The *Divorce Act* Changes Explained

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Background

This document explains some of the changes made to the *Divorce Act* through Bill C-78, *Act to Amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*. The bill received Royal Assent on June 21, 2019.

Some of the changes to the *Divorce Act* came into force upon Royal Assent. Most changes will come into force by Order in Council.

What the document includes:

- A general explanation of the main changes to the *Divorce Act*
- An overview of the reasons why some of the changes were made
- A summary of the coming into force of the changes

What the document does not include:

- Legal advice. This document only provides general legal information about the changes to the *Divorce Act*. People may want to seek legal advice from a professional working in family law for additional information about the law and its application.
- Information about the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance nor the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. These two conventions are not in force yet.

Please note that the official version of changes to the *Divorce Act* – referred to as “New section” in this document – can be found in Bill C-78 on the Parliament of Canada website at: https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=F&billId=9868788. The official version of the current *Divorce Act* – referred to as “Old section” in this document – can be found on the Justice Canada laws website at https://laws-lois.justice.gc.ca/eng/acts/D-3.4/index.html.

Definitions

Custody and custody order (Section 2(1), *Divorce Act*)

New section	Old section
The definitions *custody* and *custody order* in subsection 2(1) of the *Divorce Act* are repealed.	**2 (1)** In this Act, ***custody*** includes care, upbringing and any other incident of custody; (*garde*) ***custody order*** means an order made under subsection 16(1); (*ordonnance de garde*)

What is the change

The amendment removes the definitions of custody and custody order from the Act.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting time, decision-making responsibility and contact. The term “parenting order” replaces “custody order” throughout the Act, for instance. Similarly, the term “contact order” describes an order that sets out time for children to spend with important people who are not in a parental role, such as grandparents.

When

The change will come into force approximately one year after Royal Assent.

Accès
(Section 2(1), *Divorce Act*)

New section	Old section
The definition *accès* in subsection 2(1) of the French version of the Act is repealed.	***accès*** comporte le droit de visite. (French version only)

What is the change

The amendment removes the term “accès” from the French version of the Act.

Reason for the change

The terms “access” and “accès” are no longer used in the Act; only the French version of the Act defines the concept of access (accès). To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting, parenting time and contact.

When

The change will come into force approximately one year after Royal Assent.

Provincial Child Support Service (Section 2(1), *Divorce Act*)

New section	Old section
The definition *provincial child support service* in subsection 2(1) of the Act is replaced by the following: ***provincial child support service*** means any service, agency or body designated in an agreement with a province under subsection 25.01(1) or 25.1(1); (*service provincial des aliments pour enfants*)	***provincial child support service*** means any service, agency or body designated in an agreement with a province under subsection 25.1(1); (*service provincial des aliments pour enfants*)

What is the change

The definition of provincial child support service now includes provincial services that calculate initial child support amounts under s 25.01.

Reason for the change

The change improves efficiency and access to justice.

When

The change will come into force approximately one year after Royal Assent.

Corollary relief proceeding, divorce proceeding (Section 2(1), *Divorce Act*)

New section	Old section
The definitions *corollary relief proceeding* and *divorce proceeding in subsection* 2(1) of the Act are replaced by the following: ***corollary relief proceeding*** means a proceeding in a court in which either or both former spouses seek a child support order, a spousal support order or a parenting order; (*action en mesures accessoires*) ***divorce proceeding*** means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a parenting order; (*action en divorce*)	***corollary relief proceeding*** means a proceeding in a court in which either or both former spouses seek a child support order, a spousal support order or a custody order; (*action en mesures accessoires*) ***divorce proceeding*** means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a custody order; (*action en divorce*)

What is the change

The amendment adds the term “parenting order” to the definitions of corollary relief proceeding and divorce proceeding.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting time and decision-making responsibility. The term “parenting order” replaces “custody order” throughout the Act, for instance.

When

The change will come into force approximately one year after Royal Assent.

Spouse
(Section 2(1), *Divorce Act*)

New section	Old section
The definition of *spouse* in subsection 2(1) of the Act is replaced by the following: ***spouse*** includes, in subsection 6(1) and sections 15.1 to 5 16.96, 21.1, 25.01 and 25.1, a former spouse; (*époux*)	***spouse*** means either of two persons who are married to each other; (*époux*)

What is the change

The definition of “spouse” no longer uses the phrase “means either of two persons who are married to each other” and now includes “former spouse” for specific sections of the Act (6(1), 15.1 to 16.96, 21.1, 25.01 and 25.1).

Reason for the change

The extended meaning of “spouse” aligns the Act with other federal legislation, as the case law is clear that spouse means a person who is married. The amendment specifies for which sections the meaning includes “former spouse.”

When

The change will come into force approximately one year after Royal Assent.

Spouse
(Section 2(1), *Divorce Act*)

New section	Old section
The definition *spouse* in subsection 2(1) of the Act is replaced by the following: ***spouse*** includes, in subsection 6(1) and sections 15.1 to 16.96, 21.1, 25.01, 25.1 and 30.7, a former spouse; (*époux*)	***spouse*** means either of two persons who are married to each other; (*époux*)

What is the change

When s 30.7 comes into force, references to “spouse” in that section will include “former spouse.”

Reason for the change

Section 30.7 relates to the 1996 Convention on the Protection of Children, which has yet to come into force.

When

The change will come into force by Order in Council.

Applicable guidelines (Section 2(1), *Divorce Act*)

New section	Old section
Paragraph (a) of the definition *applicable guidelines* in subsection 2(1) of the Act is replaced by the following: **(a)** if both spouses or former spouses are habitually resident in the same province at the time an application is made for a child support order or for a variation order in respect of a child support order or the amount of a child support is to be calculated or recalculated under section 25.01 or 25.1, and that province has been designated by an order made under subsection (5), the laws of the province specified in the order, and	***applicable guidelines*** means **(a)** where both spouses or former spouses are ordinarily resident in the same province at the time an application for a child support order or a variation order in respect of a child support order is made, or the amount of a child support order is to be recalculated pursuant to section 25.1, and that province has been designated by an order made under subsection (5), the laws of the province specified in the order, and

What is the change

The amendment clarifies the definition of “applicable guidelines” to refer to the guidelines that apply at the time the application is made. The amendment also aligns the English and French versions of the Act and replaces the term “ordinarily” with “habitually.”

Reason for the change

The amendment clarifies that the applicable guidelines must be determined based on the spouses’ habitual residence when the application is made as opposed to when the order is made.

