Part 4 – Care and Time with Children

Part 4 establishes a new regime for care and time with a child. This Part, probably more so than any other Part in the Act, represents the greatest departure from the previous Family Relations Act. Not only does it add clarity to the law surrounding time and care with children, but it also changes the framework for looking at family law issues where children are involved to promote a more collaborative approach to parenting after separation, where appropriate.

There are several key elements to this new framework. A key element is the change to the "best interests of the child" test to include family violence. There is also a change in terminology from custody and access to parental responsibilities, parenting time and contact. Division 6 creates a framework for addressing cases where a parent wishes to relocate with a child, which tend to be very high conflict cases. British Columbia is the first Canadian jurisdiction to provide a much-needed relocation framework.

Division 1 – Best Interests of Child

This Division modernizes the best interests of the child test, which must be used when determining parenting arrangements. A number of changes have been made, including:

- making the best interests test the "only" consideration rather than the "paramount" consideration;
- including an overarching consideration, to "ensure the greatest possible protection of the child's physical, psychological and emotional safety;"
- making the test applicable to all decision-makers, rather than only judges; and
- expanding the list of best interests factors to include the history of care of the child, the impact of family violence and consideration of relevant civil or criminal proceedings.

Section 37 Best interests of child

- Section 37 carries over and expands section 24 of the Family Relations Act. In the Family Relations Act, the best interests of the child were the "paramount consideration." Section 37 directs that, in making decisions about parenting arrangements or contact with a child, a decision-maker must consider only the best interests of the child.
- This section expands the requirement to consider the best interests of the child beyond decision-making by judges, to include decision-making by guardians and all individuals party to a child-related agreement. A child's best interests must always be in the forefront when parenting issues are discussed.
- Section 37 provides an overarching direction to "ensure the greatest possible protection of the child's physical, psychological and emotional safety" and provides a list of factors to consider when determining what is in a child's best interest. The expanded list modernizes the Family Relations Act to better reflect current social values and research.
- Important changes to the best interest of the child factors include:
    - a change in determining whether to consider the views of the child from "if appropriate" in the Family Relations Act to "unless it would be inappropriate." This change shifts the presumptive starting point: the child's views will be considered unless there is a reason why they should not be, rather than starting from the position that the views will not be considered unless justified;

- inclusion of family violence as a factor. The addition of family violence addresses an important gap in the law and recognizes that violence – even if directed exclusively at the spouse – can still be harmful to a child; and
- inclusion of any relevant prior civil or criminal proceedings as a factor. This requires decision-makers to consider the involvement of parties in other proceedings that are relevant to the safety, security or well-being of the child and promotes greater information-sharing between the family, child protection and criminal systems where children are involved.

Section 38 Assessing family violence

- Section 38 provides guidance for decision-makers on how to assess family violence as a factor in considering the best interests of the child.
- This approach is designed to produce a more nuanced risk assessment and avoid a one-size-fits-all approach regarding parenting arrangements in cases where there has been family violence. Research shows that family violence is not all the same. This approach takes into account research showing that different types of violence carry different levels of future risk.
- This section is adapted from a similar provision in New Zealand's family law, which is often considered to be a best-practice.

Division 2 – Parenting Arrangements

This Division includes significant changes to the terms used to describe those with responsibility for children and to describe time spent with children. The changes generally adopt terminology used in Alberta's Family Law Act, which have been met by broad positive response.

The emotionally-laden terms "custody" and "access" are eliminated and replaced by the more neutral terms "guardianship" and "parenting time" to emphasize a relationship of responsibility towards a child. "Guardianship" signifies responsibility for children and "parental responsibilities" describes the responsibilities that guardians have. The references in the Family Relations Act to "guardianship of the person of the child" and "guardianship of the estate of the child" are not carried forward in the Family Law Act.

Other terminology changes include the use of "parenting time" to describe time with a child by a guardian and "contact" to describe time with a child by a non-guardian.

The Division begins with a new default guardianship provision. With few exceptions, the parents of a child who reside with the child are automatically their guardians and do not lose these responsibilities if they separate.

