii. the court would have jurisdiction under section 3 of the *Divorce Act* and at least one spouse has parental responsibility in respect of the child, under section 30.7(1)(a),

    iii. the court would have jurisdiction under section 3 and the spouses and anyone else with parental responsibility in respect of the child accept the jurisdiction of the court, under section 30.7(1)(b),

    iv. the court would have jurisdiction under section 3 and the court believes it is in the best interest of the child to take jurisdiction, under section 30.7(1)(c),

    v. there is an agreement between the court and the signatory state that the court will have jurisdiction pursuant to articles 8 or 9 of the convention, under section 30.9, or

vi. the case is urgent;

b) the courts of a province will have jurisdiction where the child has been wrongfully removed to that province and the child has become habitually resident in the province pursuant to article 7(2) of the convention, under section 30.5; and,

c) the courts of a province *may decline* to exercise jurisdiction where there is an agreement between the court and the signatory state that the signatory state will have jurisdiction pursuant to articles 8 or 9 of the convention, under section 30.8.

Under section 31.1, a "measure" taken by a signatory state that has the effect of varying a domestic parenting order or a contact order is deemed to be a variation order under section 17 of the act, subject to the discretion of the court on application under section 31.2(1), and may be enforced as a domestic order under s. 31.3.

Judicial decisions to recognize or to *not* recognize a "measure" have effect throughout Canada under section 31.2(2) and (3).

Family Orders and Agreements Enforcement Assistance Act

The *Family Orders and Agreements Enforcement Assistance Act* is a federal statute intended to assist in the enforcement of support orders, custody orders and access orders by allowing individuals and provincial agencies access to federal data, allowing federal funds owed to payors and other debtors to be garnisheed, and allowing federal licences to be suspended on the application of provincial agencies.

The bill would amend the definitions at section 2 of the FOAEAA to accord with the new language on parenting orders and contact orders proposed for the *Divorce Act*.

The more important other amendments proposed to the FOAEAA are these:

a) provincial child support services, the designated authorities referenced in the interjurisdictional support order portions of the *Divorce Act*, and the central authorities referenced in the Hague Child Support Convention portions of the act will be included among the agencies able to obtain information under the act;

b) federal data may be accessed when a support order *de novo* or a variation order are sought, not only as an enforcement measure when an order has been obtained;

c) provincial child support services may seek federal data when recalculating a child support order;

d) the definition of "order" for the garnishment provisions of the act is amended to include

i. agreements for the payment of support,

ii. orders and agreements for the payment of expenses related to the exercise of parenting time and contact, and

iii. orders for the payment of expenses related to the denial of or failure to exercise parenting time and contact;

and,

e) the definition of “support order” for the licence suspension provisions of the act is amended to include agreements for the payment of support;

Part I of this overview concerned the key portions of Bill C-78 amending the Divorce Act with respect to terminology, the duties of spouses and counsel, the best interests of children, parenting orders and contact orders, the relocation of spouses and children, the inter-jurisdictional variation of support orders and child support calculation services.

The New Divorce Act

A consolidation of the *Divorce Act*, RSC 1985, c 3 (2nd Supp) and *An Act to Amend the Divorce Act*, SC 2019, c 16

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Short title

1 This Act may be cited as the Divorce Act.

Interpretation

Definitions

2 (1) In this Act,

age of majority, in respect of a child, means the age of majority as determined by the laws of the province where the child ordinarily resides, or, if the child habitually resides outside of Canada, eighteen years of age; (majeur)

appellate court, in respect of an appeal from a court, means the court exercising appellate jurisdiction with respect to that appeal; (cour d'appel)

applicable guidelines means

> (a) if both spouses or former spouses are habitually resident in the same province at the time an application is made for a child support order or for a variation order in respect of a child support order or the amount of a child support is to be calculated or recalculated under section 25.01 or 25.1, and that province has been designated by an order made under subsection (5), the laws of the province specified in the order, and
>
> (b) in any other case, the Federal Child Support Guidelines; (lignes directrices applicables)

child of the marriage means a child of two spouses or former spouses who, at the material time,

> (a) is under the age of majority and who has not withdrawn from their charge, or
>
> (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life; (enfant à charge)

child support order means an order made under subsection 15.1(1); (ordonnance alimentaire au profit d'un enfant)

competent authority means, except as otherwise provided, a tribunal or other entity in a country other than Canada, or a subdivision of such a country, that has the authority to make a decision under their law respecting any subject matter that could be dealt with under this Act; (autorité compétente)

contact order means an order made under subsection 16.5(1); (ordonnance de contact)

corollary relief proceeding means a proceeding in a court in which either or both former spouses seek a child support order, a spousal support order or a parenting order; (action en mesures accessoires)

court, in respect of a province, means

(a) for the Province of Ontario, the Superior Court of Justice,

(a.1) for the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court of the Province,

(b) for the Province of Quebec, the Superior Court,

(c) for the Provinces of Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court of the Province,

(d) for the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Queen's Bench for the Province, and

(e) for Yukon or the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice,

and includes such other court in the province the judges of which are appointed by the Governor General as is designated by the Lieutenant Governor in Council of the province as a court for the purposes of this Act; (tribunal)

decision-making responsibility means the responsibility for making significant decisions about a child's well-being, including in respect of

(a) health;

(b) education;

(c) culture, language, religion and spirituality; and

(d) significant extra-curricular activities; (responsabilités décisionnelles)

divorce proceeding means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a parenting order; (action en divorce)

family dispute resolution process means a process outside of court that is used by parties to a family law dispute to attempt to resolve any matters in dispute, including negotiation, mediation and collaborative law; (mécanisme de règlement des différends familiaux)

family justice services means public or private services intended to help persons deal with issues arising from separation or divorce; (services de justice familiale)

family member includes a member of the household of a child of the marriage or of a spouse or former spouse as well as a dating partner of a spouse or former spouse who participates in the activities of the household; (membre de la famille)

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes

(a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;

(b) sexual abuse;

(c) threats to kill or cause bodily harm to any person;

(d) harassment, including stalking;

(e) the failure to provide the necessaries of life;

(f) psychological abuse;

(g) financial abuse;

(h) threats to kill or harm an animal or damage property; and

(i) the killing or harming of an animal or the damaging of property; (violence familiale)

Federal Child Support Guidelines means the guidelines made under section 26.1; (lignes directrices fédérales sur les pensions alimentaires pour enfants)

legal adviser means any person who is qualified, in accordance with the law of a province, to represent or provide legal advice to another person in any proceeding under this Act; (conseiller juridique)

order assignee means a minister, member, agency or public body to whom a support order is assigned under subsection 20.1(1); (cessionnaire de la créance alimentaire)

parenting order means an order made under subsection 16.1(1); (ordonnance parentale)

parenting time means the time that a child of the marriage spends in the care of a person referred to in subsection 16.1(1), whether or not the child is physically with that person during that entire time; (temps parental)

provincial child support service means any service, agency or body designated in an agreement with a province under subsection 25.01(1) or 25.1(1); (service provincial des aliments pour enfants)

relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — that is likely to have a significant impact on the child's relationship with

(a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or

(b) a person who has contact with the child under a contact order; (déménagement important)

spousal support order means an order made under subsection 15.2(1); (ordonnance alimentaire au profit d'un époux)

spouse includes, in subsection 6(1) and sections 15.1 to 16.96, 21.1, 25.01, 25.1 and 30.7, a former spouse; (époux)

support order means a child support order or a spousal support order; (ordonnance alimentaire)

variation order means an order made under subsection 17(1); (ordonnance modificative)

variation proceeding means a proceeding in a court in which either or both former spouses seek a variation order. (action en modification)

Child of the marriage

(2) For the purposes of the definition child of the marriage in subsection (1), a child of two spouses or former spouses includes

(a) any child for whom they both stand in the place of parents; and

(b) any child of whom one is the parent and for whom the other stands in the place of a parent.

Term not restrictive

(3) The use of the term "application" to describe a proceeding under this Act in a court shall not be construed as limiting the name under which and the form and manner in which that proceeding may be taken in that court, and the name, manner and form of the proceeding in that court shall be such as is provided for by the rules regulating the practice and procedure in that court.

Idem

(4) The use in section 21.1 of the terms “affidavit” and “pleadings” to describe documents shall not be construed as limiting the name that may be used to refer to those documents in a court and the form of those documents, and the name and form of the documents shall be such as is provided for by the rules regulating the practice and procedure in that court.

Provincial child support guidelines

(5) The Governor in Council may, by order, designate a province for the purposes of the definition applicable guidelines in subsection (1) if the laws of the province establish comprehensive guidelines for the determination of child support that deal with the matters referred to in section 26.1. The order shall specify the laws of the province that constitute the guidelines of the province.

Amendments included

(6) The guidelines of a province referred to in subsection (5) include any amendments made to them from time to time.

Jurisdiction

Jurisdiction in divorce proceedings

3 (1) A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been habitually resident in the province for at least one year immediately preceding the commencement of the proceeding.

Jurisdiction where two proceedings commenced on different days

(2) If divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced first is not discontinued, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding is deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) If divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both spouses, determine which court retains jurisdiction by applying the following rules:

> (a) if at least one of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident;

(b) if neither of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the spouses last maintained a habitual residence in common if one of the spouses is habitually resident in that province; and

(c) in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.

Jurisdiction in corollary relief proceedings

4 (1) A court in a province has jurisdiction to hear and determine a corollary relief proceeding if

(a) either former spouse is habitually resident in the province at the commencement of the proceeding; or

(b) both former spouses accept the jurisdiction of the court.

Jurisdiction where two proceedings commenced on different days

(2) If corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced first is not discontinued, the court in which a corollary relief proceeding was commenced first has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the second corollary relief proceeding is deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) If corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both former spouses, determine which court retains jurisdiction by applying the following rules:

(a) if at least one of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident;

(b) if neither of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the former spouses last maintained a habitual residence in common if one of the former spouses is habitually resident in that province; and

(c) in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.