When

The change will come into force approximately one year after Royal Assent.

Competent authority
(Section 2(1), *Divorce Act*)

New section	Old section
Subsection 2(1) of the Act is amended by adding the following in alphabetical order: ***competent authority*** means, except as otherwise provided, a tribunal or other entity in a country other than Canada, or a subdivision of such a country, that has the authority to make a decision under their law respecting any subject matter that could be dealt with under this Act; (*autorité compétente*)	None.

What is the change

The amendment defines the concept of “competent authority.”

Reason for the change

The Act uses the term “competent authority” in various sections related to international matters, such as those relating to the recognition of foreign divorce, the recognition of foreign parenting and contact orders and the 1996 Convention on the Protection of Children. The definition of competent authority captures various types of decision-making authorities including a tribunal, a court or any other entity outside Canada that can make decisions under their laws about any matter that can be dealt with under the Act.

The definition applies except where the Act specifically uses a different definition of “competent authority,” such as in s 25.

When

The change will come into force approximately one year after Royal Assent.

Contact order
(Section 2(1), *Divorce Act*)

New section	Old section
contact order means an order made under subsection 16.5(1); (*ordonnance de contact*)	None.

What is the change

The amendment defines “contact order” by referring to the relevant new provision in the Act.

Reason for the change

Someone other than a spouse (such as a grandparent) who wants time carved out of a child’s schedule to visit or communicate with the child may apply for a contact order under s 16.5, with leave of the court. A decision about whether to make a contact order would be made based on the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Decision-making responsibility (Section 2(1), *Divorce Act*)

New section	Old section
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*)	None.

What is the change

The amendment defines "decision-making responsibility."

Reason for the change

The Act authorizes a court to assign responsibility for making significant decisions about a child's life. The decisions might relate to the child's

- health, such as whether to undergo a medical procedure
- education, such as choice of school
- culture, language, religion and spirituality, such as which faith the child will follow, if any
- significant extra-curricular activities, meaning activities that require a relatively large investment of the parents' time or financial resources

This is only a partial list; decision-making responsibility can include many other important decisions about a child. Anyone who has decision-making responsibility must base relevant decisions on the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Family dispute resolution process (Section 2(1), *Divorce Act*)

New section	Old section
family dispute resolution process means a process outside of court that is used by parties to a family law dispute to attempt to resolve any matters in dispute, including negotiation, mediation and collaborative law; (*mécanisme de règlement des différends familiaux*)	None.

What is the change

The amendment defines “family dispute resolution process.” The term is used in the context of parenting orders and the duties of parties and legal advisers.

Reason for the change

The type and availability of dispute resolution processes varies considerably across Canada. In general, such processes are faster, less expensive and more effective ways to resolve disputes than court proceedings. The definition includes examples, but the term will apply to all such processes.

When

The change will come into force approximately one year after Royal Assent.

Family justice services (Section 2(1), *Divorce Act*)

New section	Old section
family justice services means public or private services intended to help persons deal with issues arising from separation or divorce; (*services de justice familiale*)	None.

What is the change

The amendment defines “family justice services,” in the context of duties of legal advisers.

Reason for the change

There are many types of family justice services that are helpful to families in the context of separation or divorce. Services such as mediation and parent education can help family members cope with separation or divorce.

When

The change will come into force approximately one year after Royal Assent.

Family member
(Section 2(1), *Divorce Act*)

New section	Old section
family member includes a member of the household of a child of the marriage or of a spouse or former spouse as well as a dating partner of a spouse or former spouse who participates in the activities of the household; (*membre de la famille*)	None.

What is the change

The amendment defines “family member,” a term used in the definition of “family violence”.

Reason for the change

To determine the best interests of a child, a court must consider violence involving the people who are in the child’s family or in a family-like relationship with the child. This includes people in the child’s household, in the household of one of the spouses and dating partners who participate in the activities of the household.

When

The change will come into force approximately one year after Royal Assent.

Family violence
(Section 2(1), *Divorce Act*)

New section	Old section
family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes **(a)** physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person; **(b)** sexual abuse; **(c)** threats to kill or cause bodily harm to any person; **(d)** harassment, including stalking; **(e)** the failure to provide the necessaries of life; **(f)** psychological abuse; **(g)** financial abuse; **(h)** threats to kill or harm an animal or damage property; and **(i)** the killing or harming of an animal or the damaging of property; (*violence familiale*)	None.

What is the change

The amendment defines “family violence” in the context of the best interests of the child.

Reason for the change

Family violence can take many forms and can cause significant harm to both victims and witnesses. The new definition includes not only violent acts, but also the child’s exposure to such acts. “Family violence” means conduct that

- is violent, or
- is threatening, or
- forms a pattern of coercive and controlling behaviour, or
- causes a family member to fear for their safety or the safety of another individual.

The definition clarifies that the behaviour does not have to be a criminal offence or meet the criminal threshold of “proof beyond a reasonable doubt” to be considered family violence under the *Divorce Act*.

A child’s direct exposure to family violence (for example a child seeing or hearing the violence) or indirect exposure (for example, a child seeing that a parent is fearful or injured) is recognized as family violence and child abuse.

The definition also includes a non-exhaustive list of different types of behaviour that could be considered family violence:

- Physical abuse, such as punching, slapping, kicking and forcible confinement. Actions taken by someone to protect themselves or another person are excluded.
- Sexual abuse, including sexual assault, forcing someone to watch violent pornography, or forcing someone to watch other people have sex.
- Threats to kill or cause bodily harm to another person, such as a threat to physically harm a child’s friend.
- Harassment and stalking.
- Failure to provide the necessities of life, such as preventing a family member from receiving required medical attention.
- Psychological abuse, such as a pattern of ridiculing, yelling at and criticizing a family member. To be considered family violence, the abuse must be threatening,

constitute a pattern of coercive and controlling behavior, or cause a family member to fear for their safety or for the safety of another person.

- Financial abuse, such as not giving a spouse access to their bank account or paycheque, or preventing them from working. Such behaviour often aims to coerce and control a family member.

- Threats to kill or harm an animal or to damage property, or actually causing that harm. Such threats and actions often aim to coerce, control or cause fear.

When

The change will come into force approximately one year after Royal Assent.

Legal adviser
(Section 2(1), *Divorce Act*)

New section	Old section
legal adviser means any person who is qualified, in accordance with the law of a province, to represent or provide legal advice to another person in any proceeding under this Act; (*conseiller juridique*)	None.

What is the change

In s 9, the term “legal adviser” replaces “barrister, solicitor, lawyer or advocate.”