Section 39 Parents are generally guardians

- Section 39 carries over section 29 of the Family Relations Act with some important changes.
- This section establishes the starting position that parents who live with their child are guardians. This is different from the general rule under the Family Relations Act, which provided that when parents separate, the parent with whom the child usually resided has, by operation of law, sole custody and guardianship of the person of the child.
- The change emphasizes that a parent's responsibility towards their child do**e**s not change only because the parents have separated. If the parent was a guardian before separation,

the parent remains a guardian after separation, unless the parents make an agreement, or the court orders that the parent is not a guardian of the child.

- This section clarifies that a parent who has never lived with a child is not that child's guardian. There are three exceptions:
    - where the parent is an additional parent under section 30 of the Act, which allows for three parents in limited assisted reproduction circumstances. This is important because these three parents may never have had the intention to live together but did all intend to be the child's parents and guardians;
    - where the person is a parent, they may become a guardian by agreement. This is the only circumstance in which a person may become a guardian by agreement under the Act; and
    - where a parent regularly cares for their child but does not live with the child. This may occur where a child is born in a short relationship where the parents did not live together, but both parents have been involved in the child's life.
- This section also carries over section 29(4) of the Family Relations Act to clarify that a step-parent does not become a guardian by virtue of the marriage or marriage-like relationship between a child's guardian and that another person.

Section 40 Parenting arrangements

- Section 40 sets out the framework for the making of parenting arrangements. "Parenting arrangements" is defined to include parental responsibilities and parenting time.
- Only a guardian may have parental responsibilities and parenting time.
- This section provides the default that unless an agreement or court order provides for a different allocation, each guardian has all parental responsibilities.
- This section also provides that there are no presumptions about what type of parenting arrangement is best for a particular child. Although this section allows for an agreement or order for equal or shared parental responsibilities and parenting time if that is appropriate in the circumstances, it provides that there are to be no presumptions that equal parenting time and equal parental responsibilities are best for children.
- The parenting arrangements must be made in the child's best interest considering their particular circumstances. The act allows for a flexible and tailored approach to making parenting arrangements and allocating parental responsibilities.

Section 41 Parental Responsibilities

- Section 41 contains the list of "parental responsibilities" that a guardian must exercise in the best interests of their children. This section is intended to provide guardians and decision-makers with guidance when making parenting arrangements.
- The list includes responsibilities that were previously covered by the phrases "guardian of the person of the child" and the "guardian of the estate of the child" in section 25 of the Family Relations Act. The Family Relations Act provided very little guidance with regard to what responsibilities guardians had toward their child.
- Institutional guardians (the Public Guardian and Trustee and a director under MCFD legislation) now receive their authority to act under the Infants Act, which is a better fit than the family law statute.

Section 42 Parenting time

- Section 42 defines a child's time with a guardian as "parenting time" during which the guardian may make day-to-day decisions and has day-to-day care, control and supervision of the child. Subject to any limits provided for in an agreement or order, the guardian may parent the child as they see fit during their parenting time.
- A person who had "access" under the Family Relations Act has "parenting time" under the Family Law Act, if they also had "custody" or "guardianship". If the person had "access", but did not have "custody" or "guardianship" under the Family Relations Act, then they have "contact" as set out in Division 4 of the Family Law Act.
- The time that a guardian with custody had with a child under the Family Relations Act is also "parenting time" under the Family Law Act.

Section 43 Exercise of parental responsibilities

- Section 43 establishes that, as with all decisions regarding a child, a child's guardian must exercise their parental responsibilities in the best interests of the child.
- It allows a guardian to authorize another person to temporarily exercise certain parental responsibilities if the guardian is unable to do so. This ability does not extend to all parental responsibilities. The parental responsibilities that cannot be temporarily exercised by another person are:
    - making decisions respecting where the child will reside;
    - making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
    - starting, defending, compromising or settling any proceeding relating to the child, and
    - identifying, advancing and protecting the child's legal and financial interests.
- Authorizing a person to temporarily exercise some parental responsibilities is not a transfer of guardianship. The authorized person does not become a guardian, but rather temporarily exercises the responsibilities on behalf of the guardian.
- The British Columbia Law Institute's report recommended allowing a type of temporary guardianship to deal with care of a child during a guardian's temporary incapacity or unavailability, such as where the guardian is doing military service in a foreign country.