Jurisdiction in variation proceedings

5 (1) A court in a province has jurisdiction to hear and determine a variation proceeding if

(a) either former spouse is habitually resident in the province at the commencement of the proceeding; or

(b) both former spouses accept the jurisdiction of the court.

Jurisdiction where two proceedings commenced on different days

(2) If variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced first is not discontinued, the court in which a variation proceeding was commenced first has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the second variation proceeding is deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) If variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both former spouses, determine which court retains jurisdiction by applying the following rules:

(a) if at least one of the proceedings includes an application for a variation order in respect of a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident;

(b) if neither of the proceedings includes an application for a variation order in respect of a parenting order, the court that retains jurisdiction is the court in the province in which the former spouses last maintained a habitual residence in common if one of the former spouses is habitually resident in that province; and

(c) in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.

Transfer of divorce proceeding if parenting order applied for

6 (1) If an application for an order under section 16.1 is made in a divorce proceeding or corollary relief proceeding to a court in a province and the child of the marriage in respect of whom the order is sought is habitually resident in another province, the court may, on application by a spouse or on its own motion, transfer the proceeding to a court in that other province.

Transfer of variation proceeding in respect of parenting order

(2) If an application for a variation order in respect of a parenting order is made in a variation proceeding to a court in a province and the child of the marriage in respect of whom the variation order is sought is habitually resident in another province, the court may, on application by a former spouse or on its own motion, transfer the variation proceeding to a court in that other province.

Exclusive jurisdiction

(4) Notwithstanding sections 3 to 5, a court in a province to which a proceeding is transferred under this section has exclusive jurisdiction to hear and determine the proceeding.

Jurisdiction — application for contact order

6.1 (1) If a court in a province is seized of an application for a parenting order in respect of a child, the court has jurisdiction to hear and determine an application for a contact order in respect of the child.

Jurisdiction — no pending variation proceeding

(2) If no variation proceeding related to a parenting order in respect of a child is pending, a court in a province in which the child is habitually resident has jurisdiction to hear and determine an application for a contact order, an application for a variation order in respect of a contact order or an application for a variation order in respect of a parenting order brought by a person referred to in subparagraph 17(1)(b)(ii), unless the court considers that a court in another province is better placed to hear and determine the application, in which case the court shall transfer the proceeding to the court in that other province.

No jurisdiction — contact order

(3) For greater certainty, if no parenting order has been made in respect of a child, no application for a contact order may be brought under this Act in respect of the child.

Removal or retention of child of marriage

6.2 (1) If a child of the marriage is removed from or retained in a province contrary to sections 16.9 to 16.96 or provincial law, a court in the province in which the child was habitually resident that would have had jurisdiction under sections 3 to 5 immediately before the removal or retention has jurisdiction to hear and determine an application for a parenting order, unless the court is satisfied

> (a) that all persons who are entitled to object to the removal or retention have ultimately consented or acquiesced to the removal or retention;
>
> (b) that there has been undue delay in contesting the removal or retention by those persons; or
>
> (c) that a court in the province in which the child is present is better placed to hear and determine the application.

Transfer

(2) If the court in the province in which the child was habitually resident immediately before the removal or retention is satisfied that any of paragraphs (1)(a) to (c) apply,

> (a) the court shall transfer the application to the court in the province in which the child is present; and

(b) the court may transfer any other application under this Act in respect of the parties to the court in the province in which the child is present.

Federal Court

(3) If after the child's removal from or retention in a province, two proceedings are commenced on the same day as described in subsection 3(3), 4(3) or 5(3), this section prevails over those subsections and the Federal Court shall determine which court has jurisdiction under this section. A reference in this section to "court in the province in which the child was habitually resident" is to be read as "Federal Court".

Child habitually resident outside Canada

6.3 (1) Subject to sections 30 to 31.3, if a child of the marriage is not habitually resident in Canada, a court in the province that would otherwise have jurisdiction under sections 3 to 5 to make a parenting order or contact order, or a variation order in respect of such an order, has jurisdiction to do so only in exceptional circumstances and if the child is present in the province.

Exceptional circumstances

(2) In determining whether there are exceptional circumstances, the court shall consider all relevant factors, including

(a) whether there is a sufficient connection between the child and the province;

(b) the urgency of the situation;

(c) the importance of avoiding a multiplicity of proceedings and inconsistent decisions; and

(d) the importance of discouraging child abduction.

Exercise of jurisdiction by judge

7 The jurisdiction conferred on a court by this Act to grant a divorce shall be exercised only by a judge of the court without a jury.

Duties

Parties to a Proceeding

Best interests of child

7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.

Protection of children from conflict

7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.

Family dispute resolution process

7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.

Complete, accurate and up-to-date information

7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.

Duty to comply with orders

7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

Certification

7.6 Every document that formally commences a proceeding under this Act, or that responds to such a document, that is filed with a court by a party to a proceeding shall contain a statement by the party certifying that they are aware of their duties under sections 7.1 to 7.5.

Legal Adviser

Reconciliation

7.7 (1) Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding

> (a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses; and
>
> (b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to the legal adviser that might be able to assist the spouses to achieve a reconciliation.

Duty to discuss and inform

(2) It is also the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Act

(a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;

(b) to inform the person of the family justice services known to the legal adviser that might assist the person

(i) in resolving the matters that may be the subject of an order under this Act, and

(ii) in complying with any order or decision made under this Act; and

(c) to inform the person of the parties' duties under this Act.

Certification

(3) Every document that formally commences a proceeding under this Act, or that responds to such a document, that is filed with a court by a legal adviser shall contain a statement by the legal adviser certifying that they have complied with this section.

Court

Purpose of section

7.8 (1) The purpose of this section is to facilitate

(a) the identification of orders, undertakings, recognizances, agreements or measures that may conflict with an order under this Act; and

(b) the coordination of proceedings.

Information regarding other orders or proceedings

(2) In a proceeding for corollary relief and in relation to any party to that proceeding, the court has a duty to consider if any of the following are pending or in effect, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so:

(a) a civil protection order or a proceeding in relation to such an order;

(b) a child protection order, proceeding, agreement or measure; or

(c) an order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature.

In order to carry out the duty, the court may make inquiries of the parties or review information that is readily available and that has been obtained through a search carried out in accordance with provincial law, including the rules made under subsection 25(2).

Definition of civil protection order

(3) In this section, **civil protection order** means a civil order that is made to protect a person's safety, including an order that prohibits a person from

(a) being in physical proximity to a specified person or following a specified person from place to place;

(b) contacting or communicating with a specified person, either directly or indirectly;

(c) attending at or being within a certain distance of a specified place or location;

(d) engaging in harassing or threatening conduct directed at a specified person;

(e) occupying a family home or a residence; or

(f) engaging in family violence.

Divorce

Divorce

8 (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.

Breakdown of marriage

(2) Breakdown of a marriage is established only if

(a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; or

(b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,

(i) committed adultery, or

(ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

Calculation of period of separation

(3) For the purposes of paragraph (2)(a),

(a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other; and

(b) a period during which spouses have lived separate and apart shall not be considered to have been interrupted or terminated

(i) by reason only that either spouse has become incapable of forming or having an intention to continue to live separate and apart or of continuing to live separate and apart of the spouse's own volition, if it appears to the court that the separation would probably have continued if the spouse had not become so incapable, or

(ii) by reason only that the spouses have resumed cohabitation during a period of, or periods totaling, not more than ninety days with reconciliation as its primary purpose.

Duty of court — reconciliation

10 (1) In a divorce proceeding, it is the duty of the court, before considering the evidence, to satisfy itself that there is no possibility of the reconciliation of the spouses, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.

Adjournment

(2) Where at any stage in a divorce proceeding it appears to the court from the nature of the case, the evidence or the attitude of either or both spouses that there is a possibility of the reconciliation of the spouses, the court shall

(a) adjourn the proceeding to afford the spouses an opportunity to achieve a reconciliation; and

(b) with the consent of the spouses or in the discretion of the court, nominate

(i) a person with experience or training in marriage counselling or guidance, or

(ii) in special circumstances, some other suitable person,

to assist the spouses to achieve a reconciliation.

Resumption

(3) Where fourteen days have elapsed from the date of any adjournment under subsection (2), the court shall resume the proceeding on the application of either or both spouses.

Nominee not competent or compellable

(4) No person nominated by a court under this section to assist spouses to achieve a reconciliation is competent or compellable in any legal proceedings to disclose any admission or communication made to that person in his or her capacity as a nominee of the court for that purpose.

Evidence not admissible

(5) Evidence of anything said or of any admission or communication made in the course of assisting spouses to achieve a reconciliation is not admissible in any legal proceedings.

Duty of court — bars

11 (1) In a divorce proceeding, it is the duty of the court

(a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;

(b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made; and

(c) where a divorce is sought in circumstances described in paragraph 8(2)(b), to satisfy itself that there has been no condonation or connivance on the part of the spouse bringing the proceeding, and to dismiss the application for a divorce if that spouse has condoned or connived at the act or conduct complained of unless, in the opinion of the court, the public interest would be better served by granting the divorce.

Revival

(2) Any act or conduct that has been condoned is not capable of being revived so as to constitute a circumstance described in paragraph 8(2)(b).

Condonation

(3) For the purposes of this section, a continuation or resumption of cohabitation during a period of, or periods totaling, not more than ninety days with reconciliation as its primary purpose shall not be considered to constitute condonation.

Definition of collusion

(4) In this section, **collusion** means an agreement or conspiracy to which an applicant for a divorce is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court, but does not include an agreement to the extent that it provides for separation between the parties, financial support, division of property or the exercise of parenting time or decision-making responsibility.

Effective date generally

12 (1) Subject to this section, a divorce takes effect on the thirty-first day after the day on which the judgment granting the divorce is rendered.