Reason for the change

The new definition is broader to accommodate the various terms used across Canada to refer to those who provide legal representation and services related to the Act.

When

The change will come into force approximately one year after Royal Assent.

Order assignee
(Section 2(1), *Divorce Act*)

New section	Old section
order assignee means a minister, member, agency or public body to whom a support order is assigned under subsection 20.1(1); (*cessionnaire de la créance alimentaire*)	None.

What is the change

The amendment defines “order assignee.”

Reason for the change

Under s 20.1(1), a court may assign a support order to a minister, member, agency or public body. This is common when the support recipient is on social assistance.

When

The change will come into force approximately one year after Royal Assent.

Parenting order
(Section 2(1), *Divorce Act*)

New section	Old section
parenting order means an order made under subsection 16.1(1); (*ordonnance parentale*)	None.

What is the change

The amendment defines a parenting order as an order made under s 16.1(1). Parenting time and decision-making responsibility would be assigned under a parenting order.

Reason for the change

To emphasize the best interests of the child, the Act now features concepts and words that focus on relationships with children, such as parenting time and decision-making responsibility. The term “parenting order” replaces “custody order” throughout the Act, for instance.

When

The change will come into force approximately one year after Royal Assent.

Parenting time
(Section 2(1), *Divorce Act*)

New section	Old section
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*)	None.

What is the change

The amendment defines “parenting time” as the period during which an individual is primarily responsible for the child, including when the child is in school or daycare.

Reason for the change

To emphasize the best interests of the child, the Act now features concepts and words that focus on relationships with children, such as parenting time and decision-making responsibility.

When

The change will come into force approximately one year after Royal Assent.

Relocation
(Section 2(1), *Divorce Act*)

New section	Old section
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*)	None.

What is the change

The amendment defines "relocation" as a move that is likely to have a significant impact on a child's relationship with someone who has (or is applying for) parenting time, decision-making responsibility or contact.

Reason for the change

The change prioritizes the best interests of the child. Anyone who proposes a relocation must first provide a notice that includes proposed new parenting and contact arrangements. The Act also specifies the form, content and timing for notice and rules for objecting to a proposed relocation.

When

The change will come into force approximately one year after Royal Assent.

Jurisdiction

Two proceedings commenced on different days (Sections 3(2), 4(2), 5(2) *Divorce Act*)

New section	Old section
Subsections 3(2) and (3) of the Act are replaced by the following: **Jurisdiction if two proceedings commenced on different days** **(2)** If divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced first is not discontinued, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding is deemed to be discontinued.	**Jurisdiction where two proceedings commenced on different days** **(2)** Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding shall be deemed to be discontinued.
Subsections 4(2) and (3) of the Act are replaced by the following: **Jurisdiction if two proceedings commenced on different days** **(2)** If corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced first is not discontinued, the court in which a corollary relief proceeding was commenced first has exclusive jurisdiction to hear and determine any	**Jurisdiction where two proceedings commenced on different days** **(2)** Where corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a corollary relief proceeding was commenced first has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of

corollary relief proceeding then pending between the former spouses in respect of that matter and the second corollary relief proceeding is deemed to be discontinued.	that matter and the second corollary relief proceeding shall be deemed to be discontinued.
Subsections 5(2) and (3) of the Act are replaced by the following: **Jurisdiction if two proceedings commenced on different days** **(2)** If variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced first is not discontinued, the court in which a variation proceeding was commenced first has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the second variation proceeding is deemed to be discontinued.	**Jurisdiction where two proceedings commenced on different days** **(2)** Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a variation proceeding was commenced first has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the second variation proceeding shall be deemed to be discontinued.

What is the change

The amendments clarify that if two applications for a proceeding (divorce, corollary relief or variation) involving the same spouses start on different days, the court in the province where the first application was made has jurisdiction, unless the first proceeding is discontinued. The amendment eliminates the requirement that the first proceeding be discontinued within 30 days.

Reason for the change

In many cases, the second proceeding is started long after the 30-day period has passed and is the better one to proceed with (for example, because it has the most current information). The amendment provides more time for the parties to discover the duplication of proceedings and to determine which proceeding should be discontinued. If the parties do not agree, however, the court where the first proceeding was started has exclusive jurisdiction. The change gives the parties additional flexibility and promotes efficiency.

When

The change will come into force approximately one year after Royal Assent.

Two proceedings commenced on same day (Sections 3(3), 4(3), 5(3) *Divorce Act*)

New section	Old section
Jurisdiction if two proceedings commenced on same day **3 (3)** If divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both spouses, determine which court retains jurisdiction by applying the following rules: **(a)** if at least one of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident; **(b)** if neither of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the spouses last maintained a habitual residence in common if one of the spouses is habitually resident in that province; and **(c)** in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.	**Jurisdiction where two proceedings commenced on same day** **(3)** Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the divorce proceedings in those courts shall be transferred to the Federal Court on the direction of that Court.

Jurisdiction if two proceedings commenced on same day **4 (3)** If corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both former spouses, determine which court retains jurisdiction by applying the following rules: **(a)** if at least one of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident; **(b)** if neither of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the former spouses last maintained a habitual residence in common if one of the former spouses is habitually resident in that province; and **(c)** in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.	**Jurisdiction where two proceedings commenced on same day** **(3)** Where proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the corollary relief proceedings in those courts shall be transferred to the Federal Court on the direction of that Court.
Jurisdiction if two proceedings commenced on same day **5 (3)** If variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within	**Jurisdiction where two proceedings commenced on same day** **(3)** Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty

40 days after it was commenced, the Federal Court shall, on application by either or both former spouses, determine which court retains jurisdiction by applying the following rules: **(a)** if at least one of the proceedings includes an application for a variation order in respect of a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident; **(b)** if neither of the proceedings includes an application for a variation order in respect of a parenting order, the court that retains jurisdiction is the court in the province in which the former spouses last maintained a habitual residence in common if one of the former spouses is habitually resident in that province; and **(c)** in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.	days after it was commenced, the Federal Court has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the variation proceedings in those courts shall be transferred to the Federal Court on the direction of that Court.

What is the change

The amendment limits the Federal Court's authority under the Act to a determination of the issue of jurisdiction only, and extends the time to discontinue one of the proceedings from 30 to 40 days.

Reason for the change

Previously, the Federal Court heard the entire proceeding (divorce, corollary relief or variation) in cases where both proceedings were started on the same day in different provinces. The changes to this section limit the Federal Court's role to deciding only the issue of jurisdiction (i.e. which court should hear the matter).

