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Reforming the Parenting Provisions of the *Divorce Act*: A Commentary on Bill C-78

Nicholas Bala*

On 22 May, 2018 the Liberal government introduced Bill C-78 to Parliament, which will, if enacted, amend the parenting provisions of the *Divorce Act*, the first significant change to this part of the legislation since it came into effect in 1986.¹ There have already similar changes to the parenting laws that have had effect in a few provinces, as well as appeal court decisions in other provinces that have encouraged moves towards use of the “parenting plans” rather than the terms “custody” and “access.” While these changes should have only limited impact on Canadian family lawyers who have already adopted child-focused collaborative approaches to family dispute resolution, they should have a greater impact on the courts and on practitioners who have a more adversarial approach to family law, as well as on self-represented litigants who may look to the *Act* for guidance. Even before the amendments come into force, it is important for practitioners and judges to be aware of them, as the enforcement of an agreement or order may in the future be affected by these reforms; most notably, the proposed legislation will give more weight than the present law to a clause that restricts relocation with a child.

Bill C-78 will affect the making of orders and agreements concerning children and parenting, including provisions that will:

- abandon the archaic “custody” and “access” terminology now in the *Divorce Act*, introducing more child focussed concepts like “parenting time” and “parental responsibilities,” that are to be incorporated into “parenting plans;”
- encourage parents and professionals to settle disagreements outside of the court process, using mediation or other collaborative processes. However, they are not required by Bill C-78 to use of such alternatives to the courts;
- encourage recognition of the importance of one parent supporting their child’s relationships with the other parent;

* Professor, Faculty of Law, Queen’s University. bala@queensu.ca. For inclusion in materials of the National Family Law Program, July 10, 2018.

¹ Bill C-78, 1st Session, 42nd Parliament, 1st Reading May 22, 2018.

- specifically address issues of family violence, requiring courts to consider the effects of spousal abuse on both the immediate victims and the children;
- provide that the views and preferences of children should be considered by decision-makers: children must have a voice, but not necessarily a choice; and
- change the law governing cases where one parent wishes to relocate.

Many of the changes proposed by the *Bill* related to post-divorce parenting are similar to reforms already enacted in Alberta,² British Columbia³ and Nova Scotia for post-separation parenting.⁴ In theory, in those provinces, the terminology and concepts of the current federal *Divorce Act* are applied to divorcing couples, while parents who never married are governed by the provincial statute. In fact, practice and terminology for both divorcing and separated couples in those provinces was significantly affected by the reforms to provincial law, and appeal courts in other provinces have also encouraged use of terminology other than the concepts of custody and access.⁵ We can similarly expect that if the *Divorce Act* is amended, this will affect practice regarding unmarried parents in provinces like Ontario that have not reformed its legislation, even if the provincial government does not reform the *Children's Law Reform Act*.⁶

It is widely acknowledged that Canada's *Divorce Act* and family justice system are in need of reform. The adoption of the concepts in Bill C-78 has significant support from family lawyers, judges and scholars, as well as arbitrators and mediators.⁷ As the Bill was introduced more than a year before the next federal election, it seems likely that the Bill will be enacted, and this would be a most welcome development. However, there is a busy Parliamentary agenda and a previous effort by the government in 2003 to reform these provisions of the *Divorce Act*

² *Family Law Act*, S.A. 2003, c. F4.5, in force 2005

³ *Family Law Act*, SBC 2011, c 25, in force 2013

⁴ The Nova Scotia, *Parenting and Support Act*, SNS 2015. C.44, in force in 1 May 2017.

⁵ See e.g. *M v F*, 2015 ONCA 277; *Abbott v. Taylor* (1986), 28 DLR (4th) 125 (Man CA).

⁶ R.S.O. 1990, c. C.12. A discussion of the impact of the changes on Québec is beyond the scope of this paper, but it is notable that since 1991 the *Civil Code* has provided that even if a child primarily lives with one parent, both parents continue to have “parental authority” and must make joint decisions concerning such issues as health and education, unless a court order specifically deprives a parent of this right. In Québec, there is a strong preference (“tendance lourde”) toward shared parenting arrangements (la garde conjointe) and sole custody is very rare: see Bala, Birnbaum, Cyr, Poitras, Saini & Leclaire, Shared Parenting in Canada: Increasing Use But Continued Controversy(2017) 55(4) Fam Ct Rev 513-530.