Special circumstances

(2) Where, on or after rendering a judgment granting a divorce,

(a) the court is of the opinion that by reason of special circumstances the divorce should take effect earlier than the thirty-first day after the day on which the judgment is rendered, and

(b) the spouses agree and undertake that no appeal from the judgment will be taken, or any appeal from the judgment that was taken has been abandoned,

the court may order that the divorce takes effect at such earlier time as it considers appropriate.

Effective date where appeal

(3) A divorce in respect of which an appeal is pending at the end of the period referred to in subsection (1), unless voided on appeal, takes effect on the expiration of the time fixed by law for instituting an appeal from the decision on that appeal or any subsequent appeal, if no appeal has been instituted within that time.

Certain extensions to be counted

(4) For the purposes of subsection (3), the time fixed by law for instituting an appeal from a decision on an appeal includes any extension thereof fixed pursuant to law before the expiration of that time or fixed thereafter on an application instituted before the expiration of that time.

No late extensions of time for appeal

(5) Notwithstanding any other law, the time fixed by law for instituting an appeal from a decision referred to in subsection (3) may not be extended after the expiration of that time, except on an application instituted before the expiration of that time.

Effective date where decision of Supreme Court of Canada

(6) A divorce in respect of which an appeal has been taken to the Supreme Court of Canada, unless voided on the appeal, takes effect on the day on which the judgment on the appeal is rendered.

Certificate of divorce

(7) Where a divorce takes effect in accordance with this section, a judge or officer of the court that rendered the judgment granting the divorce or, where that judgment has been appealed, of the appellate court that rendered the judgment on the final appeal, shall, on request, issue to any person a certificate that a divorce granted under this Act dissolved the marriage of the specified persons effective as of a specified date.

Conclusive proof

(8) A certificate referred to in subsection (7), or a certified copy thereof, is conclusive proof of the facts so certified without proof of the signature or authority of the person appearing to have signed the certificate.

Legal effect throughout Canada

13 On taking effect, a divorce granted under this Act has legal effect throughout Canada.

Marriage dissolved

14 On taking effect, a divorce granted under this Act dissolves the marriage of the spouses.

Corollary Relief

Child Support Orders

Child support order

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to pay for the support of any or all children of the marriage, pending the determination of the application under subsection (1).

Guidelines apply

(3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

Terms and conditions

(4) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it thinks fit and just.

Court may take agreement, etc., into account

(5) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

> (a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
>
> (b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

Reasons

(6) Where the court awards, pursuant to subsection (5), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

Consent orders

(7) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines on the consent of both spouses if it is satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.

Reasonable arrangements

(8) For the purposes of subsection (7), in determining whether reasonable arrangements have been made for the support of a child, the court shall have regard to the applicable guidelines. However, the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

Spousal Support Orders

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Priority

Priority to child support

15.3 (1) Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.

Reasons

(2) Where, as a result of giving priority to child support, the court is unable to make a spousal support order or the court makes a spousal support order in an amount that is less than it otherwise would have been, the court shall record its reasons for having done so.

Consequences of reduction or termination of child support order

(3) Where, as a result of giving priority to child support, a spousal support order was not made, or the amount of a spousal support order is less than it otherwise would have been, any subsequent reduction or termination of that child support constitutes a change of circumstances for the purposes of applying

for a spousal support order, or a variation order in respect of the spousal support order, as the case may be.

Best Interests of the Child

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;

(d) the history of care of the child;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

(g) any plans for the child's care;

(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Factors relating to family violence

(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

(a) the nature, seriousness and frequency of the family violence and when it occurred;

(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;

(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;

(d) the physical, emotional and psychological harm or risk of harm to the child;

(e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

Past conduct

(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

Parenting time consistent with best interests of child

(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

Parenting order and contact order

(7) In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.

Parenting Orders

Parenting order

16.1 (1) A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by

(a) either or both spouses; or

(b) a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.

Interim order

(2) The court may, on application by a person described in subsection (1), make an interim parenting order in respect of the child, pending the determination of an application made under that subsection.

Application by person other than spouse

(3) A person described in paragraph (1)(b) may make an application under subsection (1) or (2) only with leave of the court.

Contents of parenting order

(4) The court may, in the order,

(a) allocate parenting time in accordance with section 16.2;

(b) allocate decision-making responsibility in accordance with section 16.3;

(c) include requirements with respect to any means of communication, that is to occur during the parenting time allocated to a person, between a child and another person to whom parenting time or decision-making responsibility is allocated; and

(d) provide for any other matter that the court considers appropriate.

Terms and conditions

(5) The court may make an order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.

Family dispute resolution process

(6) Subject to provincial law, the order may direct the parties to attend a family dispute resolution process.

Relocation

(7) The order may authorize or prohibit the relocation of the child.

Supervision

(8) The order may require that parenting time or the transfer of the child from one person to another be supervised.

Prohibition on removal of child

(9) The order may prohibit the removal of a child from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.

Parenting time — schedule

16.2 (1) Parenting time may be allocated by way of a schedule.

Day-to-day decisions

(2) Unless the court orders otherwise, a person to whom parenting time is allocated under paragraph 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.

Allocation of decision-making responsibility

16.3 Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.

Entitlement to information

16.4 Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.

Contact Orders

Contact order

16.5 (1) A court of competent jurisdiction may, on application by a person other than a spouse, make an order providing for contact between that person and a child of the marriage.

Interim order

(2) The court may, on application by a person referred to in subsection (1), make an interim order providing for contact between that person and the child, pending the determination of the application made under that subsection.

Leave of the court

(3) A person may make an application under subsection (1) or (2) only with leave of the court, unless they obtained leave of the court to make an application under section 16.1.

Factors in determining whether to make order

(4) In determining whether to make a contact order under this section, the court shall consider all relevant factors, including whether contact between the applicant and the child could otherwise occur, for example during the parenting time of another person.

Contents of contact order

(5) The court may, in the contact order,

> (a) provide for contact between the applicant and the child in the form of visits or by any means of communication; and
>
> (b) provide for any other matter that the court considers appropriate.

Terms and conditions

(6) The court may make a contact order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.

Supervision

(7) The order may require that the contact or transfer of the child from one person to another be supervised.

Prohibition on removal of child

(8) The order may provide that a child shall not be removed from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.

Variation of parenting order

(9) If a parenting order in respect of the child has already been made, the court may make an order varying the parenting order to take into account a contact order it makes under this section, and subsections 17(3) and (11) apply as a consequence with any necessary modifications.

Parenting Plan

Parenting plan

16.6 (1) The court shall include in a parenting order or a contact order, as the case may be, any parenting plan submitted by the parties unless, in the opinion of the court, it is not in the best interests of the child to do so, in which case the court may make any modifications to the plan that it considers appropriate and include it in the order.

Definition of parenting plan

(2) In subsection (1), parenting plan means a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parties agree.

Change in Place of Residence

Non-application

16.7 Section 16.8 does not apply to a change in the place of residence that is a relocation.

Notice

16.8 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to change their place of residence or that of the child shall notify any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

Form and content of notice

(2) The notice shall be given in writing and shall set out

(a) the date on which the change is expected to occur; and

(b) the address of the new place of residence and contact information of the person or child, as the case may be.

Exception

(3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections do not apply or may modify them, including where there is a risk of family violence.

Application without notice

(4) An application referred to in subsection (3) may be made without notice to any other party.

Relocation

Notice

16.9 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

Content of notice

(2) The notice must set out

(a) the expected date of the relocation;

(b) the address of the new place of residence and contact information of the person or child, as the case may be;

(c) a proposal as to how parenting time, decision-making responsibility or contact, as the case may be, could be exercised; and

(d) any other information prescribed by the regulations.

Exception

(3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or may modify them, including where there is a risk of family violence.

Application without notice

(4) An application referred to in subsection (3) may be made without notice to any other party.

Relocation authorized

16.91 (1) A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if

(a) the relocation is authorized by a court; or

(b) the following conditions are satisfied:

(i) the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in

(A) a form prescribed by the regulations, or

(B) an application made under subsection 16.1(1) or paragraph 17(1)(b), and

(ii) there is no order prohibiting the relocation.

Content of form

(2) The form must set out

(a) a statement that the person objects to the proposed relocation;

(b) the reasons for the objection;

(c) the person's views on the proposal for the exercise of parenting time, decision-making responsibility or contact, as the case may be, that is set out in the notice referred to in subsection 16.9(1); and

(d) any other information prescribed by the regulations.

Best interests of child — additional factors to be considered

16.92 (1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

(a) the reasons for the relocation;

(b) the impact of the relocation on the child;

(c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;

(d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;

(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;

(f) 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, taking into

consideration, among other things, the location of the new place of residence and the travel expenses; and

(g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

Factor not to be considered

(2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

Burden of proof — person who intends to relocate child

16.93 (1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, 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.

Burden of proof — person who objects to relocation

(2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Burden of proof — other cases

(3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

Power of court — interim order

16.94 A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.

Costs relating to exercise of parenting time

16.95 If a court authorizes the relocation of a child of the marriage, it may provide for the apportionment of costs relating to the exercise of parenting time by a person who is not relocating between that person and the person who is relocating the child.

Notice — persons with contact

16.96 (1) A person who has contact with a child of the marriage under a contact order shall notify, in writing, any person with parenting time or decision-making responsibility in respect of that child of their

intention to change their place of residence, the date on which the change is expected to occur, the address of their new place of residence and their contact information.

Notice — significant impact

(2) If the change is likely to have a significant impact on the child's relationship with the person, the notice shall be given at least 60 days before the change in place of residence, in the form prescribed by the regulations, and shall set out, in addition to the information required in subsection (1), a proposal as to how contact could be exercised in light of the change and any other information prescribed by the regulations.

Exception

(3) Despite subsections (1) and (2), the court may, on application, order that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or modify them, if the court is of the opinion that it is appropriate to do so, including where there is a risk of family violence.

Application without notice

(4) An application referred to in subsection (3) may be made without notice to any other party.

Variation, Rescission or Suspension of Orders

Variation order

17 (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively,

(a) a support order or any provision of one, on application by either or both former spouses;

(b) a parenting order or any provision of one, on application by

(i) either or both former spouses, or

(ii) a person, other than a former spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent; or

(c) a contact order or any provision of one, on application by a person to whom the order relates.