The amendment also provides the Federal Court with rules to decide jurisdiction:

- The court in the province of habitual residence of the child retains jurisdiction when the proceeding includes a request for a parenting order.

- The court in the province where the spouses last maintained a habitual residence retains jurisdiction when the proceeding does not include a request for a parenting order.
- When neither of the first two applies, the Federal Court determines which court is most appropriate.

The new 40-day period also gives the parties more time to recognize that two proceedings have been started and to discontinue one of them.

When

The change will come into force approximately one year after Royal Assent.

Transfer of proceeding if parenting order applied for (Section 6(1) and (2) *Divorce Act*)

New section	Old section
Subsections 6(1) to (3) of the Act are replaced by the following: **Transfer of proceeding if parenting order applied for** **6 (1)** If an application for an order under section 16.1 is made in a divorce proceeding or corollary relief proceeding to a court in a province and the child of the marriage in respect of whom the order is sought is habitually resident in another province, the court may, on application by a spouse or on its own motion, transfer the proceeding to a court in that other province. **Transfer of variation proceeding in respect of parenting order** **(2)** If an application for a variation order in respect of a parenting order is made in a variation proceeding to a court in a province and the child of the marriage in respect of whom the variation order is sought is habitually resident in another province, the court may, on application by a former spouse or on its own motion, transfer the variation proceeding to a court in that other province.	**Transfer of divorce proceeding where custody application** **6 (1)** Where an application for an order under section 16 is made in a divorce proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the order is sought is most substantially connected with another province, the court may, on application by a spouse or on its own motion, transfer the divorce proceeding to a court in that other province. **Transfer of corollary relief proceeding where custody application** **(2)** Where an application for an order under section 16 is made in a corollary relief proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the order is sought is most substantially connected with another province, the court may, on application by a former spouse or on its own motion, transfer the corollary relief proceeding to a court in that other province. **Transfer of variation proceeding where custody application** **(3)** Where an application for a variation order in respect of a custody order is made in a variation proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the variation order is sought is most substantially connected with another

	province, the court may, on application by a former spouse or on its own motion, transfer the variation proceeding to a court in that other province.

What is the change

The court can now transfer a divorce, corollary relief, or variation proceeding that includes an application for or to vary a parenting order to the province where the child habitually resides instead of the province to which a child is most substantially connected. The amendment also merges ss 6(1) and 6(2).

Reason for the change

The change makes the Act more consistent with provincial and territorial statutes, and with international law, and accommodates other changes to the Act related to parenting. By deleting the phrase “and is opposed,” the amendment gives courts greater discretion to transfer proceedings to the province where the child habitually resides, even in unopposed applications.

When

The change will come into force approximately one year after Royal Assent.

Jurisdiction – application for contact order (Section 6.1(1), *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 6: **Jurisdiction — application for contact order** **6.1 (1)** If a court in a province is seized of an application for a parenting order in respect of a child, the court has jurisdiction to hear and determine an application for a contact order in respect of the child.	None.

What is the change

The amendment sets out jurisdictional requirements for parties seeking contact orders. If a parenting proceeding is underway, the application for a contact order must be brought to the court hearing the proceeding. Section 6.1(2) addresses situations without an ongoing parenting proceeding.

Reason for the change

The change conserves judicial resources, promotes access to justice and ensures that courts have the evidence needed to make contact orders.

When

The change will come into force approximately one year after Royal Assent.

Jurisdiction — no pending variation proceeding (Section 6.1(2), *Divorce Act*)

New section	Old section
Jurisdiction — no pending variation proceeding **(2)** If no variation proceeding related to a parenting order in respect of a child is pending, a court in a province in which the child is habitually resident has jurisdiction to hear and determine an application for a contact order, an application for a variation order in respect of a contact order or an application for a variation order in respect of a parenting order brought by a person referred to in subparagraph 17(1)(b)(ii), unless the court considers that a court in another province is better placed to hear and determine the application, in which case the court shall transfer the proceeding to the court in that other province.	None.

What is the change

The amendment sets out jurisdictional requirements for non-spouses seeking contact orders or parenting orders. If no parenting proceeding is underway, these parties must apply in the province of the child's habitual residence, unless the court in that province determines that it would be inappropriate.

Reason for the change

In general, the court hearing a parenting application is best placed to make other decisions related to the child, such as a request for a contact order. In a case where there is no pending parenting application between the spouses, an application by a third party should generally take place in the child's habitual residence; this is where most evidence about the child is likely located. When important reasons exist, however, a court can transfer the application to another province.

When

The change will come into force approximately one year after Royal Assent.

No jurisdiction – contact order (Section 6.1(3), *Divorce Act*)

New section	Old section
No jurisdiction — contact order **(3)** For greater certainty, if no parenting order has been made in respect of a child, no application for a contact order may be brought under this Act in respect of the child.	None.

What is the change

The amendment clarifies that a contact order may not be sought under the Act in the absence of an existing parenting order.

Reason for the change

The amendment reflects the constitutional division of powers in family law. If there were no existing parenting order under the Act, a non-spouse seeking a contact order would have to apply under provincial law. However, s 6.1(1) specifies that an application for a contact order may be brought to the court considering a parenting application.

When

The change will come into force approximately one year after Royal Assent.

Removal or retention of child of marriage (Section 6.2(1), *Divorce Act*)

New section	Old section
Removal or retention of child of marriage **6.2 (1)** If a child of the marriage is removed from or retained in a province contrary to sections 16.9 to 16.96 or provincial law, a court in the province in which the child was habitually resident that would have had jurisdiction under sections 3 to 5 immediately before the removal or retention has jurisdiction to hear and determine an application for a parenting order, unless the court is satisfied **(a)** that all persons who are entitled to object to the removal or retention have ultimately consented or acquiesced to the removal or retention; **(b)** that there has been undue delay in contesting the removal or retention by those persons; or **(c)** that a court in the province in which the child is present is better placed to hear and determine the application.	None.

What is the change

The amendment limits the jurisdiction of courts when a child has been wrongfully removed or retained. In cases of wrongful removal or retention, specific conditions must be met for the court in the province where the child is located to hear an application for a parenting order. If the conditions are not met, the court in the province where the child habitually resided before the removal or retention must hear the application.

Reason for the change

The amendment aims to help prevent parental child abduction and to encourage compliance with the notice requirements set out in the Act and provincial legislation.