⁷ See e.g. Canadian Bar Association, Family Law Section, Letter of Lawrence Pinsky, to Minister of Justice, Dec. 22, 2017; Bertrand, Paetsch, Boyd & Bala, *The Practice of Family Law in Canada: Results from a Survey of Participants at the 2016 National Family Law Program* (Canadian Research Institute for Law & the Family, 2016)

failed.⁸ Advocates for “equal shared parenting” complain that Bill C-78 does not go far enough, as it does not have a presumption of “equal parenting.” Advocates for abused women have expressed concerns that the new law’s encouragement to reach out of court resolutions could force victims of family violence into accepting improvident settlements or dangerous situations. There are likely to be Parliamentary hearings on Bill C-78, and those who support the reforms, or who seek amendments, will be engaged in that process.

The following discussion high-lights some of the most significant proposed reforms in Bill C-78 as they relate to parenting. Other provisions of Bill C-78 that relate to international enforcement of parenting orders, disclosure of income information, enforcement of support orders and use of provincial support calculation agencies are beyond the scope of this brief commentary.⁹ Even if not enacted in the near future, Bill C-78 is likely to have effects on practice and professional culture, as in many ways it reinforces trends already evident in Canada towards more use of different forms of shared parenting and non-court methods of family dispute resolution.

Concepts: Parenting Orders

Many countries have abandoned the antiquated concepts of “custody” and “access” that are found in Canada’s present *Divorce Act*, which came into force in 1986; those concepts place an emphasis on the protection of parental rights. Bill C-78 focusses on the needs of children, and the responsibilities of parents, rather than their rights. Although many separating parents already end up with some form of joint or shared custody, the fact that under the present statute the legal process uses terms that have proprietary connotations is the wrong place to start parents thinking about the process. It leaves a lasting impression that one parent will be the “winner” of custody, and the other is the “loser,” afforded only the access rights of a visiting parent. The use of these terms is especially problematic for self-represented individuals who may look to the legislation for guidance, as well as for clients whose professional advisors continue to use such terminology.

⁸ For a discussion of the background to Bill C-78 and previous efforts to amend the *Divorce Act*, see N. Bala, Bringing Canada’s Divorce Act into the New Millennium: Enacting a Child-Focused Parenting Law(2015) 40 Queen’s L J 425.

⁹ For a discussion of the entire Bill, see Boyd: A Brief Overview of Bill C-78, An Act to Amend the Divorce Act and Related Legislation, Parts 1 & 2 (Canadian Research Institute for Law & the Family, 2018).

Under Bill -78, parents, and if necessary courts, are to make “parenting plans” that allocate or schedule “parenting time,” and that allocate or share “decision-making responsibility.”¹⁰ While shared decision-making is often desirable, in higher conflict cases it will normally be preferable for parents to be required to consult about major decisions, but to leave one parent with the final authority to make a decision so that potential for resort to the courts is limited.

Courts may also make parenting orders that specify how communication between the parents or between a parent and child is to occur or that prohibit relocation of a child without a court order or the consent of both parents. “Parental decision-making” refers to making decisions major issues as education; unless a court orders otherwise, the person with parenting time has the exclusive authority to make, during that time, day-to day decisions affecting the child.¹¹

No Presumption of “Equal Parenting”

It is important to appreciate that Bill C-78 does not set out any presumptions about the amount of time that each parent will spend the child, and in particular does not mention any notion of “equal” parenting time or responsibilities. To the contrary, it is expected that individualized plans will be made for each child, and that these are likely to vary over time as children mature, and the needs and circumstances of children and their parents change. The absence of a presumption in favour of equal parenting rights is already the subject of adverse commentary by Canadian Equal Parenting groups (aka “Fathers’ Rights” groups) who will be presenting briefs at Parliamentary hearings, expected to be held in the Fall of 2018, to support amendments to Bill C-78 to adopt such provisions.¹²

There is an important place for *various forms of shared parenting*, a broad concept that includes but is not limited to shared custody or equal custody, that emphasizes the need of parents to share time and responsibilities, with each co-parent involved in a significant but not necessarily “equal” way in their children’s lives. Bill C-78 would require courts to take into

¹⁰ s. 2(1).

¹¹ s. 16.2 (5).