Leave of the court

(2) A person to whom the parenting order in question does not relate may make an application under subparagraph (1)(b)(ii) only with leave of the court.

Variation of parenting order

(2.1) If the court makes a variation order in respect of a contact order, it may make an order varying the parenting order to take into account that variation order, and subsections (3) and (11) apply as a consequence with any necessary modifications.

Variation of contact order

(2.2) If the court makes a variation order in respect of a parenting order, it may make an order varying any contact order to take into account that variation order, and subsections (3) and (11) apply as a consequence with any necessary modifications.

Conditions of order

(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought, and the court has the same powers and obligations that it would have when making that order.
Factors for child support order

(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Factors for spousal support order

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

Factors for parenting order or contact order

(5) Before the court makes a variation order in respect of a parenting order or contact order, the court shall satisfy itself that there has been a change in the circumstances of the child since the making of the order or the last variation order made in respect of the order, or of an order made under subsection 16.5(9).

Variation order

(5.1) For the purposes of subsection (5), a former spouse's terminal illness or critical condition shall be considered a change in the circumstances of the child, and the court shall make a variation order in respect of a parenting order with regard to the allocation of parenting time.

Relocation — change in circumstances

(5.2) The relocation of a child is deemed to constitute a change in the circumstances of the child for the purposes of subsection (5).

Relocation prohibited — no change in circumstances

(5.3) A relocation of a child that has been prohibited by a court under paragraph (1)(b) or section 16.1 does not, in itself, constitute a change in the circumstances of the child for the purposes of subsection (5).

Conduct

(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

Guidelines apply

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

Court may take agreement, etc., into account

(6.2) Notwithstanding subsection (6.1), in making a variation order in respect of a child support order, a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

> (a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
>
> (b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

Reasons

(6.3) Where the court awards, pursuant to subsection (6.2), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

Consent orders

(6.4) Notwithstanding subsection (6.1), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines on the consent of both spouses if it is satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.

Reasonable arrangements

(6.5) For the purposes of subsection (6.4), in determining whether reasonable arrangements have been made for the support of a child, the court shall have regard to the applicable guidelines. However, the

court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

Priority to child support

(6.6) Section 15.3 applies, with any necessary modifications, when a court is considering an application under paragraph (1)(a) in respect of a child support order and an application under that paragraph in respect of a spousal support order.

Objectives of variation order varying spousal support order

(7) A variation order varying a spousal support order should

> (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
>
> (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
>
> (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
>
> (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

Limitation

(10) Notwithstanding subsection (1), where a spousal support order provides for support for a definite period or until a specified event occurs, a court may not, on an application instituted after the expiration of that period or the occurrence of the event, make a variation order for the purpose of resuming that support unless the court is satisfied that

> (a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4.1) that is related to the marriage; and
>
> (b) the changed circumstances, had they existed at the time of the making of the spousal support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

Copy of order

(11) Where a court makes a variation order in respect of a support order, parenting order or contact order made by another court, it shall send a copy of the variation order, certified by a judge or officer of the court, to that other court.

Proceedings Between Provinces and Between a Province and a Designated Jurisdiction to Obtain, Vary, Rescind or Suspend Support Orders or to Recognize Decisions of Designated Jurisdictions

Definitions

Definitions

18 The following definitions apply in this section and in sections 18.1 to 19.1.

competent authority means a court that has the authority to make an order or another entity that has the authority to make a decision with respect to support under this Act. (autorité compétente)

designated authority means a person or entity that is designated by a province to exercise the powers or perform the duties and functions set out in sections 18.1 to 19.1 within the province. (autorité désignée)

designated jurisdiction means a jurisdiction outside Canada — whether a country or a political subdivision of a country — that is designated under an Act that relates to the reciprocal enforcement of orders relating to support, of the province in which either of the former spouses resides. (État désigné)

responsible authority means a person or entity that, in a designated jurisdiction, performs functions that are similar to those performed by the designated authority under subsection 19(4). (autorité responsable)

Interjurisdictional Proceedings Between Provinces

Receipt and Sending of Applications

If former spouses reside in different provinces

18.1 (1) If the former spouses are resident in different provinces, either of them may, without notice to the other,

> (a) commence a proceeding to obtain, vary, rescind or suspend, retroactively or prospectively, a support order; or
>
> (b) request to have the amount of child support calculated or recalculated, if the provincial child support service in the province in which the other former spouse habitually resides provides such a service.

Procedure

(2) A proceeding referred to in paragraph (1)(a) shall be governed by this section, sections 18.2 and 18.3 and provincial law, with any necessary modifications, to the extent that the provincial law is not inconsistent with this Act.

Application

(3) For the purpose of subsection (1), a former spouse shall submit an application to the designated authority of the province in which they are resident.

Sending application to respondent's province

(4) After reviewing the application and ensuring that it is complete, the designated authority referred to in subsection (3) shall send it to the designated authority of the province in which the applicant believes the respondent is habitually resident.

Sending application to competent authority in respondent's province

(5) Subject to subsection (9), the designated authority that receives the application under subsection (4) shall send it to the competent authority in its province.

Provincial child support service

(6) If the competent authority is a provincial child support service, the amount of child support shall be calculated or recalculated in accordance with section 25.01 or 25.1, as the case may be.

Service on respondent by court

(7) If the competent authority is a court, it or any other person who is authorized to serve documents under the law of the province shall, on receipt of the application, serve the respondent with a copy of the application and a notice setting out the manner in which the respondent shall respond to the application and the respondent's obligation to provide documents or information as required by the applicable law.

Service not possible — returned application

(8) If the court or authorized person was unable to serve the documents under subsection (7), they shall return the application to the designated authority referred to in subsection (5).

Respondent resident in another province

(9) If the designated authority knows that the respondent is habitually resident in another province, it shall send the application to the designated authority of that province.

Respondent's habitual residence unknown

(10) If the habitual residence of the respondent is unknown, the designated authority shall return the application to the designated authority referred to in subsection (3).

Applicant need not be served

(11) Service of the notice and documents or information referred to in subsection (7) on the applicant is not required.

Adjournment of proceeding

(12) If the court requires further evidence, it shall adjourn the proceeding. Prior to adjourning, the court may make an interim order.

Request for further evidence

(13) If the court requires further evidence from the applicant, it shall request the designated authority of the province in which the court is located to communicate with the applicant or the designated authority in the province of the applicant in order to obtain the evidence.

Dismissal of application

(14) If the further evidence required under subsection (13) is not received by the court within 12 months after the day on which the court makes a request to the designated authority, the court may dismiss the application referred to in subsection (3) and terminate the interim order. The dismissal of the application does not preclude the applicant from making a new application.

Order

(15) The court may, on the basis of the evidence and the submissions of the former spouses, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court, make a support order or an order varying, rescinding or suspending a support order, retroactively or prospectively.

Application of certain provisions

(16) Subsections 15.1(3) to (8) and 15.2(3) to (6), section 15.3 and subsections 17(3) to (4.1), (6) to (7), (10) and (11) apply, with any necessary modifications, in respect of an order referred to in subsection (15).

Broad interpretation of documents

(17) For greater certainty, if a court receives a document under this section that is in a form that is different from that required by the rules regulating the practice and procedure in that court, or that contains terminology that is different from that used in this Act or the regulations, the court shall give a broad interpretation to the document for the purpose of giving effect to it.

Conversion of Applications

Application to court

18.2 (1) If an application is made to a court in a province under paragraph 17(1)(a) for a variation order in respect of a support order and the respondent habitually resides in a different province, the respondent may, within 40 days after being served with the application, request that the court convert the application into an application under subsection 18.1(3).

Conversion and sending of application

(2) Subject to subsection (3) and despite section 5, the court that receives the request shall direct that the application made under paragraph 17(1)(a), along with the evidence in support of it, be considered as an application under subsection 18.1(3), and shall send a copy of the application and of the evidence to the designated authority of the province in which the application was made.

Exception

(3) If the application under paragraph 17(1)(a) is accompanied by an application under paragraph 17(1)(b) for a variation order in respect of a parenting order, the court that receives the request shall issue the direction referred to in subsection (2) only if it considers it appropriate to do so in the circumstances.

Application of certain provisions

(4) Once the designated authority receives the copy of the application under subsection (2), subsections 18.1(2), (4), (5), (7) and (12) to (17) apply, with any necessary modifications, in respect of that application.

No action by respondent

18.3 (1) If an application is made to a court in a province under paragraph 17(1)(a) for a variation order in respect of a support order, the respondent habitually resides in a different province and the respondent does not file an answer to the application or request a conversion under subsection 18.2(1), the court to which the application was made

> (a) shall hear and determine the application in accordance with section 17 in the respondent's absence, if it is satisfied that there is sufficient evidence to do so; or
>
> (b) if it is not so satisfied, may direct, despite section 5, that the application, along with the evidence in support of it, be considered as an application under subsection 18.1(3), in which case it shall send a copy of the application and of the evidence to the designated authority of the province in which the application was made.

Assignment of support order

(2) Before the court hears and determines an application under paragraph (1)(a), the court shall take into consideration

> (a) whether the support order has been assigned under subsection 20.1(1); and
>
> (b) if the support order has been assigned, whether the order assignee received notice of the application and did not request a conversion under subsection 18.2(1).

Application of certain provisions

(3) If paragraph (1)(b) applies, then subsections 18.1(2), (4), (5), (7) and (12) to (17) apply, with any necessary modifications, in respect of the application.

Proceedings Between a Province and a Designated Jurisdiction

Receipt and Sending of Designated Jurisdictions' Applications

If applicant resides in designated jurisdiction

19 (1) A former spouse who is resident in a designated jurisdiction may, without notice to the other former spouse,

(a) commence a proceeding to obtain, vary, rescind or suspend, retroactively or prospectively, a support order; or

(b) request to have the amount of child support calculated or recalculated, if the provincial child support service in the province in which the other former spouse habitually resides provides such a service.

