



Relocation under Canada's *Divorce Act*

April 2, 2025

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Overview

- Family law in Canada
- Divorce Act* amendments
- Relocation Framework
- Where are we now
- Resources



Family Law in Canada

- Canada is a federal State
- Family law is a shared responsibility between the federal and provincial/territorial governments
- Federal government is responsible for divorce
- Provinces and territories are responsible for unmarried spouses, or married spouses who are separated but not divorced



Divorce Act amendments

- Amendments to *Divorce Act* came into force on May 1, 2021
- Changes to the *Divorce Act* included:
 - Parenting language
 - Enhanced focus on best interests of the child
 - Family violence provisions
 - Relocation provisions



Overview of Relocation Framework

- The old *Divorce Act* was silent on relocation
- Supreme Court of Canada decision in *Gordon v. Goertz* [1996] 2 S.C.R. 27 had been leading case on relocation in Canada
- The new framework for relocation under the *Divorce Act*:
 - Notice
 - Objection
 - Burdens of proof
 - Exceptions



Overview of Relocation Framework (continued)

- **Notice** is 60 days in advance of proposed move and must include a proposal for modification of parenting arrangements and any other information prescribed by regulation
- **Objection** can be asserted by prescribed form or by court application within 30 days of receiving notice
- **Burdens of proof** establish who has the burden of demonstrating why the relocation is in the child's best interests
- **Exception** that allows court to modify or not apply notice provisions, for example, where there is a risk of family violence



Other Elements of the relocation scheme

- Direction for parents and courts (forms)
- Additional best interests of child factors specific to relocation cases
- Costs related to exercise of parenting time
- Interaction with *Divorce Act* family violence provisions
- Interaction with 1980 and 1996 Hague Conventions



Interaction with *Divorce Act* family violence provisions

- Other family violence provisions apply:
 - Family violence as a best interests of the child factor
 - Primary consideration



Interaction with 1980 and 1996 Hague Conventions

Relocation provisions are consistent with:

- 1980 Hague Convention
- 1996 Hague Convention



Where are we now

- Six provinces have since enacted mirroring legislation
 - Ontario
 - Saskatchewan
 - New Brunswick
 - Prince Edward Island
 - Nova Scotia
 - Manitoba



Resources

Justice Canada Public Legal Education Materials

- [The *Divorce Act* Changes Explained](#)
- Relocation fact sheets and forms:
[Moving after separation or divorce?](#)
[Notice of Relocation Form](#) and [Objection to Relocation Form](#)

Justice Canada Training

- [6 online courses](#)
- [Relocation under the Divorce Act Course](#)

Other resources

- [Making plans: A guide to parenting arrangements after separation or divorce](#)
- [Parenting Plan Checklist : Information to help you get started](#)
- [HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers](#)