¹² Toronto lawyer Gene Colman (June 13, 2018) identifies amendments that will be proposed by these groups; he also discusses the relationship between the “Fathers’ Right Movement” and the “Family Rights Movement,” see Gene Colman, *An Introduction to Fathers’ Rights* (2015) www.complexfamilylaw.com

account the willingness of each parent to support a child's relationship to the other parent as a factor in making a parenting plan. In most intact families, parents share responsibilities, but they do not spend equal time with their children, so legislation should not specify that such an arrangement would be presumed to be in the interests of a child. There are also logistical and practical constraints to equal parenting time in many cases, and this type of arrangement requires parents who are able to co-operate

Although a number of studies suggest that children have better outcomes if they are in shared parenting arrangements than in the sole custody of one parent,¹³ it is critical to appreciate that these studies are largely based on the experiences of families where the parents have agreed to shared parenting, not cases where it is imposed by a court.¹⁴ Experience in jurisdictions that have tried various forms of statutory presumptions about parenting time reveals that such legislative rules promote litigation, especially among high conflict parents, who are not well suited to this type of arrangement. In Australia, as a result of lobbying from fathers, presumptive rules about parenting time were enacted but then repealed. Two Australian scholars, Bruce Smyth and Richard Chisholm, the latter a retired judge of the Family Court, reviewed the experience in their country and concluded:

In our view, a preoccupation with [equal] time as such may encourage parental feelings of entitlement rather than benefits for children. Children may well benefit where separated parents voluntarily choose shared-time arrangements that they can manage cooperatively and tailor to the children's changing needs, whereas rigid arrangements between warring parents are likely to have a negative impact on children.¹⁵

In the United States, there has been a long and on-going debate and controversy about presumptions of custody or parenting time. While almost all states have reformed their laws to move away from the old custody and access concepts and encourage forms of shared parenting, experiments with statutory presumptions, in particular of "equal parenting" have generally

¹³ Linda Nielsen, "Joint versus sole physical custody: Outcomes for children independent of family income or parental conflict" (2018), 15 *Journal of Child Custody* 1

¹⁴ See e.g. Birnbaum, Bala, Saini & Sohani, "Shared Parenting: Ontario Case Law and Social Science Research" (2016), 35 *Can Fam L Q* 139-179.

¹⁵ Bruce Smyth & Richard Chisholm, *Shared-Time Parenting After Separation in Australia: Precursors, Prevalence, and Postreform Patterns* (2017), 55 *Fam Ct Rev* 586.

proved short lived. American law professor Margaret Brinig summarized experiences of states with joint custody presumptions:

Although strong presumptions of joint custody were popular in the 1980s when several states adopted them, the more recent practice, after some twenty years' experience, has been to allow joint custody as one of several options, rather than to presume that it is in the best interests of children. In other words, after experimentation with joint custody, some states have realized that continual moving between households may be harmful to children, that the bulk of newly divorced spouses cannot remain as positively involved with each other on an everyday basis as joint physical custody requires, or that the presumption is causing more litigation to already crowded dockets.¹⁶

Although there continues to be advocacy by fathers groups in the USA for legislative presumptions of equal parenting time, only Kentucky presently has such a law.¹⁷ Most American legal scholars recognize the value of encouraging substantial post-separation involvement of both parents in the lives of their children, but also appreciate the need to

avoid using the hard edge of legal presumptions to undermine the lived experience of children, while at the same time circumventing the perils of unpredictable case-by-case determinations unguided by presumptions or preferences. The most promising efforts chart a third course: nudging separating and divorcing parents into a framework that encourages them to implement shared parenting. Shifting the parental focus from litigating custody to jointly crafting a parenting plan also may serve to alleviate the worst aspects of the trauma children often experience when their parents break up.¹⁸

Although changing concepts and terminology will have little if any impact on the highest conflict cases, it is very appropriate to move away from “custody” and “access,” with their connotations that one parent is the primary parent and the other a mere visitor with the child. It is important for parents and professionals to think about post-separation relationships in a child-focussed way that recognizes that, in most cases, both parents will continue to have a significant role in the lives of their children, and that they will continue have to effectively co-parent their children, even though they are no longer spouses or intimate partners. While, as discussed below, Bill C-78 provides some important guidance for the making of parenting plans and the

¹⁶ Margaret F. Brinig, *Penalty Defaults in Family Law: The Case of Child Custody* (2006), 33 Fla St U L Rev 779, at 781–82.