Procedure

(2) A proceeding referred to in paragraph (1)(a) shall be governed by this section and provincial law, with any necessary modifications, to the extent that the provincial law is not inconsistent with this Act.

Application

(3) For the purposes of subsection (1), a former spouse shall submit, through the responsible authority in the designated jurisdiction, an application to the designated authority of the province in which the applicant believes the respondent is habitually resident.

Sending application to competent authority in respondent's province

(4) After reviewing the application and ensuring that it is complete, the designated authority referred to in subsection (3) shall send it to the competent authority in its province.

Provincial child support service

(5) If the competent authority is a provincial child support service, the amount of child support shall be calculated or recalculated in accordance with section 25.01 or 25.1, as the case may be.

Service on respondent by court

(6) If the competent authority is a court, it or any other person who is authorized to serve documents under the law of the province shall, on receipt of the application, serve the respondent with a copy of the application and a notice setting out the manner in which the respondent shall respond to the

application and the respondent's obligation to provide documents or information as required by the applicable law.

Service not possible — returned application

(7) If the court or authorized person was unable to serve the documents under subsection (6), they shall return the application to the designated authority referred to in subsection (3).

Return of application to responsible authority

(8) The designated authority shall return the application to the responsible authority in the designated jurisdiction.

Applicant need not be served

(9) Service of the notice and documents or information referred to in subsection (6) on the applicant is not required.

Adjournment of proceeding

(10) If the court requires further evidence, it shall adjourn the proceeding. Prior to adjourning, the court may make an interim order.

Request for further evidence

(11) If the court requires further evidence from the applicant, it shall request the designated authority of the province in which the court is located to communicate with the applicant or the responsible authority in the designated jurisdiction in order to obtain the evidence.

Dismissal of application

(12) If the further evidence required under subsection (11) is not received by the court within 12 months after the day on which the court makes the request to the designated authority, the court may dismiss the application referred to in subsection (3) and terminate the interim order. The dismissal of the application does not preclude the applicant from making a new application.

Order

(13) The court may, on the basis of the evidence and the submissions of the former spouses, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court, make a support order or an order varying, rescinding or suspending a support order, retroactively or prospectively.

Provisional order

(14) For greater certainty, if an application under paragraph (1)(a) contains a provisional order that was made in the designated jurisdiction and does not have legal effect in Canada, the court may take the provisional order into consideration but is not bound by it.

Application of certain provisions

(15) Subsections 15.1(3) to (8) and 15.2(3) to (6), section 15.3 and subsections 17(3) to (4.1), (6) to (7), (10) and (11) apply, with any necessary modifications, in respect of an order referred to in subsection (13).

Broad interpretation of documents

(16) For greater certainty, if a court receives a document under this section that is in a form that is different from that required by the rules regulating the practice and procedure in that court, or that contains terminology that is different from that used in this Act or the regulations, the court shall give a broad interpretation to the document for the purpose of giving effect to it.

Recognition of Decisions of Designated Jurisdiction

Recognition of decision of designated jurisdiction varying support order

19.1 (1) A former spouse who is resident in a designated jurisdiction may, through the responsible authority in the designated jurisdiction, make an application to the designated authority of the province in which the respondent habitually resides for recognition and, if applicable, for enforcement, of a decision of the designated jurisdiction that has the effect of varying a support order.

Registration and recognition

(2) The decision of the designated jurisdiction shall be registered in accordance with the law of the province and that law, including the laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada, applies in respect of the recognition of the decision.

Enforcement

(3) A decision that is recognized in accordance with the law of the province is deemed to be an order made under section 17, has legal effect throughout Canada and may be enforced in any manner provided for by the law of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.

Legal Effect, Enforcement, Compliance and Assignment

Definition of court

20 (1) In this section, **court**, in respect of a province, has the meaning assigned by subsection 2(1) and includes such other court having jurisdiction in the province as is designated by the Lieutenant Governor in Council of the province as a court for the purposes of this section.

Legal effect of orders and decisions throughout Canada

(2) An order made under this Act in respect of support, parenting time, decision-making responsibility or contact and a provincial child support service decision that calculates or recalculates the amount of child support under section 25.01 or 25.1 have legal effect throughout Canada.

Enforcement

(3) An order or decision that has legal effect throughout Canada under subsection (2) may be

(a) registered in any court in a province and enforced in like manner as an order of that court; or

(b) enforced in a province in any other manner provided for by the laws of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.

Variation of orders

(4) Notwithstanding subsection (3), a court may only vary an order that has legal effect throughout Canada pursuant to subsection (2) in accordance with this Act.

Assignment of order

20.1 (1) A support order may be assigned to

(a) any minister of the Crown for Canada designated by the Governor in Council;

(b) any minister of the Crown for a province, or any agency in a province, designated by the Lieutenant Governor in Council of the province;

(c) any member of the Legislative Assembly of Yukon, or any agency in Yukon, designated by the Commissioner of Yukon;

(d) any member of the Legislative Assembly of the Northwest Territories, or any agency in the Northwest Territories, designated by the Commissioner of the Northwest Territories;

(e) any member of the Legislative Assembly of Nunavut, or any agency in Nunavut, designated by the Commissioner of Nunavut; or

(f) a public body referred to in Article 36 of the 2007 Convention, as defined in section 28.

Rights

(2) A minister, member or agency referred to in subsection (1) to whom an order is assigned is entitled to the payments due under the order, and has the same right to be notified of, and to participate in, proceedings under this Act to vary, rescind, suspend or enforce the order as the person who would otherwise be entitled to the payments.

Rights — public body

(3) A public body referred to in paragraph (1)(f) to whom a decision of a State Party that has the effect of varying a child support order has been assigned is entitled to the payments due under the decision, and has the same right to participate in proceedings under this Act, to recognize and enforce the decision or if the recognition of this decision is not possible, to obtain a variation order, as the person who would otherwise be entitled to the payments.

Definition of State Party

(4) For the purpose of subsection (3), State Party has the same meaning as in section 28.

Appeals

Appeal to appellate court

21 (1) Subject to subsections (2) and (3), an appeal lies to the appellate court from any judgment or order, whether final or interim, rendered or made by a court under this Act.

Restriction on divorce appeals

(2) No appeal lies from a judgment granting a divorce on or after the day on which the divorce takes effect.

Restriction on order appeals

(3) No appeal lies from an order made under this Act more than thirty days after the day on which the order was made.

Extension

(4) An appellate court or a judge thereof may, on special grounds, either before or after the expiration of the time fixed by subsection (3) for instituting an appeal, by order extend that time.

Powers of appellate court

(5) The appellate court may

(a) dismiss the appeal; or

(b) allow the appeal and

(i) render the judgment or make the order that ought to have been rendered or made, including such order or such further or other order as it deems just, or

(ii) order a new hearing where it deems it necessary to do so to correct a substantial wrong or miscarriage of justice.

Procedure on appeals

(6) Except as otherwise provided by this Act or the rules or regulations, an appeal under this section shall be asserted, heard and decided according to the ordinary procedure governing appeals to the appellate court from the court rendering the judgment or making the order being appealed.

General

Affidavit re removal of barriers to religious remarriage

21.1 (2) In any proceedings under this Act, a spouse (in this section referred to as the "deponent") may serve on the other spouse and file with the court an affidavit indicating

(a) that the other spouse is the spouse of the deponent;

(b) the date and place of the marriage, and the official character of the person who solemnized the marriage;

(c) the nature of any barriers to the remarriage of the deponent within the deponent's religion the removal of which is within the other spouse's control;

(d) where there are any barriers to the remarriage of the other spouse within the other spouse's religion the removal of which is within the deponent's control, that the deponent

(i) has removed those barriers, and the date and circumstances of that removal, or

(ii) has signified a willingness to remove those barriers, and the date and circumstances of that signification;

(e) that the deponent has, in writing, requested the other spouse to remove all of the barriers to the remarriage of the deponent within the deponent's religion the removal of which is within the other spouse's control;

(f) the date of the request described in paragraph (e); and

(g) that the other spouse, despite the request described in paragraph (e), has failed to remove all of the barriers referred to in that paragraph.

Powers of court where barriers not removed

(3) Where a spouse who has been served with an affidavit under subsection (2) does not

(a) within fifteen days after that affidavit is filed with the court or within such longer period as the court allows, serve on the deponent and file with the court an affidavit indicating that all of the barriers referred to in paragraph (2)(e) have been removed, and

(b) satisfy the court, in any additional manner that the court may require, that all of the barriers referred to in paragraph (2)(e) have been removed,

the court may, subject to any terms that the court considers appropriate,

(c) dismiss any application filed by that spouse under this Act, and

(d) strike out any other pleadings and affidavits filed by that spouse under this Act.

Special case

(4) Without limiting the generality of the court's discretion under subsection (3), the court may refuse to exercise its powers under paragraphs (3)(c) and (d) where a spouse who has been served with an affidavit under subsection (2)

(a) within fifteen days after that affidavit is filed with the court or within such longer period as the court allows, serves on the deponent and files with the court an affidavit indicating genuine grounds of a religious or conscientious nature for refusing to remove the barriers referred to in paragraph (2)(e); and

(b) satisfies the court, in any additional manner that the court may require, that the spouse has genuine grounds of a religious or conscientious nature for refusing to remove the barriers referred to in paragraph (2)(e).

Affidavits

(5) For the purposes of this section, an affidavit filed with the court by a spouse must, in order to be valid, indicate the date on which it was served on the other spouse.

Where section does not apply

(6) This section does not apply where the power to remove the barrier to religious remarriage lies with a religious body or official.

Recognition of foreign divorce

22 (1) A divorce granted, on or after the coming into force of this Act, by a competent authority shall be recognized for the purpose of determining the marital status in Canada of any person, if either former spouse was habitually resident in the country or subdivision of the competent authority for at least one year immediately preceding the commencement of proceedings for the divorce.