Before moving with the child, it is important to seek the consent of the appropriate parties or the court. The amendment also aims to discourage forum shopping.

The amendment also addresses the child's need to feel settled in their community. It also addresses reasons why it would be appropriate for a court in the new jurisdiction to hear the application.

When

The change will come into force approximately one year after Royal Assent.

Transfer
(Section 6.2(2), *Divorce Act*)

New section	Old section
Transfer **(2)** If the court in the province in which the child was habitually resident immediately before the removal or retention is satisfied that any of paragraphs (1)(a) to (c) apply, **(a)** the court shall transfer the application to the court in the province in which the child is present; and **(b)** the court may transfer any other application under this Act in respect of the parties to the court in the province in which the child is present.	None.

What is the change

The amendment sets out the steps a court in the province of the child's habitual residence must take if it determines that a court in another province should hear a parenting application.

Specifically, if a court determines that another court should hear the application, it must transfer the application to that other court. The court could also, if appropriate, transfer any related applications, such as for child or spousal support.

Reason for the change

Decisions about parenting for a child should generally be made where the child habitually resides. The considerations for making support orders differ from those for parenting orders. To promote access to justice and judicial efficiency if a parenting matter is transferred, courts have the discretion to determine, on a case-by-case basis, where any related support applications should be heard.

When

The change will come into force approximately one year after Royal Assent.

Federal Court
(Section 6.2(3), *Divorce Act*)

New section	Old section
Federal Court **(3)** If after the child's removal from or retention in a province, two proceedings are commenced on the same day as described in subsection 3(3), 4(3) or 5(3), this section prevails over those subsections and the Federal Court shall determine which court has jurisdiction under this section. A reference in this section to "court in the province in which the child was habitually resident" is to be read as "Federal Court".	None.

What is the change

The amendment clarifies that if proceedings are brought on the same day in two different provinces, the factors to consider when determining which court has jurisdiction are subject to s 6.2(1). In such cases, instead of the court where the child habitually resides, the Federal Court would determine, if appropriate, that a court where the child is located should hear an application for a parenting order if there has been a removal or retention. The power to determine that a court in the new jurisdiction is better placed to hear and determine a parenting application (assigned to the court of the child's habitual residence under s 6.2(1)(c)) would, in such cases, be assigned to the Federal Court.

Reason for the change

In cases of alleged wrongful removal or retention, it may be more common for two applications to be filed in two different provinces on the same day. Without this amendment, parents filing applications in two different provinces on the same day would not be subject to the removal and retention rules.

When

The change will come into force approximately one year after Royal Assent.

Child habitually resident outside Canada (Section 6.3(1), *Divorce Act*)

New section	Old section
Child habitually resident outside Canada **6.3 (1)** If a child of the marriage is not habitually resident in Canada, a court in the province that would otherwise have jurisdiction under sections 3 to 5 to make a parenting order or contact order, or a variation order in respect of such an order, has jurisdiction to do so only in exceptional circumstances and if the child is present in the province.	None.

What is the change

The provision indicates that under the Act, a court in Canada should only take jurisdiction to make a parenting or contact order in exceptional circumstances when the child habitually resides outside Canada. The child must also be present in Canada.

Reason for the change

In general, the court in the jurisdiction where the child habitually resides is best placed to make and vary decisions about parenting and contact. This jurisdiction often has the best evidence available about the child's situation. In exceptional circumstances, however, it may be appropriate for another jurisdiction to make a decision. Requiring that the child be present in Canada helps to ensure that there is sufficient connection between the child and the Canadian province, consistent with the approach in many Canadian provinces.

When

The change will come into force approximately one year after Royal Assent.

Exceptional circumstances (Section 6.3(2), *Divorce Act*)

New section	Old section
Exceptional circumstances **(2)** In determining whether there are exceptional circumstances, the court shall consider all relevant factors, including **(a)** whether there is a sufficient connection between the child and the province; **(b)** the urgency of the situation; **(c)** the importance of avoiding a multiplicity of proceedings and inconsistent decisions; and **(d)** the importance of discouraging child abduction.	None.

What is the change

The amendment provides a non-exhaustive list of factors the court must consider when determining whether the circumstances of a case are exceptional enough for the court to take jurisdiction when the child is not habitually resident in the province.

Reason for the change

This amendment gives the court guidance to determine whether a situation is “exceptional” enough for it to take jurisdiction over an application. For example, this provision highlights considerations that include the need to avoid multiple proceedings, to discourage child abduction and to ensure a sufficient connection of the child to the province. The urgency of the situation is also important for a court to consider.

When

The change will come into force approximately one year after Royal Assent.

Child habitually resident outside Canada (Section 6.3(1), *Divorce Act*)

New section	Old section
Subsection 6.3(1) of the Act is replaced by the following: **Child habitually resident outside Canada** **6.3 (1)** Subject to sections 30 to 31.3, if a child of the marriage is not habitually resident in Canada, a court in the province that would otherwise have jurisdiction under sections 3 to 5 to make a parenting order or contact order, or a variation order in respect of such an order, has jurisdiction to do so only in exceptional circumstances and if the child is present in the province.	None.

What is the change

This amendment adds “subject to sections 30 to 31.3” to ensure that the provision applies only when the provisions of the 1996 Convention on the Protection of Children do not apply.

Reason for the change

The provisions of the 1996 Convention on the Protection of Children have yet to come into force in Canada. Once they do come into force, the words “subject to sections 30 to 31.3” will be included in this provision. This section would apply when the child is not habitually resident in Canada, but the 1996 Convention does not apply. This could happen, for example, if the child is habitually resident in a country that is not a party to the 1996 Convention. If the 1996 Convention is applicable, this section would not apply.

When

The change will come into force by Order in Council.

Duties – Parties to a proceeding

Best interests of the child (Section 7.1, *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 7: **Duties** **Parties to a Proceeding** **Best interests of child** **7.1** A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.	None.

What is the change

Under this amendment, anyone who has parenting time, decision-making responsibility or contact must fulfill these duties in the best interests of the child.

Reason for the change

The Act prioritizes the best interests of the child. This amendment reminds parties of their obligations. For example, when a parent exercises decision-making responsibility about a child's education, they must act in the best interests of the child. Courts could also point to this provision to remind parties of their obligations.

When

The change will come into force approximately one year after Royal Assent.

Protection of children from conflict (Section 7.2, *Divorce Act*)

New section	Old section
Protection of children from conflict **7.2** A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.	None.

What is the change

This amendment requires parties - to the extent possible - to shield children from conflict related to issues being decided under the Act.