Section 44 Agreements respecting parenting arrangements

- Section 44 in part carries over the policy of section 121(2) (a) and section 122(1)(a) of the Family Relations Act.
- This section provides specific rules about agreements respecting parenting arrangements. Clarifying that agreements may be made to create enforceable parenting arrangements will increase certainty and will encourage parents to use agreements to manage their affairs.
- To be binding, an agreement about parenting arrangements after separation must be made on or after separation. Because children's needs change over time, it is impossible to know prior to that time what arrangements may be in the child's best interests.
- This section allows written agreements respecting parenting arrangements to be filed with the court so they may be treated and enforced like a court order. It streamlines the enforcement of agreements.

- Section 44 provides a safeguard for agreements respecting parenting arrangements. If the agreement is not in the best interests of the child, the court must set it aside and replace it with an appropriate order.

Section 45 Orders respecting parenting arrangements

- Section 45 authorizes a court to make orders about parenting arrangements where the parents are not living together.
- It also authorizes a court to include provisions that facilitate implementation of parenting arrangements including the use of family dispute resolution processes, such as parenting coordination.
- Orders for supervised parenting time are authorized, if appropriate.
- It makes clear that, to ensure a streamlined approach, an order with respect to parenting arrangements may be made at the same time as an application respecting guardianship.

Section 46 Changes to child's residence if no agreement or order

- Section 46 applies where there is no existing agreement or order and there is an application for an order respecting parenting arrangements that involves a change in location of a child.
- This is different from a relocation application under Division 6. Division 6 applies where there is an existing agreement or order respecting parenting arrangements. Section 46 is needed because the situation is unique and falls somewhere between an ordinary application for parenting arrangements and a relocation application under Division 6.
- Like a relocation application, it is important for the court to consider the reasons for the move. However, it is not appropriate to use the presumptions in Division 6, which are based on the fact that the parties already have an agreement or order respecting parenting arrangements made in the best interests of the child. In relocation situations, some deference should be given to those pre-established arrangements. In the situation described by this section, there is no rationale for the same deference**.**
- This section directs the court to consider the reason for the change in residence, in addition to the best interests of the child and prohibits consideration of whether the guardian would move without the child.

Section 47 Changing, suspending or terminating orders respecting parenting arrangements

- It establishes the need for a "change in circumstance" in order to change an order respecting parenting arrangements.
- This section authorizes a court, with regard to an order about parenting arrangements, to:
    - change the terms of the order;
    - suspend the operation of the order for a period of time; or
    - terminate the order.
    - Section 47 carries over from section 20 of the Family Relations Act.

Section 48 Informal parenting arrangements

- Section 48 provides guidance respecting the period of time between the date of separation and the date that a formal agreement or court order is made with regard to parenting arrangements.

- Generally, it applies where the parents are guardians by operation of law and both are playing a role in the child's life, although they have not solidified their parenting arrangements through an express agreement.
- Each guardian has a duty to consult with each other in circumstances where there are informal parenting arrangements, unless it would be unreasonable (e.g., minor day-to-day decisions) or inappropriate (e.g., risk of family violence).
- Where there is no agreement or order and there have been informal parenting arrangements for a sufficient period of time that those arrangements are a normal part of the child's routine, this section says that one of the guardians cannot unilaterally change the arrangements. If a guardian wants to change these arrangements, they can formalize an agreement or seek an order.

Section 49 Referral of questions to court

- This section allows guardians to apply to court for directions respecting issues affecting a child so that judges can ensure that decisions made by a guardian are in the best interests of the child.
- Section 49 carries over section 32 of the Family Relations Act.

Division 3 –Guardianship

This Division deals with how guardianship of children is obtained and terminated by agreement, court order or appointment.

Section 50 Agreements respecting guardianship

1. Section 50 allows for agreements respecting guardianship to be made between parents of the child. This carries forward the policy in section 28 of the Family Relations Act.
2. It also allows for the transfer of guardianship through agreement under the Adoption Act or the Child, Family and Community Services Act to allow the director to transfer guardianship to the prospective parents or guardians under those acts.
3. This section prevents the transfer of guardianship by agreement in all other cases. Under the Act, unless the person is a parent of the child, a court order is needed for guardianship. This is more restrictive than section 34(2)(b) of the Family Relations Act, which did not restrict who could obtain custody under an agreement. This additional restriction was added to promote children's safety by ensuring there is court oversight in all cases where a non-parent is seeking guardianship of a child.