Recognition of foreign divorce

(2) A divorce granted after July 1, 1968 by a competent authority, on the basis of the domicile of the wife in the country or subdivision of the competent authority, determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for the purpose of determining the marital status in Canada of any person.

Other recognition rules preserved

(3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.

Recognition of foreign order that varies parenting or contact order

22.1 (1) Subject to sections 30 to 31.3, on application by an interested person, a court in a province that has a sufficient connection with the matter shall recognize a decision made by a competent authority that has the effect of varying, rescinding or suspending a parenting order or contact order, unless

(a) the child concerned is not habitually resident in the country other than Canada in which the competent authority is located or that competent authority of that other country would not have had jurisdiction if it applied substantially equivalent rules related to the jurisdiction as those that are set out in section 6.3;

(b) the decision was made, except in an urgent case, without the child having been provided with the opportunity to be heard, in violation of fundamental principles of procedure of the province;

(c) a person claims that the decision negatively affects the exercise of their parenting time or decision-making responsibility or contact under a contact order, and the decision was made, except in an urgent case, without the person having been given an opportunity to be heard;

(d) recognition of the decision would be manifestly contrary to public policy, taking into consideration the best interests of the child; or

(e) the decision is incompatible with a later decision that fulfils the requirements for recognition under this section.

Effect of recognition

(2) The court's decision recognizing the competent authority's decision is deemed to be an order made under section 17 and has legal effect throughout Canada.

Effect of non-recognition

(3) The court's decision refusing to recognize the competent authority's decision has legal effect throughout Canada.

Provincial laws of evidence

23 (1) Subject to this or any other Act of Parliament, the laws of evidence of the province in which any proceedings under this Act are taken, including the laws of proof of service of any document, apply to such proceedings.

Canada Evidence Act

(2) The Canada Evidence Act applies in respect of a proceeding before the Federal Court to determine, under subsection 3(3), 4(3), 5(3) or 6.2(3), which court retains jurisdiction.

Means of presenting submissions

23.1 If the parties to a proceeding are habitually resident in different provinces, a court of competent jurisdiction may, in accordance with any applicable rules regulating the practice and procedure in that court, make an order on the basis of the evidence and the submissions of the parties, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court.

Official languages

23.2 (1) A proceeding under this Act may be conducted in English or French, or in both official languages of Canada.

Language rights

(2) In any proceeding under this Act,

(a) any person has the right to use either official language, including to

(i) file pleadings or other documents,

(ii) give evidence, or

(iii) make submissions;

(b) the court shall, at the request of any person, provide simultaneous interpretation from one official language into the other;

(c) any party to that proceeding has the right to a judge who speaks the same official language as that party or both official languages, as the case may be;

(d) any party to that proceeding has the right to request a transcript or recording, as the case may be, of

(i) what was said during that proceeding in the official language in which it was said, if what was said was taken down by a stenographer or a sound recording apparatus, and

(ii) any interpretation into the other official language of what was said; and

(e) the court shall, at the request of any party to that proceeding, make available in that party's official language of choice any judgment or order that is rendered or made under this Act and that relates to that party.

Original version prevails

(3) In the case of a discrepancy between the original version of a document referred to in paragraph (2)(a) or (e) and the translated text, the original version shall prevail.

Court forms

(4) The court forms relating to any proceedings under this Act shall be made available in both official languages.

Proof of signature or office

24 A document offered in a proceeding under this Act that purports to be certified or sworn by a judge or an officer of a court shall, unless the contrary is proved, be proof of the appointment, signature or authority of the judge or officer and, in the case of a document purporting to be sworn, of the appointment, signature or authority of the person before whom the document purports to be sworn.

Definition of competent authority

25 (1) In this section, competent authority, in respect of a court, or appellate court, in a province means the body, person or group of persons ordinarily competent under the laws of that province to make rules regulating the practice and procedure in that court.

Rules

(2) Subject to subsection (3), the competent authority may make rules applicable to any proceedings under this Act in a court, or appellate court, in a province, including, without limiting the generality of the foregoing, rules

(a) regulating the practice and procedure in the court, including the addition of persons as parties to the proceedings;

(b) respecting the conduct and disposition of any proceedings under this Act without an oral hearing;

(b.1) respecting the application of section 23.1;

(c) regulating the sittings of the court;

(d) respecting the fixing and awarding of costs;

(e) prescribing and regulating the duties of officers of the court;

(f) respecting the transfer of proceedings under this Act to or from the court; and

(g) prescribing and regulating any other matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this Act.

Exercise of power

(3) The power to make rules for a court or appellate court conferred by subsection (2) on a competent authority shall be exercised in the like manner and subject to the like terms and conditions, if any, as the power to make rules for that court conferred on that authority by the laws of the province.

Not statutory instruments

(4) Rules made pursuant to this section by a competent authority that is not a judicial or quasi-judicial body shall be deemed not to be statutory instruments within the meaning and for the purposes of the Statutory Instruments Act.

Provincial child support service — calculation of child support

25.01 (1) With the approval of the Governor in Council, the Minister of Justice may, on behalf of the Government of Canada, enter into an agreement with a province authorizing a provincial child support service designated in the agreement to calculate the amount of child support in accordance with the applicable guidelines and set it out in a decision.

Application of law of province

(2) To the extent that it is not inconsistent with this section, the law of the province applies to a provincial child support service in the performance of its functions under this section.

Effect of calculation by provincial child support service

(3) The amount of child support calculated under this section is the amount payable by the spouse who is subject to a provincial child support service decision.

Liability

(4) A spouse who is subject to a provincial child support service decision becomes liable to pay the amount of child support calculated under this section on the day, or on the expiry of a period, specified by the law of the province or, if no day or period is specified, on the expiry of the period prescribed by the regulations.

Disagreement with respect to amount

(5) Either or both spouses who do not agree with the amount of the child support calculated under this section may apply to a court of competent jurisdiction for an order under section 15.1 before the day or within the period specified by the law of the province or, if no day or period is specified, within the period prescribed by the regulations.

Effect of application

(6) The liability to pay the amount of child support under subsection (4) continues while the determination of the application under subsection (5) is pending.

Recalculation of amount or application for order

(7) After a spouse subject to a provincial child support service decision becomes liable to pay an amount of child support under subsection (4), either or both spouses may have the amount of child support recalculated under section 25.1 or apply to a court of competent jurisdiction for an order under section 15.1.

Provincial child support service — recalculation of child support

25.1 (1) With the approval of the Governor in Council, the Minister of Justice may, on behalf of the Government of Canada, enter into an agreement with a province authorizing a provincial child support service designated in the agreement to recalculate, in accordance with the applicable guidelines, the amount of child support orders on the basis of updated income information.

Application of law of province

(1.1) To the extent that it is not inconsistent with this section, the law of the province applies to a provincial child support service in the performance of its functions under this section.

Deeming of income

(1.2) For the purposes of subsection (1), if a spouse does not provide the income information, a provincial child support service may deem the income of that spouse to be the amount determined in accordance with the method of calculation set out in the law of the province or, if no such method is specified, in accordance with the method prescribed by the regulations.

Effect of recalculation

(2) Subject to subsection (5), the amount of a child support order as recalculated pursuant to this section shall for all purposes be deemed to be the amount payable under the child support order.

Effect of deeming of income

(2.1) Subject to subsection (5), the income determined under subsection (1.2) shall be deemed to be the spouse's income for the purposes of the child support order.

Liability

(3) The spouse against whom a child support order was made becomes liable to pay the recalculated amount on the day, or on the expiry of the period specified by the law of the province or, if no day or period is specified, on the expiry of the period prescribed by the regulations.

Disagreement with recalculation

(4) If either or both spouses do not agree with the recalculated amount of the child support order, either or both of them may, before the day or within the period specified by the law of the province or, if no day or period is specified, within the period prescribed by the regulations, apply to a court of competent jurisdiction

(a) in the case of an interim order made under subsection 15.1(2), for an order under section 15.1;

(b) in the case of a provincial child support service decision made under section 25.01, for an order under section 15.1; or

(c) in any other case, if they are former spouses, for an order under paragraph 17(1)(a).

Effect of application

(5) Where an application is made under subsection (4), the operation of subsection (3) is suspended pending the determination of the application, and the child support order continues in effect.

Withdrawal of application

(6) If an application made under subsection (4) is withdrawn before it is determined, the spouse against whom the child support order was made becomes liable to pay the recalculated amount on the day on which the spouse would have become liable had the application not been made.

Definition of child support order

(7) In this section, **child support order** has the same meaning as in subsection 2(1) and also means an interim order made under subsection 15.1(2), a provincial child support service decision made under section 25.01 and a variation order made under paragraph 17(1)(a).day on which the former spouse would have become liable had the application not been made.

Ministerial activities

25.2 The Minister of Justice may conduct activities related to matters governed by this Act, including undertaking research.

Regulations

26 (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and, without limiting the generality of the foregoing, may make regulations

(a) respecting the establishment, mandate and operation of a central registry of divorce proceedings;

(b) providing for uniformity in the rules made under section 25;

(c) respecting the framework for the calculation or recalculation of the amount of child support by the provincial child support service under section 25.01 or 25.1; and

(d) prescribing any matter or thing that by this Act is to be or may be prescribed.

Regulations prevail

(2) Regulations made under paragraph (1)(b) prevail over rules made under section 25.

Guidelines

26.1 (1) The Governor in Council may establish guidelines respecting orders for child support, including, but without limiting the generality of the foregoing, guidelines

(a) respecting the way in which the amount of an order for child support is to be determined;

(b) respecting the circumstances in which discretion may be exercised in the making of an order for child support;

(c) authorizing a court to require that the amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;

(d) authorizing a court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order;

(e) respecting the circumstances that give rise to the making of a variation order in respect of a child support order;

(f) respecting the determination of income for the purposes of the application of the guidelines;

(g) authorizing a court to impute income for the purposes of the application of the guidelines; and

(h) respecting the production of information relevant to an order for child support and providing for sanctions and other consequences when that information is not provided.