Reason for the change

Research indicates that children's well-being suffers if they witness conflict between parents during and after a separation or divorce. In the best interests of the child, parents must try to shield children from conflict as much as possible. Of course, some level of conflict is common between divorcing spouses and it can be difficult to shield children completely. As a result, parties are required only to do their best.

When

The change will come into force approximately one year after Royal Assent.

Family dispute resolution process (Section 7.3, *Divorce Act*)

New section	Old section
Family dispute resolution process **7.3** To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.	None.

What is the change

Parties to a proceeding under the Act must try to settle conflicts through a family dispute resolution process other than court proceedings.

Reason for the change

It is generally faster and less expensive to resolve issues through negotiation or other dispute resolution processes than through court proceedings. In cases involving children, there are particular advantages to developing agreements through family dispute resolution processes. For example, children often benefit from seeing their parents work together. And dispute resolution processes, such as mediation, usually aim to keep parents focused on the best interests of their children. These processes also tend to improve the communication skills divorcing spouses will need for years to come to resolve issues related to their children.

Dispute resolution processes are not always appropriate, however. For example, when there has been family violence or there is a significant power imbalance between the parties, court proceedings may be a better option. As a result, parties must only participate in a dispute resolution process “to the extent that it is appropriate to do so.”

When

The change will come into force approximately one year after Royal Assent.

Complete, accurate and up-to-date information (Section 7.4, *Divorce Act*)

New section	Old section
Complete, accurate and up-to-date information **7.4** A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.	None.

What is the change

Parties to a proceeding must provide all information required under the Act and its regulations, and ensure that all information they provide is accurate and up-to-date.

Reason for the change

To make a fair decision based on the circumstances of the parties, the court must have accurate, current information. To decide on child support, for example, the court must have information about the financial situation of each spouse. To decide on parenting time or decision-making responsibility, the court must have other information, for example information relevant to the child's safety and other orders or proceedings.

When

The change will come into force approximately one year after Royal Assent.

Duty to comply with orders (Section 7.5, *Divorce Act*)

New section	Old section
Duty to comply with orders **7.5** For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.	None.

What is the change

Anyone subject to an order made under the Act must comply with the order until it no longer applies.

Reason for the change

Some people do not comply with orders related to parenting or support. The amendment aims to encourage compliance by clearly stating the obligation to obey court orders while they are in effect.

When

The change will come into force approximately one year after Royal Assent.

Certification
(Section 7.6, *Divorce Act*)

New section	Old section
Certification **7.6** Every document that formally commences a proceeding under this Act, or that responds to such a document, that is filed with a court by a party to a proceeding shall contain a statement by the party certifying that they are aware of their duties under sections 7.1 to 7.5.	None.

What is the change

Parties to a proceeding under the Act must certify that they understand all of the obligations imposed upon them by the court.

Reason for the change

Many parties represent themselves in proceedings under the Act. This amendment draws their attention to their legal obligations.

When

The change will come into force approximately one year after Royal Assent.

Duties – Legal Adviser

Reconciliation
(Section 7.7(1), *Divorce Act*)

New section	Old section
Legal Adviser **Reconciliation** **7.7 (1)** Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding **(a)** to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses; and **(b)** to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to the legal adviser that might be able to assist the spouses to achieve a reconciliation.	**Duty of legal adviser** **9 (1)** It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding **(a)** to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses, and **(b)** to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to him or her that might be able to assist the spouses to achieve a reconciliation, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.

What is the change

The amendment re-orders the listing of duties under the Act, and replaces the phrase "barrister, solicitor, lawyer or advocate" with "legal adviser."

Reason for the change

The changes make the structure of the Act easier to understand. The term "legal adviser" is defined in s 2(1) as "any person qualified in accordance with the law of a province to represent another before the courts in a province." In addition, the more inclusive "they" replaces "he or she" throughout the Act. This amendment does not change any legal obligations.

When

The change will come into force approximately one year after Royal Assent.

Duty to discuss and inform (Section 7.7(2), *Divorce Act*)

New section	Old section
Duty to discuss and inform **(2)** It is also the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Act **(a)** to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so; **(b)** to inform the person of the family justice services known to the legal adviser that might assist the person **(i)** in resolving the matters that may be the subject of an order under this Act, and **(ii)** in complying with any order or decision made under this Act; and **(c)** to inform the person of the parties' duties under this Act.	**Idem** **(2)** It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding to discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and to inform the spouse of the mediation facilities known to him or her that might be able to assist the spouses in negotiating those matters.

What is the change

The amendment clarifies that legal advisers have new specific duties and obligations under the Act. Legal advisers must

- encourage clients to try a family dispute resolution process, unless inappropriate
- inform clients of family justice services that can help to resolve matters or comply with their obligations under the Act
- inform clients about their duties under the Act

Reason for the change

In most cases, family dispute resolution processes tend to be faster, less expensive and more effective than court proceedings. They are also more likely to serve the interests of the child. A greater variety of such processes are available than ever before, including mediation, negotiation and collaborative law. The phrase “it would clearly not be appropriate” means that legal advisers do not have to encourage family dispute resolution in some situations, such as when family violence poses safety risks.

While family justice services vary across Canada, they can help the parties resolve issues related to divorce and separation, and help them comply with orders made under the Act. The Justice Canada website has information about public family justice services across the country. This can assist legal advisers in discharging their duty to inform clients about family justice services.

It is also important for legal advisers to inform their clients about the client’s duties under the Act. This will help ensure that the parties are aware of their obligations.

The obligations on legal advisers apply in all proceedings under the Act, including divorce, corollary relief and variation proceedings.

When

The change will come into force approximately one year after Royal Assent.

Certification
(Section 7.7(3), *Divorce Act*)

New section	Old section
Certification **(3)** Every document that formally commences a proceeding under this Act, or that responds to such a document, that is filed with a court by a legal adviser shall contain a statement by the legal adviser certifying that they have complied with this section.	**Certification** **(3)** Every document presented to a court by a barrister, solicitor, lawyer or advocate that formally commences a divorce proceeding shall contain a statement by him or her certifying that he or she has complied with this section.

What is the change

The amendment clarifies that for all proceedings under the Act (divorce, corollary relief and variation), legal advisers must certify their compliance with this section in writing in initiating and responding documents.

Reason for the change

Previously, the certification requirements applied only to documents initiating a divorce proceeding. The expanded certification requirement will help remind legal advisers about their duties in different proceedings under the Act.

When

The change will come into force approximately one year after Royal Assent.

