CHAPTER 2: Relocation

Introduction

Disagreements over whether one parent or guardian can move with a child to a new community are some of the most difficult to resolve. As one person providing feedback on this issue described it, "*Relocation is a zero-sum game. There is a winner and a loser and it is very hard to find a compromise*."[1]

Part 4 of the *Family Law Act* (FLA) includes *Division 6 – Relocation* which is about how proposed changes to the residence of a child are handled when the child's guardians cannot agree and the parenting arrangements exist in a written agreement or court order. This is contrasted with section 46 of the FLA which addresses proposed moves where there is no existing agreement or order.

A significant feature of the FLA is the presumption that a move proposed by the guardian who has the majority of time with the child under existing parenting arrangements is in the best interests of the child. This is only a presumption and is rebutted if the other guardian can establish that the move is not in the best interests of the child.

BC was the first Canadian jurisdiction to have specific relocation provisions. Since then, others have enacted similar provisions including the federal government which added relocation provisions into the *Divorce Act* in 2021. The table below compares aspects of the relocation provisions in the FLA and the *Divorce Act*.

Issue	*Family Law Act*	*Divorce Act*
Unequal parenting time:	If guardians "do not have substantially equal parenting time" a relocation must be considered to be in the best interests of a child unless another guardian proves otherwise, if the relocating guardian proves: • move is in "good faith"; and • "reasonable and workable arrangements" to preserve the child's existing relationships are proposed.	If parties "substantially comply" with existing parenting arrangements that provide that the child spends "the vast majority of their time in the care" of the relocating party, the party opposing relocation "has the burden of proving that the relocation would not be in the best interests of the child."

[1] Ministry of Attorney General. (2024). *Family Law Act Modernization Project: Care of and Time with Children & Protection from Family Violence Discussion Paper*. (Chapter 2, p.2). https://engage.gov.bc.ca/app/uploads/sites/121/2024/09/FINAL-Chapter-2-Relocation.pdf

Equal parenting time:	If guardians have "substantially equal parenting time" the relocating guardian must prove: • move is in "good faith"; • "reasonable and workable arrangements" to preserve the child's existing relationships are proposed; and • move is in the best interests of the child.	If parties "substantially comply" with existing parenting arrangements that provides that the child spends "substantially equal time in the care of each party", the relocating party "has the burden of proving that the relocation would be in the best interests of the child."
"Any other case":	None	If parties cannot establish that they "substantially comply" with existing parenting arrangements, or the relocating party cannot establish that they have the "vast majority" of time with the child, "the parties each have the burden of proving whether the relocation is in the best interests of the child."

Feedback and analysis suggest that the process could be improved by:

- ensuring the FLA and *Divorce Act* use similar language when addressing a presumption in favour of relocation. This will increase the likelihood that families in similar situations will receive similar judicial decisions, regardless of whether their relocation application is made under the FLA or the *Divorce Act*.
- eliminating the FLA requirement that a guardian who wishes to relocate with their child must establish that the proposed move is being made "in good faith" before being entitled to a presumption in favour of a relocation. This would remove an unnecessary burden of proof that does not exist in any other context within the FLA.
- creating a new template that parties can use to give relocation notice similar to the form required by the *Divorce Act*. This will reduce confusion about how to notify other people about a proposed relocation.

Key Changes and How They Help Families

Mirror the Divorce Act's relocation presumption:

<u>Proposed change</u>: As provided for in the *Divorce Act*,

- **require parties to establish that there has been "substantial compliance" with an existing parenting time agreement or order that grants them the majority of parenting time in order to obtain the benefit of a presumption in favour of relocation; and**
- **change the phrase "do not have substantially equal parenting time" to having the "vast majority" of parenting time as the standard for whether a guardian becomes entitled to a presumption in favor of relocation.**

<u>How this helps families</u>: By ensuring both the FLA and the *Divorce Act* provisions use similar language in addressing a presumption in favour of relocation, cases with similar facts should have similar outcomes under either statute, which will increase certainty and improve the likelihood of settlement.

The differences between the FLA and *Divorce Act* can lead to confusion and strategic maneuvering by parties to rely on one or the other statute depending on the desired outcome.