Principle

(2) The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

Definition of order for child support

(3) In subsection (1), order for child support means

(a) an order or interim order made under section 15.1;

(b) a variation order in respect of a child support order;

(c) an order made under subsection 18.1(15) or 19(13) in respect of a child support order; or

(d) an order made under subsection 28.5(5) or 29.1(5).

Fees

27 (1) The Governor in Council may, by order, authorize the Minister of Justice to prescribe a fee to be paid by any person to whom a service is provided under this Act or the regulations.

Agreements

(2) The Minister of Justice may, with the approval of the Governor in Council, enter into an agreement with the government of any province respecting the collection and remittance of any fees prescribed pursuant to subsection (1).

International Conventions

Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

Definitions

Definitions

28 The following definitions apply in this section and in sections 28.1 to 29.5.

2007 Convention means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007, set out in Schedul 1. (Convention de 2007)

Central Authority means any person or entity designated under Article 4 of the 2007 Convention that is responsible for carrying out the duties that are imposed on it by the 2007 Convention. (autorité centrale)

competent authority means a court that has the authority to make an order, or another entity that has the authority to make a decision, with respect to support under this Act. (autorité compétente)

creditor means a former spouse to whom support is owed or who seeks to obtain support. (créancier)

debtor means a former spouse who owes support or from whom support is sought. (débiteur)

State Party means a State other than Canada in which the 2007 Convention applies. (État partie)

Implementation, Interpretation and Application of the 2007 Convention

Force of law

28.1 (1) The provisions of the 2007 Convention have the force of law in Canada in so far as they relate to subjects that fall within the legislative competence of Parliament.

Inconsistency

(2) The 2007 Convention prevails over this Act and any other federal law to the extent of any inconsistency between them.

Explanatory Report

28.2 In interpreting the 2007 Convention, recourse may be had to the Explanatory Report on the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted by the Twenty-First Session of the Hague Conference on Private International Law held from November 5 to 23, 2007.

Application

28.3 Sections 28.4 to 29.5 apply if either the creditor or the debtor, as the case may be, resides in a State Party and the other resides in a province in respect of which Canada has made a declaration extending the application of the 2007 Convention to that province. However, the application of those provisions does not exclude the application of the other provisions of this Act unless there is an indication to the contrary.

Application of Creditor to Central Authority

Recognition of State Party decision varying child support order

28.4 (1) A creditor may, through the Central Authority designated by the State Party in which the creditor resides, submit to the Central Authority in the province in which the debtor is habitually resident an application for recognition and, if applicable, for enforcement of a decision of the State Party that has the effect of varying a child support order.

Spousal support order

(2) A creditor may also in the same manner submit an application for recognition and, if applicable, for enforcement of a decision of the State Party that has the effect of varying a spousal support order if the application is also for recognition and, if applicable, for enforcement of a decision of the State Party that has the effect of varying a child support order.

Registration and recognition

(3) The decision of the State Party is registered in accordance with the law of the province and that law, including the laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada, applies in respect of the recognition of the decision.

Enforcement

(4) A decision that is recognized in accordance with the law of the province is deemed to be an order made under section 17, has legal effect throughout Canada and may be enforced in any manner

provided for by the law of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.

Establishment or variation of child support order or calculation or recalculation of amount

28.5 (1) A creditor may, through the Central Authority designated by the State Party in which the creditor resides, submit to the Central Authority in the province in which the debtor is habitually resident an application to be sent to the competent authority in the province.

Types of applications

(2) An application may seek

(a) to obtain or to vary a child support order; or

(b) to have the amount of child support calculated or recalculated, if the provincial child support service in the province in which the debtor habitually resides provides such a service.

Sending of application

(3) The Central Authority shall, in accordance with the law of the province, send the application to the competent authority of that province.

Application of section 19

(4) Subsections 19(5) to (12) and (16) apply with necessary modifications to the application except that a reference to a "respondent" shall be read as "debtor", a reference to "designated authority" shall be read as "Central Authority in the province in which the debtor is habitually resident", a reference to "responsible authority in the designated jurisdiction" shall be read as "Central Authority designated by the State Party in which the creditor resides" and "applicant" shall be read as "creditor".

Order

(5) The court referred to in subsection 19(6) may, on the basis of the evidence and the submissions of the creditor and of the debtor, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court, make a child support order or an order varying a child support order, retroactively or prospectively.

Application of certain provisions

(6) Subsections 15.1(3) to (8), section 15.3 and subsections 17(3), (4), (6) to (6.5) and (11) apply, with any necessary modifications, in respect of an order referred to in subsection (5).

Exception

(7) Subsections (1) to (6) apply despite sections 4 and 5.

Application of Debtor to Central Authority

Recognition of State Party decision suspending or limiting enforcement of child support order

29 (1) A debtor may, through the Central Authority designated by the State Party in which the debtor resides, submit to the Central Authority in the province in which the creditor is habitually resident an application for recognition of a decision of a State Party that has the effect of suspending or limiting the enforcement of a child support order.

Spousal support order

(2) A debtor may also in the same manner submit an application for recognition of a decision of a State Party that has the effect of suspending or limiting the enforcement of a spousal support order, if the application is also for recognition of a decision of the State Party that has the effect of suspending or limiting the enforcement of a child support order.

Registration and recognition

(3) The decision of the State Party shall be registered in accordance with the law of the province and that law, including the laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada, apply in respect of the recognition of the decision.

Enforcement

(4) A decision that is recognized in accordance with the law of the province is deemed to be an order made under section 17, has legal effect throughout Canada and may be enforced in any manner provided for by the law of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.

Variation of child support order or recalculation of amount

29.1 (1) A debtor may, through the Central Authority designated by the State Party in which the debtor resides, submit to the Central Authority in the province in which the creditor is habitually resident an application to be sent to the competent authority in the province.

Types of applications

(2) An application may seek

(a) to vary a child support order; or

(b) to have the amount of child support recalculated, if the provincial child support service in the province in which the creditor habitually resides provides such a service.

Sending of application

(3) The Central Authority shall, in accordance with the law of the province, send the application to the competent authority of that province.

Application of section 19

(4) Subsections 19(5) to (12) and (16) apply with necessary modifications to the application except that a reference to a "respondent" shall be read as "creditor", a reference to "designated authority" shall be read as "Central Authority in the province in which the creditor is habitually resident", a reference to "responsible authority in the designated jurisdiction" shall be read as "Central Authority designated by the State Party in which the debtor resides" and "applicant" shall be read as "debtor".

Order

(5) The court referred to in subsection 19(6) may, on the basis of the evidence and the submissions of the creditor and of the debtor, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court, make an order varying a child support order, retroactively or prospectively.

Application of certain provisions

(6) Subsections 17(3), (4), (6) to (6.5) and (11) apply, with any necessary modifications, in respect of an order referred to in subsection (5).

Exception

(7) Subsections (1) to (6) apply despite section 5.

Spousal Support Orders

Declaration in respect of a province

29.2 If Canada declares under Article 2 of the 2007 Convention that the application of Chapters II and III of that Convention is to extend, in respect of a province, to spousal support orders, the applications described in sections 28.4 to 29.1 of this Act may also be made in respect of those orders and in that case those sections apply with any necessary modifications.

Application of Creditor to Court

Recognition of State Party decision varying support order

29.3 (1) A creditor may submit to a court in the province in which the debtor is habitually resident an application for recognition — and, if applicable, for enforcement — of a decision of a State Party that has the effect of varying a support order.

Registration and recognition

(2) The decision of the State Party shall be registered in accordance with the law of the province and that law, including the laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada, applies in respect of the recognition of the decision.

Enforcement

(3) A decision that is recognized in accordance with the law of the province is deemed to be an order made under section 17, has legal effect throughout Canada and may be enforced in any manner provided for by the law of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.

Application of Debtor to Court

Recognition of State Party decision suspending or limiting enforcement of support order

29.4 (1) A debtor may submit to a court in the province in which the creditor is habitually resident an application for recognition of a decision of a State Party that has the effect of suspending or limiting the enforcement of a support order.

Registration and recognition

(2) The decision of the State Party shall be registered in accordance with the law of the province and that law, including the laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada, applies in respect of the recognition of the decision.

Enforcement

(3) A decision that is recognized in accordance with the law of the province is deemed to be an order made under section 17, has legal effect throughout Canada and may be enforced in any manner provided for by the law of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.

Limits on Divorce Proceedings

Support decision obtained in State Party

29.5 (1) If a divorce proceeding is commenced in the province in which the debtor is habitually resident, the court of competent jurisdiction is not authorized to make an order under section 15.1 if the creditor has, in the State Party in which the creditor habitually resides, obtained a decision that requires the debtor to pay for the support of any or all of the children of the marriage.

Exceptions

(2) Subsection (1) does not apply if

(a) the creditor accepts the jurisdiction of the court, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

(b) the decision-making authority that made the decision in the State Party has no jurisdiction to vary the decision or make a new one or refuses to exercise its jurisdiction to do so; or

(c) the decision cannot be recognized or declared enforceable in the province in which the debtor is habitually resident.

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

Definitions

Definitions

30 The following definitions apply in this section and in sections 30.1 to 31.3.

1996 Convention means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded at The Hague on October 19, 1996, set out in Schedule 2. (Convention de 1996)

State Party means a State other than Canada in which the 1996 Convention applies. (État partie)

Implementation, Interpretation and Application of the 1996 Convention

Force of law

30.1 (1) The provisions of the 1996 Convention have the force of law in Canada in so far as they relate to subjects that fall within the legislative competence of Parliament.

Inconsistency

(2) The 1996 Convention prevails over this Act and any other federal law to the extent of any inconsistency between them.

Explanatory Report

30.2 In interpreting the 1996 Convention, recourse may be had to the Explanatory Report on the 1996 Hague Child Protection Convention, adopted by the Eighteenth Session of the Hague Conference on Private International Law that was held from September 30 to October 19, 1996.