Duties – Court

Purpose of section
(Section 7.8(1), *Divorce Act*)

New section	Old section
Court **Purpose of section** **7.8 (1)** The purpose of this section is to facilitate **(a)** the identification of orders, undertakings, recognizances, agreements or measures that may conflict with an order under this Act; and **(b)** the coordination of proceedings.	None.

What is the change

The amendment aims to improve coordination and communication among various legal proceedings.

Reason for the change

Families sometimes become involved with multiple parts of the justice system at the same time. This is often true in cases of family violence, when the criminal justice system, the child protection system and the family justice system may be involved. Coordinating the involvement of these systems can be challenging, as documented in the Federal Provincial Territorial report *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems* ("*Making the Links"*). For example, if a family court is unaware of a criminal order that prohibits contact between the parties, it might make a conflicting parenting order that makes it difficult to enforce the other order, confuses the parties and creates safety risks.

When

The change will come into force approximately one year after Royal Assent.

Information regarding other orders or proceedings (Section 7.8(2), *Divorce Act*)

New section	Old section
Information regarding other orders or proceedings **(2)** In a proceeding for corollary relief and in relation to any party to that proceeding, the court has a duty to consider if any of the following are pending or in effect, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so: **(a)** a civil protection order or a proceeding in relation to such an order; **(b)** a child protection order, proceeding, agreement or measure; or **(c)** an order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature. In order to carry out the duty, the court may make inquiries of the parties or review information that is readily available and that has been obtained through a search carried out in accordance with provincial law, including the rules made under subsection 25(2).	None.

What is the change

This amendment requires the court in all proceedings where there is a claim for corollary relief (for example a parenting order or support order), to consider, unless clearly inappropriate, whether other relevant proceedings, orders or instruments exist. To fulfill this duty, the court may inquire of the parties, or refer to information that has been obtained in accordance with a search provided for under provincial law.

Reason for the change

To properly consider an issue, the court must be aware of all relevant information, including legal orders and proceedings involving the parties. The amendment lists three general categories.

1. **Civil protection:** Proceedings related to or orders made to protect a person's safety. For example, a civil protection order limiting contact between family members can be relevant when the court considers a parenting matter or how the parties are to provide up-to-date information to one another in relation to support.

2. **Child protection**: Proceedings or measures taken or orders made in the child protection context can be relevant to the determination of parenting matters.

3. **Criminal:** Pending or existing criminal proceedings or orders, undertakings or recognizances are also potentially relevant. For example, a criminal court can order that an accused have no contact with a specific person for a specific period.

When

The change will come into force approximately one year after Royal Assent.

Definition of *civil protection order* (Section 7.8(3), *Divorce Act*)

New section	Old section
Definition of *civil protection order*	None.
(3) In this section**, *civil protection order*** means a civil order that is made to protect a person's safety, including an order that prohibits a person from	
(a) being in physical proximity to a specified person or following a specified person from place to place;	
(b) contacting or communicating with a specified person, either directly or indirectly;	
(c) attending at or being within a certain distance of a specified place or location;	
(d) engaging in harassing or threatening conduct directed at a specified person;	
(e) occupying a family home or a residence; or	
(f) engaging in family violence.	

What is the change

The amendment defines "civil protection order" and describes the associated types of prohibitions.

Reason for the change

Orders that aim to protect the safety of intimate partners and other family members have different names in different jurisdictions. The definition includes a non-exhaustive list of examples of a wide range of behaviours that one person might use to harass, intimidate, threaten or control another. The definition aligns with the protections contained in legislation in provinces and territories across Canada.

When

The change will come into force approximately one year after Royal Assent.

Miscellaneous

Section 9 repealed
(Section 9, *Divorce Act*)

New section	Old section
Section 9 of the Act is repealed.	**Duty of legal adviser** **9 (1)** It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding **(a)** to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses, and **(b)** to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to him or her that might be able to assist the spouses to achieve a reconciliation, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so. **Idem** **(2)** It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding to discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and to inform the spouse of the mediation facilities known to him or her that might be able to assist the spouses in negotiating those matters.

	Certification **(3)** Every document presented to a court by a barrister, solicitor, lawyer or advocate that formally commences a divorce proceeding shall contain a statement by him or her certifying that he or she has complied with this section.

What is the change

Section 7.7 replaces s 9 of the Act.

Reason for the change

See new s 7.7.

When

The change will come into force approximately one year after Royal Assent.

Definition of collusion (Section 11(4), *Divorce Act*)

New section	Old section
Subsection 11(4) of the Act is replaced by the following: **Definition of *collusion*** **(4)** In this section, ***collusion*** means an agreement or conspiracy to which an applicant for a divorce is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court, but does not include an agreement to the extent that it provides for separation between the parties, financial support, division of property or the exercise of parenting time or decision-making responsibility.	**Definition of *collusion*** **(4)** In this section, ***collusion*** means an agreement or conspiracy to which an applicant for a divorce is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court, but does not include an agreement to the extent that it provides for separation between the parties, financial support, division of property or the custody of any child of the marriage.

What is the change

The amendment introduces “parenting time” and “decision-making responsibility” to replace “custody” in the definition of collusion.

Reason for the change

The substance of this provision does not change. The amendment replaces the term “custody” and, to align with the English version, the French version adds the phrase “dans la mesure où elle prévoit” to the definition of collusion.

When

The change will come into force approximately one year after Royal Assent.

Heading “Interpretation” repealed (Section 15, *Divorce Act*)

New section	Old section
Section 15 of the Act and the heading “Interpretation” before it are repealed.	Interpretation **Definition of *spouse*** **15** In sections 15.1 to 16, ***spouse*** has the meaning assigned by subsection 2(1), and includes a former spouse.

What is the change

Due to changes to s 2 of the Act, the amendment repeals s 15.

Reason for the change

Section 2 of the Act specifies that the term “spouse” also refers to “former spouse” for particular sections.

When

The change will come into force approximately one year after Royal Assent.

Best interests of the child

Best interests of the child (Section 16(1), *Divorce Act*)

New section	Old section
Section 16 of the Act and the heading before it are replaced by the following: 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.	Custody Orders **Order for custody** **16 (1)** A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage. **Interim order for custody** **(2)** Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1). **Application by other person** **(3)** A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court. **Joint custody or access** **(4)** The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.

	Access **(5)** Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child. **Terms and conditions** **(6)** The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just. **Order respecting change of residence** **(7)** Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child. **Factors** **(8)** In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child. **Past conduct**

	(9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child. **Maximum contact** **(10)** In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

What is the change

A new section, titled “Best Interests of the Child,” replaces the previous s 16. It requires courts to consider only the best interests of the child in decisions about parenting and contact orders.

