Family Law Act Modernization Project:

Care of and Time with Children & Protection from Family Violence

Discussion Paper – Chapter 2: Relocation of a Child

January 2024

This paper addresses issues that arise under Part 4 – *Care of and Time with Children* as well as protection from family violence under the *Family Law Act* (FLA) and was created by the BC Ministry of Attorney General's Family Policy, Legislation, and Transformation Division as part of an on-going project to review and modernize the FLA. The FLA modernization project is not an overhaul of the Act but rather is intended to respond to issues that have emerged since the Act was introduced and respond to case law.

The ministry invites you to participate in the project by reviewing this paper and providing feedback. Your feedback will be used in the development of recommendations for changes. The ministry will assume that comments received are not confidential and that respondents consent to the ministry attributing their comments to them and to the release or publication of their submissions. Any requests for confidentiality or anonymity, must be clearly marked and will be respected to the extent permitted by freedom of information legislation. Please note that there will not be a reply to submissions.

This paper is organized in chapters, with each chapter addressing a different family law topic. You may respond to questions throughout the paper or provide feedback only on those topics you choose.

You can submit your comments by regular mail or email to the following addresses below until **March 31st, 2024**.

By regular mail:

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Chapter 2 : Relocation of a Child

Introduction

Phase 2 of the FLA Modernization Project includes a review of Part 4, Division 6 - *Relocation*. Division 6 includes provisions on the following:

- a definition for "relocation" and in what circumstances the term applies,
- when, how, and to whom notice of an intended relocation is required (s. 66),
- a requirement for parties to try to resolve relocation issues (s. 67),
- when and how an objection to an intended relocation can be made (s. 68),
- orders the court can make regarding relocation (s. 69 and 70), and
- clarification that an order prohibiting relocation is not a change in the child's circumstances justifying an application to change parenting arrangements (s. 71).

Early engagement with people with lived experiences, lawyers, and advocates identified the following should be reviewed in the FLA Modernization Project:

- When relocation provisions apply
- Notices and objections of relocation
- Presumptions and burdens on parties in relocation cases Factors to be considered in relocation applications

In reviewing Part 4, Division 6 - *Relocation* with a view to modernize the provisions, the following are important to consider:

1) **The FLA and the new *Divorce Act* relocation provisions.**

   In March 2021, the federal *Divorce Act*[1] introduced a relocation regime in sections 16.9 to 16.96. Married parties seeking a divorce may apply for relocation either under the FLA or under the *Divorce Act*. Unmarried parties can only apply under the FLA relocation provisions. Having two parallel but distinct relocation regimes may cause confusion, create inconsistent results, and lead to different treatment under the law based on whether parties were married or not. It has been suggested that married parties in BC often make relocation applications under both the FLA and *Divorce Act*.[2] However, the workability of this approach seems suspect as the statutes differ on the notification and objection processes, the effects of parenting time, the burdens placed on the parties, and what factors must be established in a relocation claim. See Appendix C for a comparison table of the FLA and *Divorce Act* provisions.

2) **The gender and relationship considerations of relocation applications.**

[1] *Divorce Act*, RSC 1985, c 3 (2nd Supp.).
[2] Rollie Thompson, "*Barendregt* and B.C. Relocation Law" (Presentation delivered at the 14th Biennial Family Law Conference, 7 July 2023) [unpublished] [Thompson, "*Barendregt*"].

It has been estimated that 90 to 95 per cent of parents applying to relocate with their child are women.[3] It has been found that the reasons for relocation are often a combination of economic needs and relationships and support systems.[4] Other reasons for relocation seen in case law include fleeing family violence and the affordability or availability of housing.[5] Given this information, the unique experiences faced by women and mothers need to be considered when reviewing the relocation provisions of the FLA. Consideration also needs to be given to whether the FLA relocation provisions adequately address any unique issues that may arise for 2SLGBTQIA+ parties or parties that are in a polyamorous relationship.

For example, it has been suggested that the FLA could be amended to specifically require the courts to consider gender-related factors in relocation applications:

> …I conclude that the courts and the legislature could make space in the analysis for attention to the gendered experiences of family violence and the socio-economic realities that many applicants, the majority of them mothers, face.[6]

3) Advancements in technology.

There have been significant advancements in technology and the way we communicate since the FLA came into force in 2013. The use of video chat, texting, and social media to communicate is widespread. Technological advancements in how families communicate with each other need to be considered when determining whether or how the relocation provisions of the FLA could be modernized.

What is Relocation under the FLA?

Section 65 of the FLA defines "relocation" by the degree to which a change in residence affects the child's relationship with specified people. Under the FLA, "relocation" means a change in the location of the residence of a child or a child's guardian, that reasonably can be expected to have a significant impact on the child's relationship with a guardian or one or more other persons having a significant role in the child's life. The relocation provisions apply if it is a child's guardian, the child, or both who plan to relocate, and a written agreement or order related to parenting arrangements or contact applies to the child.