Section 51 Orders respecting guardianship

- This section authorizes the court to make a guardianship order or to terminate a person's guardianship. The authority to remove a guardian does not apply to removing the director's guardianship under the Adoption Act and the Child, Family and Community Service Act. This prevents a person, after the child has been adopted or removed, from bringing an application to have the director's guardianship terminated.
- Subsection (2) provides the ability to establish rules to ensure information relevant to the best interest of the child is brought before the court, including in relation to criminal or child protection history. This section applies to all non-parents as well as to the few parents who are not guardians by default (i.e. those who have never lived with the child). This section also applies where the parties are seeking an order by consent. This responds to recommendations made by the Representative for Children and Youth.
- Section 51 requires the consent of a child who is 12 years or older to the appointment of a person as the child's guardian, unless the person seeking guardianship is a parent or the court is satisfied that the child's best interests require the appointment.
- This section addresses section 54.1 of the Child Family and Community Services Act which refers to a situation in which, after a continuing custody order has been made, the director grants "custody" to another person. Section 51 equates this to a grant of "guardianship" under the Family Law Act.
- Section 51 carries forward sections 30 and 35 of the Family Relations Act with respect to appointing or revoking guardianship and making custody orders.

Section 52 Who is entitled to notice

- This section lists those people who, subject to a court-ordered exemption, must be served with notice of an application for guardianship.
- It requires that notice be given to all parents, guardians or others with whom the child resides and who have care of the child, unless the child is the subject of a continuing custody order or another person has temporary custody of the child under section 54.1 of the Child Family and Community Services Act or permanent custody under s. 54.01(5) of that Act.
- Section 52 carries forward section 22(1) of the Family Relations Act as well as the policy objective of section 30.1(2) of the Family Relations Act.

Section 53 Appointment of guardian in case of death

- Section 53 provides a way for guardians to appoint a guardian to take over responsibility for their child upon their death and, if there is no such appointment, provides a default to determine who exercises the parenting responsibilities of a deceased guardian.
- In addition to authorizing the use of a will, it allows a guardian to use a prescribed form to make the appointment.
- The section eliminates the limitation currently in section 50(1) of the Infants Act that allows only a "parent" of a child to appoint a testamentary guardian. Under the Act, all guardians, whether or not they are also parents, have the ability to appoint a testamentary guardian. The British Columbia Law Institute's report recommended elimination of the distinction between parents and non-parent guardians.

- The section says that if a guardian dies without appointing a guardian and there are surviving parent-guardians, those parent-guardians take all the parental responsibilities that the deceased guardian had.

Section 54 Loss of guardian

- This section provides that upon the death of a child's guardian, if a surviving parent is not also a guardian they do not automatically become the child's guardian and therefore does not take the parental responsibilities of the deceased guardian.
- Section 54 carries over section 29(2) of the Family Relations Act.

Section 55 Appointment of standby guardian

- Section 55 authorizes a guardian facing a terminal illness or permanent mental incapacity to provide for the orderly transition respecting the care of their children by appointing a standby guardian. This is intended to promote certainty and stability in the care of children.
- The appointment takes effect when the appointing guardian, while still alive, is unable because of the illness or mental incapacity to attend to their responsibilities. The standby guardian must consult with the appointing guardian, to the extent possible and appropriate. Upon the appointing guardian's death, the standby guardian remains guardian of the child.
- These appointments are executed in a prescribed form in the same way as a will. The appointment must include a description of conditions upon which the standby guardian takes responsibility and may include a requirement for a medical doctor or other designated person to verify that conditions have been met.
- The section also deals with the possibility of a competition between appointments. The section provides that, unless the standby appointing document indicates otherwise, the standby guardian becomes the child's guardian on the death of the appointing guardian despite any other document, such as a will, that contains a different appointment
- Standby guardianship developed in the United States and a number of states have legislation surrounding its use. The British Columbia Law Institute's report supported the use of standby guardianship.

Section 56 Limits on appointments

- Section 56 says that appointments for testamentary or standby guardians must be made in the best interests of the child only and restricts an appointing guardian from granting greater parental responsibilities than the appointing guardian has.

Section 57 Appointments must be accepted to take effect

- Section 57 codifies the common-law requirement that appointments of guardianship do not take effect unless the appointed person either expressly or impliedly by the person's conduct accepts the appointment.