Although both acts currently grant a presumption in favour of relocation in situations where the relocating guardian has the majority of time with the child, they are worded differently. The difference has created a perception that a guardian wishing to relocate may obtain a different outcome depending on which act they make their application under. Amending the FLA provisions to align with wording used in the *Divorce Act* provisions will reduce confusion and may avoid unnecessary litigation.

Currently, the FLA says that if guardians have "substantially equal parenting time" with their child, the person who wants to move with the child must prove that the move is in the best interests of the child. If the parties do not have "substantially equal parenting time" – meaning that one of them has significantly more time than the other – and the person wanting to move is the one with more time, the move is presumed to be in the best interests of the child unless another guardian establishes that it is not.

The *Divorce Act* differs in that it explicitly requires parties to offer evidence about whether they are following an existing parenting arrangements order or agreement. If they have <u>not</u> been following the order or agreement, then the presumption in favour of the relocation may not apply. Although the FLA could be interpreted as also requiring evidence of

compliance, it does not explicitly say so and this may be interpreted to mean the evidence is not required. In cases where the written parenting arrangements do not match the actual time spent with the child, a party could be granted a presumption that they may not deserve.

Also, the *Divorce Act* differs from the FLA in how each describes the amount of parenting time a guardian has with the child. As noted, the FLA uses the phrase "substantially equal" to qualify how much time a guardian has with the child. The *Divorce Act* instead uses the phrase "vast majority" to describe the amount of time that triggers a presumption in favour of a relocation. Although the intention of both statutes appears to be similar, the different phrases could be interpreted to mean different things. This difference could lead to cases with similar facts resulting in different orders based only on the statute chosen. Using the *Divorce Act*'s phrase in the FLA improves consistent outcomes for families.

Eliminate the "good faith" factor:

Proposed change: Remove the requirement that an applicant seeking to relocate a child must establish that the relocation application is made in "good faith".

How this helps families: Removing the requirement that a guardian who wishes to relocate with their child must establish that the proposed move is being made "in good faith" eliminates an unnecessary evidentiary burden that does not exist in any other context within the FLA.

Currently the FLA requires someone who wants to relocate a child to establish that they are making the application in "good faith" before a presumption in favour of the move will apply. Section 69(6) of the Act contains a list of factors that a court must consider when determining "good faith". The reason for this is to ensure the move is not being proposed only as a way to negatively affect the child's relationship with their other guardians.

Most applications for relocation are made by women. As a consequence, it is usually the women's motives that are being questioned by making them prove the application is being made "in good faith". There is no other issue in the FLA that requires this type of motive analysis to determine whether an application is appropriate.

Although understanding the reasons for a proposed move is relevant, the factors listed in subsection (6) can be retained as considerations in granting the relocation as opposed to the very action of bringing the application. Retaining these factors is consistent with provisions with the *Divorce Act* because they are similar to factors used to assess whether a relocation should be allowed under that Act.

Notice of relocation:

<u>Proposed change</u>: Create a template to assist people in giving notice of a relocation under the FLA that requires including information similar to the information required in the *Divorce Act* form, such as:

- **the expected date of relocation**
- **the name of the proposed relocation location;**
- **the proposed location's address if available or known;**
- **new contact information of the person or child relocating, if available;**
- **a proposal regarding parenting arrangements including how proposed parenting time or contact may be exercised;**
- **the name of the relocating person and any other relocating child of the parties; and**
- **the relocating person's current address and contact information.**

<u>How this helps families</u>: Providing a template with required information adds further alignment with the *Divorce Act* and will make it easier and therefore more likely that guardians intending to move will give notice to the child's other guardians.

Currently, although the FLA requires a person wanting to relocate a child to give written notice including the date of the relocation and the "name of the proposed location" to "all guardians and persons having contact with the child" it does not require that notice to be in a particular written format. This allows flexibility and makes it easy for some parties to provide notice. However feedback indicated others would appreciate more direction.

Creating a template that a party intending to relocate can choose to use to give notice of relocation will make it easier for some parties to understand and comply with the notice requirements, while retaining flexibility and convenience.

The information proposed for inclusion in the notice of relocation mirrors the information required by the prescribed *Divorce Act* form.