For comparison, the definition of "relocation" in section 2(1) of the *Divorce Act* is similar but less broad than the FLA. The *Divorce Act's* definition only references the relationships with persons who have parenting time, decision-making responsibilities or contact under the Act.[7] The FLA requires the court to

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[3] Rollie Thompson, "Legislating About Relocating Bill C-78, N.S. and B.C." (Paper delivered at the 28th Annual Institute of Family Law Conference 20, Quebec, 5-6 April 2019) 2019 CanLIIDocs 3939 at 3 [Thompson, "Relocating Bill C-78"].

[4] Magal Huberman, *Between Court and Context: Relocation Cases in British Columbia* (LLM Thesis, University of British Columbia, 2022) [archived at University of British Columbia Library] at iii.

[5] Meredith Shaw, "A Gendered Approach to 'Quality of Life' After Separation Under the British Columbia Family Law Act Relocation Regime" (2021) 26 Appeal 121, 2021 CanLIIDocs 676 at 123.

[6] *Ibid* at 139.

[7] **2 (1):** In this Act, …

> ***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

consider whether the relocation would have a significant impact on the child's relationship with other people who have a significant role in the child's life, regardless of whether they are a guardian or if there is a contact order or not. "Other people" who are not guardians or who do not have contact with the child are not entitled to receive notice of relocation or to object to a relocation, but their relationship with the child may still affect whether it is considered a relocation.

The FLA's relocation provisions are in contrast to the "Changes to a child's residence" provisions in section 46 of the Act. Section 46 applies if:

- there is no written agreement or order respecting parenting arrangements for a child,
- a guardian applies for an order about parenting arrangements,
- the child's guardian plans to change the child's residence, and
- it is reasonable that the change will have a significant impact on the child's relationship with another guardian.

Section 46 does not provide requirements for notice, opportunities for objections, or presumptions. Instead, like with other applications setting parenting arrangements, the court must consider whether the change of residence would be in the best interests of the child according to the factors in section 37 (2) and the reasons for the move. There is an additional direction (also found in the Act's relocation provisions) that prohibits a court from considering whether the guardian would move without the child.[8]

It has been suggested that because the changes to a child's residence and the relocation provisions are similar, but apply in different circumstances, moving the relevant sections closer together would improve the readability of the Act.

There is some question about whether relocation provisions apply when there is an interim parenting arrangement order as opposed to a final order.[9] In the 2018 case of *KW v LH*, the BC Court of Appeal held that the relocation notice was given before the interim order was made, so the interim order did not qualify as an "order" and the relocation application should have been considered under section 46.[10] There also remains a question of timing of written agreements and orders and whether the relocation provisions would apply if, for example, an order was made prior to the notice of relocation being given or prior to the relocation hearing. The BC Court of Appeal concluded the following in *KW v LH*:

> [92] I agree with Justice Punnett and adopt his analysis set out at paras. 54–60 of *S.J.F.* reproduced above. Absent an existing agreement between the parties, when an initial application is brought for an order respecting parenting arrangements under s. 45 and a guardian indicates in his or her pleadings or by notice in writing of an intention to change the child's residence, s. 46 applies notwithstanding that an interim order is made in the course of the proceedings. To the extent that *L.J.R., A.J.D.*, *Pepin*, and *Wong* suggest otherwise, those cases were wrongly decided and should not be followed.

(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;

[8] *Family Law Act*, SBC 2011, c 25, s 46(2)(b) [FLA].
[9] Thompson, "Relocating Bill C-78", *supra* note 3 at 10—11.
[10] *KW v LH*, 2018 BCCA 204 (CanLII).

> [93] Whether an interim order made in advance of any claim or notice of intention to relocate would transfer the matter from Division 2 to Division 6 raises somewhat different policy considerations. Arguably, such an order may create legitimate expectations about existing arrangements, particularly if the order has remained in effect for an extended period of time. This issue however does not arise on this appeal and I will say no more about it.

It has similarly been observed that there is inconsistent treatment of whether the relocation provisions apply when there are interim orders under the *Divorce Act*.[11]

Discussion Questions:

2-1. Does the definition of "relocation" accurately capture the people, relationships and situations that need to be considered in relocation applications?

2-2. Should the differences between the relocation provisions and the changes to child's residence provisions be clarified or better distinguished in the FLA?

2-3. Should the FLA clarify if, when, and how the relocation provisions apply to interim orders, in addition to final orders and agreements?