Division 4 – Contact with a Child

"Contact" refers to a child's time with someone who is not a guardian. It replaces the concept of "access" for non-guardians in the Family Relations Act. A contact person does not have parental responsibilities for the child.

Section 58 Agreements respecting contact

- Section 58 sets out the specific rules about agreements between guardians and non-guardians respecting contact with a child to encourage parties to use written agreements to manage their affairs.
- It requires that an agreement with respect to contact must be made with all of the guardians who have parental responsibility under section 41 (c) of the Act for making decisions about who the child may associate.
- An agreement respecting contact with a child may be filed in the court registry, so that it may be treated and enforced like a court order. This streamlines the enforcement of agreements.
- The section provides a safeguard in that if an agreement respecting contact is not in the best interests of the child, it must be set aside and replaced by an appropriate court order.
- Section 58 carries over the policy of section 121 (2) (a) and section 122 (1) (a) of the Family Relations Act.

Section 59 Orders respecting contact

- This section authorizes a court to make orders for contact including the type of contact and terms associated with it. For example, contact might take the form of time with the child or telephone or written contact.
- It clarifies that non-guardian parents and grandparents may apply for contact. The inclusion of grandparents in this section does not prevent grandparents from applying for orders for guardianship, parenting arrangements or parenting time in appropriate circumstances.
- The section authorizes orders for supervised contact, if appropriate.
- It provides that an "access" order made under the Child Family and Community Service Act is a "contact" order for the purposes of the Bill.
- Section 59 carries forward and clarifies section 35 of the Family Relations Act.

Section 60 Changing, suspending or terminating orders respecting contact

- Section 60 carries over from section 20 of the Family Relations Act the need to establish a "change in circumstance" to change an order respecting contact.

Division 5 – Compliance Respecting Parenting Time or Contact with a Child

This Division provides remedies to address the denial of parenting time or contact as well as failure to exercise time with a child. The remedies include moderate sanctions or tools (e.g., an order for mediation or counselling), but also provide for the potential that some situations will require an escalation in sanctions. Some different remedies are proposed for denial and failure to exercise access to recognize the different circumstances in which such problems arise.

Including options to address non-compliance is intended to clarify the law and provide effective remedial tools while at the same time maintaining sufficient flexibility to address the unique facts of each case. Options which fall on the preventative side of the continuum such as counselling could reduce the costs of separation by helping to resolve underlying issues, thereby avoiding future difficulties.

The division draws on the approach taken in other jurisdictions, both inside and outside of Canada, including Australia, New Zealand and some U.S. states.

Section 61 Denial of parenting time or contact

- The Family Relations Act did not have specific remedies for disputes over time with a child. The remedies were quasi-criminal tools, such as contempt proceedings or applications under section 128(3) of the Family Relations Act, which provided for enforcement of access orders through the Offence Act. They were rarely used and were ineffective and ill-suited to this type of parenting dispute.
- Section 61 establishes an enforcement regime for judges to ensure parties respect each other's parenting time and contact arrangements.
- This section provides a limit to ensure that applications are made with regard to recent denials only by requiring applications to be brought within 12 months of the denial.
- It provides a range of remedies, from preventative to punitive, that a judge can order when there is a denial of parenting time or contact, including:
    - requiring parties or their children or both to attend family dispute resolution, counselling or other services;
    - compensatory time;
    - reimbursement of expenses incurred as a result of the denial; and
    - requiring the offending party to provide security or pay a fine of up to $5,000.
- This section gives judges the discretion to allocate the cost, if any, of family dispute resolution, counselling or supervised transfer of children to facilitate parenting time or contact.

Section 62 When denial is not wrongful

- Section 62 provides examples of circumstances in which a denial of parenting time or contact is not wrongful.
- Most remedies for denial of parenting time or contact are only available when the parenting time or contact was wrongfully denied. However, even where the denial was not wrongful, the court may, if appropriate, order compensatory time to the guardian to make-up for the missed time with their child.

Section 63 Failure to exercise parenting time or contact

- Section 63 lists orders that can be made when a person fails repeatedly to exercise the parenting time or contact agreed to or granted in an order.
- These remedies are more limited than those for denial of time, since it may be at odds with the child's best interest to force a relationship with an uninterested adult by using punitive remedies.
- This section gives judges the discretion to allocate the cost, if any, of to facilitate parenting time or contact.