¹⁷ Michael Alison Chandler, *More than 20 states in 2017 considered laws to promote shared custody of children after divorce*, December 11, 2017, *Washington Post*. Kentucky is the only state to have a presumption of equal parenting time and joint custody.

¹⁸ J. Herbie DiFonzo, *From the Rule of One to Shared Parenting: Custody Presumptions in Law and Policy*(2014), 52 Fam Ct Rev 213, at 213 (from author's abstract).

resolution of relocation disputes, the federal government has been wise to follow the approach of provincial reforms and avoid broad statutory presumptions of time sharing.¹⁹

Contact Orders and Grandparents

Under Bill C-78 a court will be able to make a “contact order,” allowing a grandparent or other person who is not parent but with an important role in a child’s life to have continuing contact.²⁰ While grandparents are mentioned in the Bill C-78, there is no presumption that they will have contact with a child and they must still seek leave of the court to make an application for contact or parenting time.

Dispute Resolution and Conflict

There are a number of provisions in Bill C-78 that are intended to impress upon parents and professionals the harm done to children by exposing them to conflict from the divorce process, and that impose duties on lawyers to encourage parents to consider using non-court based methods of family dispute resolution.

The proposed s. 7.1 of the *Divorce Act* states “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,” with s. 7.2 further directing “that 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.” These provisions are intended to remind parents and their professional advisors of the harm to children from exposure continuing parental conflict and to encourage resolution of disagreements about parenting and economic issues outside of the adversarial process, to help parents move towards a constructive co-parenting relationship.²¹ As with the changes in

¹⁹ Boyd, The case against having default shared custody, *Lawyers Weekly*, Feb. 21, 2014.

²⁰ S. 16.5.

²¹ St. George’s House Consultation, *Modern Families, Modern Family Justice* (Windsor, UK: 2018) summarizes research on effects of high conflict on children (emphasis added):

While most children whose parents separate adjust fairly well to change, poor outcomes such as behavioural difficulties are about twice as likely among these children as they are for children whose parents remain together. Research shows strong associations between parental relationship breakdown and child poverty, distress and unhappiness, poorer educational achievement, substance misuse, physical and emotional health problems, teenage pregnancy, and increased risk of children’s own relationships breaking down.

Prolonged and unresolved parental conflict – whether in intact or separated families – can affect children’s and adolescents’ wellbeing and adjustment. This is reflected both in brain development, and in

terminology, these provisions can contribute to “changing the culture” of professionals and societal expectations about the divorce process, though their direct practical impact will be limited.

To encourage reducing the conflict in the divorce process, Bill C-78 goes on to state that “to the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve” matters through some form of non-court “family dispute resolution process,” which is defined to include “negotiation, mediation and collaborative law.” Further it is the duty of every legal advisor who is acting for a person involved in a proceeding under the *Divorce Act* to encourage their client to “attempt to resolve the matters” through a non-court “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.”²² Bill C-78 also provides that a court dealing with a divorce may order the parties to attend a family “dispute resolution process,” like mediation, but only if permitted under provincial law in the jurisdiction, as in British Columbia.²³ It is submitted that the reforms should be broader, to allow courts to make orders directing that parents use services like a parenting co-ordinator to implement a parenting plan, provided that such services are available and parents can afford to use them.²⁴

Support for the Other Parent

Consistent with the efforts to support significant meaningful relationships with both parents,²⁵ Bill C-78 has a provision entitled “Maximum Parenting Time,” with s. 16.2 (1) specifying that 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

emotional and mental development, resulting in increased anxiety, depression, aggression, hostility and antisocial behaviour and criminality. Parents who engage in frequent, intense, and poorly-resolved inter-parental conflict put children’s mental health and long-term life chances at risk, with negative effects evidenced across infancy, childhood, adolescence, and adulthood. Hence, research shows that the quality of the relationships surrounding the child post-separation are crucial to their outcomes.

²² s. 7.7 (2)(a)

²³ S. 16.1(6)

²⁴ Recently reformed legislation like British Columbia’s *Family Law Act* already allows courts to order use of a parenting co-ordinator. While in most places in Canada such services are only available if parents can afford them, in some provinces, such as Newfoundland and Labrador, such services are provided by the government. This is a wise use of government resources, and is likely to have long term benefits in terms of reducing resort to courts for relitigation and outcomes for children.