Notice of and Objections to Relocation

Notice of Relocation

Section 66(1) of the FLA requires a guardian who is planning to relocate to give all other guardians and people who have contact with the child at least 60 days written notice of the date of the relocation and the name of the proposed location. Whether notice was given under section 66 is a factor the court must consider when determining whether the relocation application is being made in good faith.[12]

As a comparison, the *Divorce Act* is much more prescriptive in its notice requirements under section 16.9. In both Acts, notice of relocation must be given at least 60 days before the relocation. However, while the FLA and *Divorce Act* both require the date of relocation, the FLA also requires the name of the proposed location compared to the following requirements in the *Divorce Act* and the Notice of Relocation Regulations:[13]

- the new address, and contact information;
- a proposal as to how parenting time, decision-making-responsibility, or contact (whichever applies) could be exercised;
- the name of the relocating person and any relocating child of the marriage;
- the name of any other child of the marriage regarding whom the relocating person has parenting time or decision-making responsibility;
- the relocating person's current address and contact information; and

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[11] Rollie Thompson, "The New Relocation Laws: Questions and Some Early Answers" (Paper delivered ahead of the 14th Biennial Family Law Conference, May 2023) online (pdf) [Thompson, "New Relocation Laws"].
[12] FLA, *supra* note 8, s 69(6)(c).
[13] Notice of Relocation Regulations, SOR/2020-249.

- the name of any person who has parenting time, decision-making responsibility or contact regarding any child of the marriage, whether that child is relocating or not.

Section 3 of the Notice of Relocation Regulations also prescribes a form – Form 1 – for giving notice that must include the required information.

Although a prescribed form can add certainty and may make it easier to ensure all relevant information is included in applications, it may sometimes be difficult to complete if information is not known (e.g., a specific address versus a general location for the proposed relocation). Creating a template instead of a form may help prevent applicants from being penalized for failing to properly completing a form.

Notice Exemptions

Both the FLA and the *Divorce Act* allow for exemptions to their notice requirements. Section 66(2) of the FLA allows the court to grant an exemption in two circumstances:

1) if the court is satisfied that notice cannot be given without incurring a risk of family violence, or
2) the other guardians or people with contact do not have an ongoing relationship with the child.

An application for these exemptions may be brought without notice to other parties under section 66(3) of the FLA. Under the *Divorce Act*, a court seemingly has more discretion to grant exemptions or modifications to the notice requirements, because section 16.9(3) does not restrict the court to specified reasons.[14] The *Divorce Act* section does state that a reason for an exemption can be "where there is a risk of family violence."

Some legal practitioners suggest that courts are reluctant to grant a notice exemption under either Act, even in cases where the circumstances might support one. For example, although case law suggests that family violence is a likely reason why a relocation application may be granted, many of those cases involve the relocating party giving notice rather than being exempted from giving notice.[15] Given the serious nature of family violence and a guardian's potential desire to relocate because of it, section 66 could be amended to provide further guidance to the court for when notice exemptions should be granted in such cases. Similarly, additional notice exemption guidance could be provided in the FLA for when there is no ongoing relationship between a child and a person who could object.

Consequences of Failing to Give Notice

Whether notice was given under section 66 is a factor the court must consider when determining whether the relocation application is being made in good faith.[16] In contrast the *Divorce Act* requires the court to consider whether the person who applies to relocate has complied with any applicable notice requirement, including a requirement under the *Divorce Act*, a provincial statute, an order, an

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[14] **16.9** (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.

[15] Thompson, "New Relocation Laws", *supra* note 11 at 16—17.

[16] FLA, *supra* note 8, s 69(6)(c).

arbitral award or an agreement, when determining the best interests of a child in a relocation application.[17]

It has been suggested that a legislated presumption against permitting the relocation if the party already relocated without providing notice[18] could be added and may discourage child abductions.

Resolving Issues Arising from Relocation

Section 67 of the FLA triggers a requirement, if notice is required, for the relocating child's guardians and persons having contact with the child to use their best efforts to cooperate in resolving issues related to the proposed relocation once notice has been given and before the date of relocation. This direction aligns with a purpose of the Act articulated in section 4 of encouraging parties to resolve matters through the use of agreement rather than court.[19]

This cooperation requirement, however, does not prevent a guardian from seeking a court order to permit or prohibit the relocation under section 69, and does not prevent a person having contact with the child from making an application to maintain their relationship with the child under section 59 (*Orders respecting contact*) or section 60 (*Changing, suspending or terminating orders respecting contact*) of the FLA.

It is unclear whether this provision is useful in relocation cases or whether it causes potential for confusion. The provision does not provide any guidance for what "best efforts to cooperate" might mean and there are no legislated consequences for failing to comply.

Objections to Relocation

Both the FLA and *Divorce Act* allow relocation unless there is an objection filed within 30 days after the notice of relocation is received.

Section 68 of the FLA states if a guardian gives notice of their intention to relocate a child, the relocation may occur on or after the date set out in the notice unless another guardian files an application for an order to prohibit the relocation within 30 days of receiving the notice. Although notice is required to be given to both a guardian and persons having contact with a child, only a guardian may file for an application to prohibit the relocation. Persons having contact with a child may only apply for a contact order under section 59, or to change, suspend or terminate a contact order under section 60.