Section 64 Orders to prevent removal of child

- Section 64 provides for two types of orders with respect to removal of a child.
- The first type allows a court to restrict a person from taking a child out of a certain area. This type of order is often used currently. For example, an order might say that neither parent may take the child out of the Lower Mainland without the other parent's consent. This type of order is generally about parenting together and making sure each guardian knows where the child is.
- The second type is used where there is concern that a person may remove and not return that child. In these circumstances, the court may take action to stop the person from leaving with the child, such as surrendering passports or providing security to motivate the person to stay.
- This section clarifies that these orders do not apply to the situation where one parent wants to move as those applications are different and are to be dealt with under Division 6 [Relocation]. This ensures a person cannot thwart the effect of a relocation order by inappropriately making a non-removal application.

Division 6 – Relocation

This Division addresses the issue of moving away after parenting arrangements have been established in an agreement or court order. Relocation is an increasingly common event in children's lives after their parents separate or divorce, and disputes over relocation are difficult to resolve and tend to result in litigation.

Most often, this situation arises where one parent wishes to move to another city, province or country with the child. This move could impact the relationship between the child and the other parent and will require a change in the parenting arrangements. As a result, often the other parent does not agree with the move.

The Family Relations Act did not specifically address relocation, and the case law is unclear. Critics have called relocation law "rock, paper, scissors territory" and say that its uncertainty and unpredictability fuel litigation, prolong disputes, and interfere with parents' ability to plan.

There is a difference between how guardians are treated under this Division and how persons with contact with the child are treated. Guardians have parental responsibilities toward the child and are charged with raising the child; whereas persons with contact have time with a child but do not have any parental responsibilities or decision-making authority. Although both guardians and persons who have contact with a child are entitled to notice of a relocation, only a guardian can apply to prevent a move. A person with contact is provided notice to ensure there is adequate opportunity to make appropriate contact arrangements.

The Division's goal is to introduce some certainty to this area of the law by mandating notice of a proposed move, defining what constitutes a relocation and directing courts about both circumstances that should be considered and those that should not. The introduction of certainty will reduce the need for lengthy litigation and, thus, reduce the costs associated with disputes over relocation.

Section 65 Definition and application

- Section 65 establishes criteria for what is considered to be a "relocation". "Relocation" is defined in a child-centred way that takes into account the specific circumstances of individual families. It focuses on the impact of the proposed move on the child's primary relationships.
- Usually relocation disputes arise where a guardian wants to move with the child. However, relocation includes situations in which a guardian intends to move but does not intend to move the child. Although these types of cases are often less disputed than cases where the guardian intends to move with the child, this provision ensures that notice is given so that appropriate adjustments to parenting arrangements may be made to minimize the impact on the child.
- This section also makes clear that Division 6 applies only when parenting arrangements already exist. If parenting arrangements do not already exist, then parents must make an application to determine parenting arrangements under Division 2, and section 46 [Changes to child's residence if no agreement or order] applies.

Section 66 Notice of relocation

- Section 66 describes the circumstances in which notice of a proposed relocation must be given, and to whom.
- This section requires a guardian of a child who plans to relocate, with or without the child, to give 60 days' notice to other guardians or persons having contact with a child. The notice must contain the date of the proposed relocation and the name of the city, town or area of the new residence.
- The notice period allows for an opportunity to discuss the issue and, if a relocation is agreed upon, to work out new parenting arrangements.
- The section allows a court to grant an exemption to the requirement to give notice if satisfied that either:
    - the existence of family violence would create a risk if notice were given; or
    - there is no ongoing relationship between the child and the person who would be entitled to notice.

Section 67 Resolving issues arising from relocation

- Section 67 encourages co-operation between the guardian proposing to move and those whose relationship with the child may be affected by the move by imposing a duty to use best efforts to resolve issues arising from the move. The goal is to reduce the need for litigation and, thus, reduce the costs associated with disputes over relocation.
- This section makes it clear that the obligation to attempt to resolve the dispute does not prevent the starting of an application for an order if that is necessary. If the parties resolve the issue before the court hearing, they do not need to continue in court.