²⁵ These provisions replace what is now the “maximum contact principle” in s. 16(10) of the present *Divorce Act*, with a more positive and directive provision.

child.” The Bill also provides in s. 16(3)(i) that one of the factors in deciding on parenting arrangements is the “ability and willingness” of each parent “to communicate and cooperate, in particular with one another, on matters affecting the child.” These provisions are intended to remind parents, their professional advisors and the courts that it is generally in the child’s best interests, and most children hope to have a significant on-going relationship with both parents. Unless there are valid concerns, parents have a duty to support their child’s relationship with the other parent, and certainly to avoid alienating their child from the other parent.²⁶

These provisions are consistent with the changes in terminology and concepts in Bill C-78, though the Bill recognizes that in some cases, such as concerns about family violence or parental mental health, contact with a parent may need to be suspended.

Views of the Child

Although not mentioned as a factor in the present *Divorce Act*, there is growing appreciation of the importance of taking account of the perspectives and preferences of children who are the subject of disputes between their parents, as this promotes better outcomes for children, respects their rights, and often facilitates settlement.²⁷ Bill C-78 will make the *Divorce Act* consistent with Article 12 of the *United Nations Convention on the Rights of the Child*, to which Canada is a signatory, and provincial legislation in Canada requiring consideration of the child’s views. The new s.16(3)(e) will specify that in making a parenting plan, parents, professionals and the courts shall consider “the child’s views and preferences, by giving due weight to the child’s age and maturity, unless they cannot be ascertained.” Although this is just a statutory codification of existing caselaw and practice, it is clearly desirable to have this acknowledgement of the importance of inclusion in the *Divorce Act*.

While children must be consulted, and their views sought, there must be a careful balance so that children are not inappropriately drawn into parental disputes or pressured to “take sides.” In cases that are going through the courts, there may be consideration to preparation of a Views of the Child Report, appointment of counsel for a child or a judicial interview.

²⁶ See e.g. Bala & Hebert, “Children Resisting Contract: What’s a Lawyer to Do?” (2016) 36 CFLQ 1.

²⁷ For a review of developments in a number of jurisdictions regarding children’s involvement in family proceedings, see M. Fernando, *Family Law Proceedings and the Child’s Right to Be Heard in Australia, the United Kingdom, New Zealand, and Canada* (2014) 52 Fam Ct Rev 46. See also e.g. R. Birnbaum & N. Bala, “Views of the Child Reports: The Ontario Pilot Project” (2017), 31 Intern J Pol L & Fam 344.

An important responsibility for professionals involved in collaborative processes and mediation is to consider how to involve children. In some mediation cases, this may involve a mediator interviewing a child, having a report based on interviews with the child prepared by a mental health professional, or bringing older children into meetings with the parents. In other cases, for example pre-school age children or parents who are not in conflict over the children, it may be appropriate for parents to simply report on their conversations with their children. Professionals involved in family dispute resolution must be satisfied that they have appropriate knowledge, resources and skills to ensure that children are involved in a way that gives them a “voice” without forcing them to take sides.

Family Violence

Although all provincial and territorial legislation governing post-separation parenting recognizes the potential significance of spousal violence for children, the present *Divorce Act* makes no mention of it. Consistent with the increased awareness of the effects of intimate partner violence not only on the direct, but also on children who are exposed to this violence, Bill C-78 has a number of procedural and substantive provisions related to “family violence,” a concept that is broadly-defined to include physical abuse, sexual abuse, threats of harm to persons, pets and property, harassment, psychological abuse and financial abuse.²⁸

Bill C-78 adds a useful provision requiring judges to make inquiries about other proceedings that may involve the parties, in particular civil, child protection or criminal proceedings that are related to family violence or child abuse, to ensure that there is appropriate information sharing and co-ordination of proceedings.²⁹

The new law will continue to specify that “best interests of the child” is the only consideration to be applied a court in making a parenting order or contact order. Subsection 16(3) provide a non-exhaustive list of factors to be taken into account in determining a child’s best interests. However, s. 16(2) specifies that “the court *shall give primary consideration* to the child’s physical, emotional and psychological *safety, security and well-being.*” [Emphasis added]. Further, the list of factors in s. 16(3) includes family violence as a best interests factor; courts are to consider the impact of family violence on the ability of a parent to meet the needs of the child,

²⁸ s. 2(1).