The *Divorce Act* is again more prescriptive than the FLA, as it requires the objection to be set out in the prescribed Form 2 of the Notice of Relocation Regulations. [20] Another express condition that must be met before relocation is permitted under the DA is that there cannot be an order prohibiting the relocation.[21]

Under section 16.91 of the *Divorce Act*, a person may object by:

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[17] DA, *supra* note 1, s 92(1)(d).
[18] Thompson, "New Relocation Laws", *supra* note 11 at 14.
[19] DA, *supra* note 1, s 4(b).
[20] Notice of Relocation Regulations, *supra* note 13, s 5.
[21] DA, *supra* note 1, s 16.91(1)(b)(ii).

- filing a Notice of Objection to Relocation form[22] which sets out their reasons for objecting and their views on the proposal about the exercise of parenting time or decision-making responsibility, or
- making an application for parenting time or decision-making responsibility under section 16.1(1) or an application for the court to rescind, vary, or suspend a parenting order under section 17(1)(b).

Neither the FLA nor the *Divorce Act* require the notice of relocation to be served. With various forms of communication, this means that the notice could be sent by e-mail, text message, social media direct message, regular mail, registered mail, etc. Given the potential importance of a relocation, it may be difficult for the relocating party to know when the other guardian "receives" the notice and when the 30-day objection period is over.

Indigenous Considerations on Relocation – What We Heard

In speaking with Indigenous peoples with lived experience, one of the themes the Ministry heard is that the FLA needs to recognize Indigenous family networks.[23] Indigenous (First Nations, Inuit, and Métis) "families" extend beyond the colonial concept of nuclear family, and include aunts, uncles, grandparents, and even non-related community members who may step in and act as a child's guardian. The FLA's relocation provisions require notice to be given to a child's other guardians and people who have formal contact with the child. The people who may object to a relocation application is even further limited to a child's guardian. The FLA relocation provisions currently do not provide a role for other people who may play a role in an Indigenous child's life unless they have formally obtained guardianship or an order for contact with the child.

2-4. Should the FLA's relocation provisions allow for other family and community members in an Indigenous child's life to expressly be given notice or be able to object to the relocation of that child? If so, how?

Discussion Questions:

2-5. Should the FLA require that a notice of relocation or a notice of objection of relocation include additional information or be in a prescribed form?

2-6. Are the two permissible exemptions to the requirement to provide notice of a proposed relocation under the FLA adequate?

(a) If not, should any exemptions be added, removed or amended? Or should the FLA remove the list and allow the court to determine when an exemption may be allowed?

2-7. Should the FLA establish additional consequences for failing to give notice of a relocation in cases where no exemption applies?

[22] Notice of Relocation Regulations, *supra* note 13, schedule – Form 2.
[23] Mahihkan Management on behalf of the B.C. Ministry of Attorney General, *What We Heard: Family Law Act Modernization Dialogue Sessions*, (Coming Soon).

2-8. Does the requirement under section 67 for a child's guardians and persons having contact with a child to use their best efforts to cooperate to resolve any issues related to the relocation need to be updated? If so, how?

Presumptions and Burdens

Section 69 of the FLA allows the court to make an order either permitting or prohibiting the relocation of a child by the relocating guardian. In making its decision, the court must consider the best interests of the child factors in section 37 (1) and (2).[24] The court must also consider additional factors in section 69 (4) or (5), depending on whether the guardians have substantially equal parenting time with the child or not. The court is specifically prohibited from considering whether a guardian would still relocate if the court does not allow the child's relocation.[25]

If the guardians do not have substantially equal parenting time with the child, the burden is on the relocating guardian to satisfy the court that the proposed relocation is made in good faith and that they have proposed reasonable and workable arrangements to preserve the child's relationship with other guardians, persons with contact with the child and others who have a significant role in the child's life.[26] If the court is satisfied that those factors have been complied with adequately, then the burden shifts to an objecting guardian to prove that the relocation is not in the best interests of the child.[27]
If, on the other hand, the guardians do have substantially equal parenting time with the child, the burden is on the relocating guardian to satisfy the court of both the factors listed in section 69(4)(a) and that the relocation is in the best interests of the child.[28] There is no shift of burden in these circumstances.

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[24] **37** (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
(a) the child's health and emotional well-being;
(b) the child's views, unless it would be inappropriate to consider them;
(c) the nature and strength of the relationships between the child and significant persons in the child's life;
(d) the history of the child's care;
(e) the child's need for stability, given the child's age and stage of development;
(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[25] FLA, *supra* note 8, s 69(7).

[26] *Ibid*, s 69(4)(a).

[27] *Ibid*, s 69(4)(b).

[28] *Ibid*, s 69(5)(a)–(b).