Application

30.3 Sections 30.4 to 31.3 only apply in a province if

(a) Canada has made a declaration extending the application of the 1996 Convention to that province; and

(b) the child of the marriage concerned is under 18 years of age.

Jurisdiction

Child habitually resident in State Party

30.4 If a child concerned is habitually resident in a State Party, a court in a province does not have jurisdiction to hear and determine an application in respect of the child for a parenting order, a contact order or a variation order in respect of either such order, except in the circumstances set out in section 30.6, 30.7, 30.9 or 31.

Wrongful removal or retention

30.5 In the case of a wrongful removal or retention, as defined in Article 7(2) of the 1996 Convention, a court in a province has jurisdiction to hear and determine an application for a parenting order, a contact order or a variation order in respect of such orders only if the child has become habitually resident in that province and the conditions set out in subparagraphs 7(1)(a) or (b) of that Convention have been met.

Child present in province

30.6 If one or more of the circumstances set out in Article 6 of the 1996 Convention exist and the child is present in a province, a court in that province that would otherwise have jurisdiction under any of sections 3 to 5 of this Act has jurisdiction to hear and determine an application in respect of the child for a parenting order, a contact order or a variation order in respect of either such order.

Divorce proceeding — child habitually resident in State Party

30.7 (1) For the purposes of Article 10 of the 1996 Convention, if the child is habitually resident in a State Party, a court in a province that would otherwise have jurisdiction under section 3 of this Act has jurisdiction to make a parenting order or contact order in respect of the child if

(a) at least one of the spouses has parental responsibility in respect of the child;

(b) the spouses and any other person who has parental responsibility accept the jurisdiction of the court; and

(c) the court is satisfied that it is in the best interests of the child to exercise jurisdiction.

Definition of parental responsibility

(2) For the purposes of subsection (1), **parental responsibility** has the same meaning as in Article 1(2) of the 1996 Convention.

Transfer of Jurisdiction

State Party better placed to assess child's best interests

30.8 For the purposes of Articles 8 and 9 of the 1996 Convention, a court in the province in which a child is habitually resident that would otherwise have jurisdiction under any of sections 3 to 6 of this Act, or that has jurisdiction under section 30.6 of this Act, may decline to exercise jurisdiction to make, in respect of the child, a parenting order, a contact order or a variation order in respect of such an order if the conditions of Article 8 or 9, as the case may be, are fulfilled and there is agreement between the court and the competent authority of a State Party that the latter will have jurisdiction.

Canadian court better placed to assess child's best interests

30.9 For the purposes of Articles 8 and 9 of the 1996 Convention, only the court in a province that would otherwise have jurisdiction under any of sections 3 to 5 of this Act may exercise jurisdiction to make a parenting order, a contact order or a variation order in respect of such orders if the conditions of Article 8 or 9, as the case may be, are fulfilled and there is agreement between the competent authority of a State Party and the court that the latter will have jurisdiction.

Urgency

Urgent cases

31 For the purposes of Article 11 of the 1996 Convention, a court in a province that does not have jurisdiction under sections 30.4 to 30.9 of this Act but that would otherwise have jurisdiction under any of sections 3 to 5 of this Act, may, in urgent cases, make a parenting order, a contact order or a variation order in respect of either such order if the child who would be the subject of the order is present in that province.

Recognition

Recognition by operation of law

31.1 (1) For the purposes of Article 23 of the 1996 Convention, a measure taken by a competent authority of a State Party is a measure that has the effect of varying, rescinding or suspending a parenting order or contact order.

Measure taken deemed to be variation order

(2) A measure taken by a competent authority of a State Party that is recognized by operation of law under Article 23(1) of the 1996 Convention is deemed to be an order made under section 17 of this Act.

Extent of validity

(3) Despite subsection 20(2), the measure referred to in subsection (2) is valid only in any province to which the 1996 Convention applies.

Jurisdiction respecting recognition

31.2 (1) For the purposes of Article 24 of the 1996 Convention and on application by an interested person, a court in a province has jurisdiction to decide on the recognition of a measure referred to in section 31.1 of this Act if there is a sufficient connection between the matter and the province.

Effect of recognition

(2) The court's decision recognizing the measure is deemed to be an order made under section 17 and has legal effect throughout Canada.

Effect of non-recognition

(3) The court's decision refusing to recognize the measure has legal effect throughout Canada.

Enforcement

31.3 For the purposes of Article 26 of the 1996 Convention, a measure taken by a competent authority of a State Party that is enforceable in that State Party and that is to be enforced in a province may, on application by an interested person,

(a) be declared to be enforceable by a court in the province and enforced in that province as an order of that court; or

(b) be registered for the purposes of enforcement in the court in that province and enforced in that province as an order of that court.

Transitional Provisions

Proceedings based on facts arising before commencement of Act

32 Proceedings may be commenced under this Act notwithstanding that the material facts or circumstances giving rise to the proceedings or to jurisdiction over the proceedings occurred wholly or partly before the day on which this Act comes into force.

Divorce Act, R.S. 1970, c. D-8

Variation and enforcement of orders previously made

34 (1) Subject to subsection (1.1), any order made under subsection 11(1) of the Divorce Act, chapter D-8 of the Revised Statutes of Canada, 1970, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day under subsection 22(2) of that Act may be varied, rescinded, suspended or enforced in accordance with sections 17 to 20, other than subsection 17(10), of this Act as if

(a) the order were a support order, parenting order or contact order, as the case may be; and

(b) in subsections 17(4), (4.1) and (5), the words “or the last order made under subsection 11(2) of the Divorce Act, chapter D-8 of the Revised Statutes of Canada, 1970, varying that order” were added immediately before the words “or the last variation order made in respect of that order”.

Combined orders

(1.1) Where an application is made under subsection 17(1) to vary an order referred to in subsection (1) that provides a single amount of money for the combined support of one or more children and a former spouse, the court shall rescind the order and treat the application as an application for a child support order and an application for a spousal support order.

Enforcement of interim orders

(2) Any order made under section 10 of the Divorce Act, chapter D-8 of the Revised Statutes of Canada, 1970, may be enforced in accordance with section 20 of this Act as if it were an order made under subsection 15.1(1) or 15.2(1) or section 16.1 or 16.5 of this Act, as the case may be.

Assignment of orders previously made

(3) Any order for the maintenance of a spouse, former spouse or child of the marriage made under section 10 or 11 of the Divorce Act, chapter D-8 of the Revised Statutes of Canada, 1970, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day under subsection 22(2) of that Act may be assigned to any minister, member or agency designated under section 20.1.

Procedural laws continued

35 The rules and regulations made under the Divorce Act, chapter D-8 of the Revised Statutes of Canada, 1970, and the provisions of any other law or of any rule, regulation or other instrument made thereunder respecting any matter in relation to which rules may be made under subsection 25(2) that were in force in Canada or any province immediately before the day on which this Act comes into force and that are not inconsistent with this Act continue in force as though made or enacted by or under this Act until they are repealed or altered by rules or regulations made under this Act or are, by virtue of the making of rules or regulations under this Act, rendered inconsistent with those rules or regulations.

Divorce Act, R.S. 1985, c. 3 (2nd Supp.)

Variation and enforcement of support orders previously made

35.1 (1) Subject to subsection (2), any support order made under this Act before the coming into force of this section may be varied, rescinded, suspended or enforced in accordance with sections 17 to 20 as if the support order were a child support order or a spousal support order, as the case may be.

Combined orders

(2) Where an application is made under subsection 17(1) to vary a support order made under this Act before the coming into force of this section that provides for the combined support of one or more children and a former spouse, the court shall rescind the order and treat the application as an application for a child support order and an application for a spousal support order.

Assignment of orders previously made

(3) Any support order made under this Act before the coming into force of this section may be assigned to any minister, member or agency designated pursuant to section 20.1.

Agreements entered into under subsection 25.1(1)

35.2 Any agreement entered into by the Minister of Justice under subsection 25.1(1), as that subsection read immediately before the day on which section 27 of An 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 comes into force, and that continues to be in force on that day, is deemed to have been entered into under subsection 25.1(1), as that subsection read on that day.

Proceedings commenced before coming into force

35.3 A proceeding commenced under this Act before the day on which this section comes into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with this Act as it reads as of that day.

Person deemed to have parenting time and decision-making responsibility

35.4 Unless a court orders otherwise,

> (a) a person who had custody of a child by virtue of a custody order made under this Act, immediately before the day on which this section comes into force, is deemed as of that day, to be a person to whom parenting time and decision-making responsibility have been allocated; and
>
> (b) a spouse or former spouse who had access to a child by virtue of a custody order made under this Act, immediately before the day on which this section comes into force, is deemed as of that date, to be a person to whom parenting time has been allocated.

Person deemed to have contact order

35.5 If, immediately before the day on which this section comes into force, a person who is not a spouse or former spouse had access to a child by virtue of a custody order made under this Act, then, as of that day, unless a court orders otherwise, that person is deemed to be a person who has contact with the child under a contact order.

No notice

35.6 A person who is deemed under section 35.4, to be a person to whom parenting time or decision-making responsibility has been allocated is not required to give notice under either section 16.8 or 16.9 if a custody order to which they are a party specifies that no notice is required in respect of a change in the place of residence by the person or a child to whom the order relates.

No change in circumstances

35.7 For the purposes of subsection 17(5), as enacted by subsection 13(2) of An 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, the coming into force of that Act does not constitute a change in the circumstances of the child.

Variation of orders previously made

35.8 An order made before the day on which this section comes into force under subsection 16(1), as that subsection read immediately before that day, or an order made in proceedings disposed of by the court in the manner described in section 35.3, may, as of that day, if it is still in effect, be varied, rescinded or suspended in accordance with section 17, as amended by section 13 of An 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, as if the order were a parenting order or contact order.

Provisional orders

35.9 If, before the day on which this section comes into force, a provisional order was made under subsection 18(2) as it read immediately before that day, the provisional order is deemed, as of that day, to be an application made under in subsection 18.1(3) and shall be dealt with and disposed of as such.