²⁹ s. 7.8.

and “the appropriateness of making an order that would require” the parents “to cooperate on issues affecting the child.” These provisions are clearly intended to both protect children from direct harm, and to ensure that victims of intimate partner violence are not coerced into on-going abusive relationships with a former partner as a result of parenting arrangements. However, Bill C-78 recognizes that family violence is complex and multifaceted, requiring a court to consider not only the “impact of family violence” including its seriousness and recency, but also whether it involved isolated incidents or a pattern of coercive and controlling behaviour, and to take account of any steps taken by the perpetrator to prevent further family violence and improve their ability to care for the child. Bill C-78 reflects an awareness that family violence is a complex and often evolving issue.³⁰

Family justice professionals engaged in collaborative process and mediators have generally been aware of the need to screen for domestic violence and other power imbalances.³¹ However, the enactment of Bill C-78 should serve as a useful reminder to all professionals involved in the family justice process, and will be especially important for those who are self-represented and may not appreciate the significance of harmful effects of family violence for children.

Relocation

The most significant changes in Bill C-78 to the substantive law governing parenting are the provisions that deal with parental relocation (also known as “mobility.”) The present *Divorce Act* has no provisions governing relocation, and the 1996 Supreme Court of Canada decision in *Gordon v Goertz*³² established a highly discretionary “best interests of the child” test for making decisions about relocation. The uncertainty about how court will apply this test has contributed to litigation in this area. Further, the fact that courts gave little weight to a non-

³⁰ See Jaffe, Crooks & Bala, *Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices* (Justice Canada, 2006); and Jaffe, Johnston, Crooks & Bala, *Custody Disputes Involving Allegations of Domestic Violence: The Need for Differentiated Approaches to Parenting Plans* (2008) 46 Fam Ct Rev 500.

³¹ See e.g. Family Dispute Resolution Institute of Ontario (FDRIO), *Family Mediation, Screening Guidelines* <https://www.fdro.io.ca/certifications/mediation/family-mediation-screening-guidelines/>

³² [1996] 2 SCR 27

relocation term in an agreement, may have undermined reliance on parenting plans, and made their negotiation more difficult.³³

Bill C-78 provides that a person with parenting time or decision-making responsibility who intends to relocate, with or without a child, must give at least 60 days' notice to the other parent. Although in theory, both parents are required to give notice of a planned relocation, in practice this is only likely to be a legal issue if a parent want to "relocate the child." If there is an objection to the relocation of the child, the party intending to relocate must seek court approval. While the decision about allowing relocation is to be based on an assessment of the "best interests" of the child, one of the factors to be taken into account is whether the parenting plan or order has a term that specifies the geographic area in which the child is to reside.³⁴

Under s. 16.93, if the parties have "substantially equal" time with the child, the party seeking to relocate with the child will have the onus of establishing that the relocation of the child is in the best interests of the child. However, if the relocating party has the child for "the vast majority of their time," the burden of establishing that the relocation is not in the best interests of the child will be on the objecting party. In mid-range cases, both parties have the burden of proof, and there are no presumptions about whether or not relocation should be permitted. Although many cases will fall in the "grey zone" without a presumption, it is likely that more parenting agreements and consent orders will have relocation restrictions, that help resolve litigation, and should also reduce its frequency.

These provisions in the *Divorce Act* should reduce the amount of litigation about relocation, and help parents know that they can rely on parenting agreements, and hence they may be more likely to make them. Even before the amendments come into effect, those who are negotiating agreements should take into account that a clause restricting relocation may have greater effect in the future than it does at present.

³³ Bala & Wheeler, "Canadian Relocation Cases: Heading Towards Guidelines" (2012) 30 Can Fam L Q 271; and e.g. *Ligate v. Richardson* (1997), 34 O.R. 3d 423 (Ont CA); *Krebs v. Yarmel* (2003), 2003 CarswellOnt 2909 (S.C.J.); and *Johnstone v. Brighton*, [2004] O.J. No. 3477 (Sup. Ct.).

³⁴ S. 16.91(1)(e)