It has been suggested that the FLA's two presumptions based on whether the guardians have substantially equal parenting time is overly simplistic[29] and that the FLA essentially presumes the relocation is in the child's best interests if the guardians do not have substantially equal parenting time. In contrast, Nova Scotia's legislation creates a three-way presumption, where relocation is presumed to be in the child's best interests only in cases where the guardians do not have substantially equal parenting time and there is a clear primary caregiver parent.[30]

The *Divorce Act* also has a three-way presumption in section 16.93, where the relocation is only presumed to be in the best interests of the child if the child spends the vast majority of their time in the care of the relocating party.[31]

The idea of identifying a "primary care giver" was deliberately steered away from in the development of the FLA because it was a prominent feature of orders for joint custody under the former *Family Relations Act.* Requiring the court to identify one party as "primary" was counterproductive to encouraging the parties to cooperate with joint parental responsibilities.

The FLA's use of the wording "substantially equal parenting time" has been judicially considered. It appears that most of the "substantially equal parenting time" decisions are based on truly equal parenting time.[32] However, the BC courts have also found that having 40 per cent of parenting time is considered "substantially equal parenting time" for the purposes of the relocation provisions. There is also inconsistency in relocation decisions about whether parenting time that is around 35 per cent and even as low as 29 per cent[33] is substantially equal parenting time.

Section 69(7) of the FLA specifically prohibits the court from considering whether a guardian would still relocate if the court does not allow the child's relocation. However, it has been noted that this "double-bind" provision only addresses what the relocating guardian would do, and not the other guardians, family members or other people in the child's life.[34] It has also been noted by an assessor and report writer that the double bind restriction makes it difficult to conduct parenting assessments and to write views of the child or full section 211 reports in cases where there is a relocation application.

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[29] Thompson, "Relocating Bill C-78", *supra* note 3 at 13.

[30] *Parenting and Support Act*, RSNS 1989, c 160, s 18H.

[31] *Divorce Act*, *supra* note 1*:*

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.

[32] Thompson, "Relocating Bill C-78", *supra* note 3 at 13—14.

[33] *CMB v BDG*, 2014 BCSC 780 (CanLII).

[34] Thompson, "New Relocation Laws*", supra* note 11 at 17---18.

"Good faith" and "Reasonable and Workable Arrangements" Requirements

Unlike the *Divorce Act*, the FLA places two additional burdens on the relocating guardian. Regardless of whether the guardians have substantially equal parenting time or not, the relocating guardian always has the burden of satisfying the court that the relocation is made in good faith and that they have proposed reasonable and workable arrangements to preserve the child's relationships with other guardians, persons entitled to contact with the child, and other persons who have a significant role in the child's life.[35]

Section 69(6) of the FLA gives further direction with respect to the section 69(4)(a)(i) "good faith" requirement. In order to determine whether the proposed relocation is made in good faith, the court must consider all of the factors set out in the non-exhaustive list, including the reasons for the relocation, whether the relocation is likely to enhance the child's general quality of life and, if applicable, the relocating guardian's general quality of life (including emotional well-being, financial, or educational opportunities), whether notice of the relocation was given, and any restrictions on relocation contained in a written agreement or order.

These "good faith" and "reasonable and workable arrangements" requirements are unique to the FLA. There is a requirement to establish similar "good faith" factors when looking at the best interests of the child under the section 16.92(1) of the *Divorce Act*.[36] It has been suggested that these FLA requirements have resulted in an unintended burden being placed on the relocating guardian and have led to a decrease in court decisions permitting relocation in BC.[37] Considering that about 90-95 per cent of parents applying to relocate with their child are women, [38] it is questionable whether this requirement is

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[35] FLA, *supra* note 8, s 69(4)(a).

[36] *Divorce Act*, *supra* note 1:

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.

[37] Thompson, "Relocating Bill C-78", *supra* note 3 at 12—13.

[38] *Ibid* at 3.

putting an added burden on mothers and their ability to move with their child for various reasons which often include social support networks, employment, [39] housing, and fleeing family violence. [40]

Furthermore, given advancements in technology and communications, there may now be more options to establish reasonable and workable arrangements to preserve the child's relationships with others.

Discussion Questions:

2-9. Are the FLA's two presumptions for when the relocation is or is not in the best interests of the child adequate?

2-10. Should the FLA's "substantially equal parenting time" continue to be the line between when each presumption applies?

(a) If so, should the FLA provide more direction on what "substantially equal parenting time" means?

(b) If not, what should be the line between the presumptions?

2-11. Do the "good faith" and "reasonable and workable arrangements" requirements in section 69 (4)(a) place too much of a burden on the relocating guardian?

2-12. Is it still appropriate to prevent the court under section 69(7) from considering whether a guardian would still relocate alone, if the court denied their application to relocate with the child?