- Only guardians can ask the court to prevent a move. A person with contact must be given notice of a move, but this is to ensure they can make alternate arrangements for that contact.

Section 68 Child may be relocated unless guardian objects

- Section 68 allows a move to occur unless an application is filed objecting to the move within 30 days after notice is given.
- This eliminates the need for a moving guardian to wait the entire 60 days before planning the move if another guardian does not object to the move, by requiring the other guardian to raise their objection within 30 days. The parties would then have some time to resolve the dispute before the intended move date.
- This section balances the needs of an objecting guardian to have sufficient time to object and the needs of the moving guardian to make plans for the move.

Section 69 Orders respecting relocation

- Section 69 provides guidance to the court with regard to determining whether relocation should be granted or prohibited and introduces a degree of certainty into the law.
- This section provides the factors that a court must consider when determining whether to grant a relocation. The court must consider the factors listed in the general best interests of the child test in section 37 and must also specifically consider whether the proposal to move is made in "good faith" and whether reasonable and workable alternate parenting arrangements have been proposed.
- It deals with situations in which the guardians of a child do not have substantially equal parenting time. The moving guardian, who has the majority of the time with and care of the child, must show "good faith" reasons for the move and must provide reasonable and workable alternate parenting arrangements that will maintain the relationship between the child and other guardian. If the court is satisfied that those two things are established then there is a presumption in favour of the move, unless the objecting guardian satisfies the court that the move is not in the best interests of the child.
- The section also deals with situations in which the guardians have substantially equal parenting time. In such a case, both parents play a significant role in the child's day-to-day life and it may be difficult to maintain this relationship if there were a move. Therefore, the threshold is higher and the moving guardian has full responsibility for satisfying the court that the proposal to move is made in "good faith," reasonable and workable alternate parenting arrangements have been proposed, and the move is in the best interests of the child.
- This section gives the court guidance about what to consider in determining whether the proposal to move is made in "good faith", including the reasons for the move, whether the move is likely to enhance the general quality of life of the child and moving guardian, whether notice requirements were met and whether the guardians' written agreement or order restricts relocation. The good faith requirement is designed to prevent relocations from occurring where the moving guardian is trying to move in order to undermine or limit the child's relationship with the other guardian.
- It prohibits a court from inquiring into and considering whether a guardian would still relocate if the application to relocate the child were refused. This question is an impossible one for a guardian to answer, with very little probative value for the decision the court has to make.

Section 70 If relocation permitted

- Section 70 authorizes the court to make necessary changes to the parenting arrangements to facilitate a relocation and to make orders to ensure compliance with a relocation order. Compliance is especially important in these cases, because otherwise the move could undermine the relationship between the child and the non-moving guardian.
- This section restricts the court's discretion to make fundamental changes to the parenting arrangements by requiring that the existing arrangements be preserved to the extent reasonable.
- Restricting the discretion that courts may exercise in adjusting existing parenting arrangements prevents a re-examination of the entire parenting arrangements structure. The existing parenting arrangements were either the result of an agreement between the guardians or a court order made in the child's best interests. While the physical relocation of the child or one of the guardians will necessitate changes, the court must try to adjust the arrangements in such a way as to preserve the current roles played by the guardians.

Section 71 Not a change in circumstances

- Section 71 prevents an application to change parenting arrangements based only on the fact that a court refused to allow a guardian to change the location of a child.
- Section 47 of the Family Law Act requires a change in circumstance before a change to an order respecting parenting arrangements is made. While an unsuccessful application to move coupled with other questionable decisions by a guardian may justify a change in parenting arrangements based on the best interests of the child, an unsuccessful proposal to move on its own is insufficient justification for such a change.
- This section is important because, otherwise, a relocating guardian may forego a relocation where it would be in the child's best interests because of fear an unsuccessful application could result in a significant change to the parenting arrangements. There have been challenging cases where a parent applied for permission to move the child, only to have the court reject the move and then transfer custody to the other parent without further basis for the decision. This section provides clarity and ensures that where a relocation is denied, the status quo is maintained with respect to the parenting arrangements unless there is another change of circumstances.

Division 7 – Extraprovincial Matters Respecting Parenting Arrangements

This Division provides for how orders respecting parenting arrangements and contact from jurisdictions outside British Columbia are to be dealt with in British Columbia.