2-13. Should the fact that the vast majority of relocation applications are made by women or technological advancements in the way families can communicate be considered in modernizing the FLA's relocation provisions? If so, how?

Factors to Be Considered

Best Interests of the Child Factors

In any relocation application, the court must consider the best interests of the child. In order to determine this, the court must consider all the factors listed in section 37(2) of the FLA.[41] The court

[39] Huberman, *supra* note 4.
[40] Shaw, *supra* note 5 at 39.
[41] See note 24 for full list of factors in section 37(2).

must also consider all the factors listed in section 38 to assess family violence and the impact it has on a child and on the ability of a person to care for and meet the needs of the child.[42]

Section 16.92 of the *Divorce Act* also provides additional best interests of the child factors that are to be considered in a relocation application.[43] As mentioned above, some of these factors are similar to the factors that the court must currently consider under the "good faith" requirement in section 69(6) of the FLA.

It is noteworthy that the FLA focuses on whether the relocation is in the best interests of the child. There is currently no requirement for the objection of a relocation application to also be in the best interests of the child.

Indigenous Considerations on Relocation – What We Heard

In speaking with Indigenous peoples with lived experience, one of the themes the Ministry heard is that it is vital for every Indigenous child to grow up with their culture and that the FLA should emphasize the importance of staying connected with both sides of their Indigenous families.[44] Ideally, an Indigenous child should live within their Indigenous community, but if this is not possible, then maintaining the child's connection to their community and culture must be a priority.

Although the FLA requires a relocation to be in the best interests of a child, the legislation does not provide specific considerations for the relocation of an Indigenous child. For example, if a proposed relocation of an Indigenous child will result in the child moving into or out of their Indigenous community, should there be a requirement to maintain the child's connection to their Indigenous community? Should other or additional factors be considered when determining whether a relocation application is in the best interests of an Indigenous child?

2-14. Do you think the FLA's relocation provisions should require consideration of specific best interests of the Indigenous child factors? If so, what should the factors be?

2-15. Do you think there should be a requirement for a relocating guardian to maintain an Indigenous child's connection to their Indigenous culture and community if they are being relocated out of their community?

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[42] **Assessing family violence**

38 For the purposes of section 37 (2) (g) and (h) [*best interests of child*], a court must consider all of the following:

(a) the nature and seriousness of the family violence;
(b) how recently the family violence occurred;
(c) the frequency of the family violence;
(d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
(e) whether the family violence was directed toward the child;
(f) whether the child was exposed to family violence that was not directed toward the child;
(g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
(h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
(i) any other relevant matter

[43] See note 36 for full list of factors in section 16.92.

[44] Mahihkan Management, *supra* note 23.

Discussion Questions:

2-16. Should the best interests of the child factors considered in relocation cases under the FLA be updated? If so, how?

2-17. Should the FLA require that an objection to a relocation application also be in the best interests of a child?

Barendregt Decision

In the 2022 case of *Barendregt v. Grebliunas* ("*Barendregt*"), the Supreme Court of Canada examined a relocation decision involving a mother relocating with her children from Kelowna to Telkwa, BC. [45] It has been suggested that the Court's new relocation framework established in *Barendregt* was only meant to fill the gap and update the common law in jurisdictions that continue to not have relocation legislation.[46] One view is therefore, that the *Barendregt* decision should not affect the application of the FLA's relocation regime, or similar relocation legislative regimes in other provinces.

However, the *Barendregt* decision has been applied by BC courts in some relocation decisions, even after the court considered the FLA's relocation provisions.[47] For example, the court has said that the *Barendregt* framework applies under the FLA, and after applying the FLA's relocation provisions, has proceeded to apply additional factors set out in *Barendregt*.

The framework established by the Court in *Barendregt* centres on the child's best interests:

> [152] The crucial question is whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary.

The Court provided a non-exhaustive list of relevant factors that should be considered when determining the best interests of a child:

- the child's views and preferences;
- the history of caregiving;
- any incidents of family violence;
- a child's cultural, linguistic, religious and spiritual upbringing and heritage;
- each parent's willingness to support the development and maintenance of the child's relationship with the other parent; and
- the principle that a child should have as much time with each parent, as is consistent with the best interests of the child.[48]

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[45] *Barendregt v Grebliunas*, 2022 SCC 22 (CanLII) [*Barendregt*].
[46] Rollie Thompson, "Rethinking Barendregt v. Grebliunas on relocation", *The Lawyer's Daily* (29 June 2022).
[47] For example, *RP v GU*, 2022 BCCA 255 (CanLII); *JHF v KB*, 2022 BCSC 1219 (CanLII); *TMP v TML*, 2022 BCSC 1092 (CanLII); *Hull v Kornilov*, 2022 BCSC 898 (CanLII); *KBM v DBI*, 2022 BCPC 170 (CanLII).
[48] *Barendregt*, *supra* note 45 at para 153.

When determining the best interests of the child in relocation cases, a court should also consider:

- the reasons for the relocation;
- the impact of the relocation on the child;
- 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;
- the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- 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.[49]

The court should not consider whether the outcome of the relocation application would affect either party's plans to relocate or not.[50]

Discussion Questions:

2-18. Should the FLA be amended to accommodate the framework outlined by the SCC in *Barendregt* for relocation applications under the FLA? If so, how?

2-19. The discussion and questions posed in this chapter relate to issues that have been raised concerning relocation of a child. Do you have any other concerns or suggestions for amendments to provisions in the FLA related to this topic?

[49] *Ibid* at para 154.
[50] *Ibid*.

Appendix C : Relocation Legislative Comparison Table

Note: Underlining added to emphasize differences between the legislation

	FAMILY LAW ACT [SBC 2011] CHAPTER 25	DIVORCE ACT (R.S.C., 1985, c. 3 (2nd Supp.))
Relocation Definition / When Relocation Provisions Apply	*Section 65* **Part 4, Division 6 — Relocation** *Definition and application* **65** (1) In this Division, **"relocation"** means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with (a) a guardian, or (b) one or more other persons having a significant role in the child's life. (2) This Division applies if (a) a child's guardian plans to relocate himself or herself or the child, or both, and (b) a written agreement or an order respecting parenting arrangements or contact with the child applies to the child.	*Section 2 (1)* **Interpretation** **Definitions** **2 (1)** In this Act, … ***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*) … ***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*) ***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*)
Notice	*Guardian*	*Person with Parenting Time or Decision-making Responsibility*
	Section 66 (1) *Notice of relocation* **66** (1) Subject to subsection (2), a child's guardian who plans to relocate himself or herself or a child, or both, must give to all other guardians and persons having contact with the child at least 60 days' written notice of (a) the date of the relocation, and (b) the name of the proposed location.	*Section 16.9 (1) - (2)* **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. **NOTICE OF RELOCATION REGULATIONS,** SOR/2020-249 *Sections 2 - 4* **Prescribed information — paragraph 16.9(2)(d) of Act** **2** For the purposes of paragraph 16.9(2)(d) of the Act, the following information is prescribed: **(a)** the name of the person who intends to undertake a relocation and the name of any child of the marriage who is relocating, if applicable; **(b)** the name of any other child of the marriage in respect of whom the person has parenting time or decision-making responsibility; **(c)** the address of the person's current place of residence and their current contact information; and **(d)** the name of any person who has parenting time, decision-making responsibility or contact under a contact order in respect of any child of the marriage referred to in paragraph (a) or (b). **Notice of relocation**

		3 For the purposes of section 16.9 of the Act, a person who intends to undertake a relocation must give notice of their intention by providing the information set out in Form 1 of the schedule. **Prescribed information — paragraph 16.91(2)(d) of Act** **4** For the purposes of paragraph 16.91(2)(d) of the Act, the following information is prescribed: **(a)** the name of the person who has received the notice under section 16.9 of the Act; and **(b)** the address of the person's current place of residence and their current contact information.
		Person with Contact
		Section 16.96 (1) – (2) **Relocation** **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. **NOTICE OF RELOCATION REGULATIONS,** SOR/2020-249 *Sections 6 - 7* **Prescribed information — subsection 16.96(2) of Act** **6** For the purposes of subsection 16.96(2) of the Act, the following information is prescribed: **(a)** the name of the person who has contact with a child of the marriage under a contact order; **(b)** the address of the person's current place of residence and their current contact information; **(c)** the name of any child of the marriage specified in the contact order; and **(d)** the name of any person who has parenting time or decision-making responsibility in respect of any child of the marriage specified in the contact order. **Notice — persons with contact** **7** For the purposes of subsection 16.96(2) of the Act, a person who has contact with a child of the marriage under a contact order and who intends to change their place of residence must give notice of their intention by providing the information set out in Form 3 of the schedule.

<table>
<tr><th>Notice Exceptions</th><td>Guardian</td><td>Person with Parenting Time or Decision-making Responsibility</td></tr>
<tr><td></td><td>Section 66 (2) - (3)

<u>Part 4, Division 6 — Relocation</u>

Notice of relocation

66 …

(2) The court may grant an exemption from all or part of the requirement to give notice under subsection (1) if satisfied that

(a) notice cannot be given without incurring a risk of family violence by another guardian or a person having contact with the child, or

(b) there is no ongoing relationship between the child and the other guardian or the person having contact with the child.

(3) An application for an exemption under subsection (2) may be made <u>in the absence of any other party</u>.</td><td>Section 16.9 (3) – (4)

<u>Relocation</u>

16.9 …

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 <u>without notice to any other party</u>.