It carries forward Part 3 – Extraprovincial Custody and Access Orders from the Family Relations Act. Changes were made to the structure and terminology to reflect the new terminology of the Family Law Act , (i.e. the use of "guardianship", "parenting arrangements" and "contact," and the elimination of "custody" and "access"), but no substantive changes were made.

Section 72 Definitions and interpretation

- Section 72 carries forward the definitions for "extraprovincial order" and "extraprovincial tribunal" from the Family Relations Act.
- This section assists a court in determining in which jurisdiction a child is considered to be "habitually resident". It is an important concept in international conventions dealing with determining which jurisdiction (provinces, country, state, etc.) should have jurisdiction over the issues of a particular child.
- It clarifies that the removal of a child from a jurisdiction, or a child's retention in a jurisdiction, has no bearing on a determination about the child's habitual residence, unless there is acquiescence or undue delay in challenging the removal or withholding.

Section 73 Purposes

- Section 73 carries over section 43 of the Family Relations Act and describes the purposes of this Division.

Section 74 Determining whether to act under this Part

- Section 74 is used when there is an issue of which jurisdiction the order should be made in.
- This section provides a test for when a British Columbian court may take jurisdiction in a child-related case.
- As well, it provides authority for a court to take jurisdiction in cases where the child may suffer serious harm, even though the court would otherwise not have jurisdiction.
- Section 74 allows a court to decline jurisdiction even if the tests are met if it is satisfied that another jurisdiction is more appropriate place to hear the case.
- It carries forward sections 44(1), 45 and 46 of the Family Relations Act.

Section 75 Recognition of extraprovincial orders

- This section addresses when a court must recognize an order made in another jurisdiction with regard to the care of a child and the effect of recognition.
- This section provides that an extraprovincial order must be recognized in British Columbia if certain criteria are met, and if recognized, the order has the same effect and may be enforced in the same manner as one made under the Family Law Act.
- It provides that a court faced with conflicting extraprovincial orders must recognize the one most consistent with the best interests of the child.
- Section 75 carries over section 48 of the Family Relations Act.

Section 76 Superseding extraprovincial orders

- This section provides authority to a British Columbian court to make a different order even though there is a recognized extraprovincial order, in circumstances where there is a risk of serious harm or where the circumstances have changed such that the best interests of the child are affected.
- This is an exception to the general rule that says only the most appropriate court should make decisions respecting a child.
- Section 76 carries over sections 49 and 50 of the Family Relations Act.

Section 77 Wrongful removal of child

- This section allows a court, in cases in which it cannot take jurisdiction under section 74 of the Act, to nevertheless make orders for temporary or interim relief in wrongful removal or retention situations.
- It provides what a court can do in such situations. It may, for example, make an interim order that it considers to be in the child's best interests, or order a party to return the child to another jurisdiction.
- Section 77 carries over section 47 of the Family Relations Act.

Section 78 Extraprovincial evidence

- This section provides the authority for British Columbian courts to request evidence or attendance of witnesses in other jurisdictions for the purposes of resolving issues related to guardianship, parenting arrangements or contact.
- This section creates a new definition for "senior legal executive" that describes the office with whom communication will be necessary in order to either obtain or provide needed evidence.
- Section 78 carries over the intention of section 51 of the Family Relations Act.

Section 79 Referral to court

- This section continues the reciprocal relationship whereby the Ministry of Justice is obligated to provide the same assistance given to British Columbia courts in cases where other jurisdictions make requests.
- Section 79 carries over section 52 of the Family Relations Act.

Division 8 – International Child Abduction

This Division carries over Part 4 – International Child Abduction of the Family Relations Act. This Division is necessary to ensure the continued application of the Convention on the Civil Aspects of International Child Abduction in British Columbia.

Section 80 International child abduction

- This section addresses the Hague Convention on the Civil Aspects of International Child Abduction to ensure the continued application of the Convention on the Civil Aspects of International Child Abduction in British Columbia.
- It deals with administrative requirements of the convention such as appointing a "Central Authority". The Central Authority is the office that assists parents and guardians with locating children in other jurisdictions. It is also responsible for communication and coordination with other jurisdictions with regard to ensuring the return of children to British Columbia.
- This section identifies the Attorney General as the "Central Authority" for British Columbia.
- Section 80 carries over section 55 of the Family Relations Act.