Person with Contact

Section 16.96 (3) – (4)

16.96 …

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.</td></tr>
</table>

		Application without notice **(4)** An application referred to in subsection (3) may be made without notice to any other party.
Resolving Issues – Requirement to Cooperate	*Section 67* **Part 4, Division 6 — Relocation** *Resolving issues arising from relocation* **67** (1) If notice is required under section 66 *[notice of relocation]*, after the notice is given and before the date of the relocation, the child's guardians and the persons having contact with the child must use their best efforts to cooperate with one another for the purpose of resolving any issues relating to the proposed relocation. (2) Nothing in subsection (1) prevents (a) a guardian from making an application under section 69 *[orders respecting relocation]*, or (b) a person having contact with the child from making an application under section 59 *[orders respecting contact]* or 60 *[changing, suspending or terminating orders respecting contact]*, as applicable, for the purpose of maintaining the relationship between the child and a person having contact with the child if relocation occurs.	N/A
Objections	*Section 68* **Part 4, Division 6 — Relocation**	*Section 16.91* **Relocation** **Relocation authorized**

	Child may be relocated unless guardian objects **68** If a child's guardian gives notice under section 66 *[notice of relocation]* that the guardian plans to relocate the child, the relocation may occur on or after the date set out in the notice unless another guardian of the child, within 30 days after receiving the notice, files an application for an order to prohibit the relocation.	**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

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<td>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.

NOTICE OF RELOCATION REGULATIONS,
SOR/2020-249

Objection to relocation

5 For the purposes of clause 16.91(1)(b)(i)(A) of the Act, a person who intends to object to a relocation must do so by providing the information set out in Form 2 of the schedule.</td>
</tr>
<tr>
<td rowspan="2">Not Substantially Equal Parenting Time</td>
<td rowspan="2">Section 69 (4)
[initial burden on relocating guardian, then switches to objecting guardian to prove relocation not in BIOC]

Part 4, Division 6 — Relocation

Orders respecting relocation

69 …

(4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,

(a) the relocating guardian must satisfy the court that

(i) the proposed relocation is made in good faith, and

(ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between</td>
<td>Vast Majority of Time with Relocating Parent

Section 16.93 (2) [burden on objecting parent]

Relocation

16.93 …

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.</td>
</tr>
<tr>
<td>Other

Section 16.93 (3) [burden on both parties]</td>
</tr>
</table>

	the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise. … (6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following: (a) the reasons for the proposed relocation; (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities; (c) whether notice was given under section 66 *[notice of relocation]*; (d) any restrictions on relocation contained in a written agreement or an order.	**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.
Substantially Equal Parenting Time	*Section 69 (5) [burden on relocating guardian]* **Part 4, Division 6 — Relocation** **Orders respecting relocation** **69** …	*Section 16.93 (1) [burden on relocating guardian]* **Relocation** **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

	(5) If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court (a) of the factors described in subsection (4) (a), and (b) that the relocation is in the best interests of the child.	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.
Best Interests of the Child Factors	*Section 37* **Part 4, Division 1 — Best Interests of Child** *Best interests of child* **37** (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only. (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following: (a) the child's health and emotional well-being; (b) the child's views, unless it would be inappropriate to consider them; (c) the nature and strength of the relationships between the child and significant persons in the child's life; (d) the history of the child's care;	*Section 16 (1) – (4), (6)* **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;

	(e) the child's need for stability, given the child's age and stage of development; (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities; (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member; (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs; (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members; (j) any civil or criminal proceeding relevant to the child's safety, security or well-being. (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being. (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor	**(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

	set out in subsection (2), and only to the extent that it affects that factor.	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. **…** **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.
	Family Violence	
	Section 38 **Assessing family violence**	*Section 16 (4)* **16** … **Factors relating to family violence**

	38 For the purposes of section 37 (2) (g) and (h) [*best interests of child*], a court must consider all of the following: (a) the nature and seriousness of the family violence; (b) how recently the family violence occurred; (c) the frequency of the family violence; (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member; (e) whether the family violence was directed toward the child; (f) whether the child was exposed to family violence that was not directed toward the child; (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence; (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring; (i) any other relevant matter.	**(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.
Additional Factors	*Section 69 (6)* **Part 4, Division 6 – Relocation**	*Section 16.92 (1)* **Best Interests of the Child**

	Orders respecting relocation **69** … (6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following: (a) the reasons for the proposed relocation; (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities; (c) whether notice was given under section 66 *[notice of relocation]*; (d) any restrictions on relocation contained in a written agreement or an order.	**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.
Factors NOT to be considered -- Double Bind	*Section 69 (7)* **Part 4, Division 6 – Relocation** **Orders respecting relocation** **69** … (7) In determining whether to make an order under this section, the court must not consider whether a guardian would still relocate if the child's relocation were not permitted.	*Section 16.92 (2)* **Relocation** **16.92** … **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.