Reason for the change

Courts have long considered only the best interests of the child in decisions about parenting. This test is also found in provincial and territorial family law, and in the United Nations *Convention on the Rights of the Child.*

The test in Canadian family law when courts make orders about parenting is the best interests of the child. Each child is different and each family is different. A parenting arrangement that might be in one child’s best interests might not be in the best interests of another. Therefore, as the Special Joint Committee on Child Custody and Access noted in its report For the Sake of the Children in 1998, a presumption in favour of a particular parenting arrangement would not likely be in the best interests of children. Parenting arrangements for a child would have to be what is best for that child in that child’s particular situation.

When

The change will come into force approximately one year after Royal Assent.

Primary consideration (Section 16(2), *Divorce Act*)

New section	Old section
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.	None.

What is the change

In determining the best interests of the child, courts must prioritize the safety, security and well-being of the child above all other considerations.

Reason for the change

Specific best interests of the child criteria are now included in the Act. In some cases, there may be conflicts between two or more of these criteria. This provision helps to resolve these conflicts by requiring that courts prioritize the child's safety, security and well-being. Family laws in Alberta and British Columbia include similar provisions.

When

The change will come into force approximately one year after Royal Assent.

Factors to be considered (Section 16(3), *Divorce Act*)

New section	Old section
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; **(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;	**Factors** **(8)** In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances 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 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.	

What is the change

To decide what is in the best interests of the child, courts must consider all of the circumstances, including those set out in the list of factors in this section.

Reason for the change

A list of best interests of the child factors will provide clarity and promote a shared understanding among parents, family justice professionals, lawyers and judges. All but one of the provinces and territories include such a list in their family laws.

The list is not exhaustive; a court may consider factors not on the list. A court may also prioritize one factor over another based on the circumstances of the case, although s 16(2) requires that courts always give priority to the child's safety, security and well-being.

When

The change will come into force approximately one year after Royal Assent.

Child's needs
(Section 16(3)(a), *Divorce Act*)

New section	Old section
(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;	None.

What is the change

The court must consider the child's specific individual needs to determine the best interests of the child.

Reason for the change

To determine best interests, the court must consider the unique needs and circumstances of the child. For example, age, level of maturity and temperament can all influence a child's ability to cope with change and their need for a particular parenting style. Special needs, such as those related to a physical disability, are also important to consider.

A child's needs change over time, and a child's stage of development is a major factor in determining their reaction to any situation. For example, infants generally need a great deal more predictability in terms of schedules and routines than adolescents do. Courts will consider these types of developmental issues.

When

The change will come into force approximately one year after Royal Assent.

Nature and strength of child's relationships (Section 16(3)(b), *Divorce Act*)

New section	Old section
(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;	None.

What is the change

The court must consider the relationship between the child and each spouse, sibling, grandparent or other person important to the child.

Reason for the change

The nature of the child's relationship with each parent, including the nature of their relationship as it existed during the marriage, is especially relevant to parenting. In addition, the child often has important relationships with siblings, grandparents and other family members. These relationships can provide stability at a time of substantial change in the child's life. When making decisions about parenting time and contact, courts must consider the importance of these relationships. In some cases, a contact order may be necessary.

When

The change will come into force approximately one year after Royal Assent.

Supporting the child's relationship with other spouse (Section 16(3)(c), *Divorce Act*)

New section	Old section
(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;	**Maximum contact** **(10)** In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

What is the change

The court must consider each spouse's willingness to support the child's relationship with the other spouse.

Reason for the change

It is generally important that each parent support the child's relationship with the other parent. A positive relationship with both parents provides stability for the child during their parents' separation and divorce. This provision reflects the "friendly parent rule," formerly found in ss 16(10) and 17(9) of the Act.

In some situations, it may be inappropriate for one parent to support a child's relationship with the other parent, such as in situations of family violence where there are safety concerns. In cases involving family violence, courts must consider the impact of the violence on all of the best interests of the child factors set out in section 16, including on the willingness of a spouse to support the child's relationship with the other spouse. In every case, the court must give primary consideration to the child's safety, security and well-being.

When

The change will come into force approximately one year after Royal Assent.

History of care
(Section 16(3)(d), *Divorce Act*)

New section	Old section
(d) the history of care of the child;	None.

What is the change
The court must consider how the child has been cared for in the past.

Reason for the change
Courts must consider the roles played by people involved in the child's life before the divorce. For example, a court might assess a person's knowledge of, and ability to cope with, the child's daily routines, preferences and health-related challenges. The history of the child's relationship with each person who applies for an order also relates to stability for the child, including continuity of care.

As with the other criteria in s 16(3), this is one factor to consider among many.

When
The change will come into force approximately one year after Royal Assent.

Child's views and preferences (Section 16(3)(e), *Divorce Act*)

New section	Old section
(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;	None.

What is the change

When making decisions about parenting, the court must consider children's perspectives whenever appropriate.

Reason for the change

Under Article 12 of the United Nations *Convention on the Rights of the Child*, children who are capable of forming their own views have the right to participate in a meaningful way in decisions that affect their lives, and parenting decisions made by judges and parents affect children directly. The weight to be given to children's views will generally increase with their age and maturity. However, in some cases, it may not be appropriate to involve children, for example if they are too young to meaningfully participate. This amendment includes language similar to that of the Convention.

When

The change will come into force approximately one year after Royal Assent.

Child's cultural, linguistic, religious and spiritual upbringing and heritage including Indigenous upbringing and heritage (Section 16(3)(f), *Divorce Act*)

New section	Old section
(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;	None.

What is the change

When deciding on parenting arrangements, the court must consider the child's cultural, linguistic, religious and spiritual upbringing and heritage.

Reason for the change

A child's culture or religion may provide an added support system for the child. A parent's ability to maintain and promote the child's understanding of, and link to, the child's cultural, linguistic and religious heritage, as well as the potential for a child to develop their own cultural identity and self-esteem, may be important factors for a court to consider.

For example, in the case of Indigenous children, there may be parenting arrangements that reflect cultural aspects of Indigenous communities, such as the involvement of extended family.

The weight to be given to such factors would depend on their importance to a particular child's well-being.

When

The change will come into force approximately one year after Royal Assent.

Plans for child's care
(Section 16(3)(g), *Divorce Act*)

New section	Old section
(g) any plans for the child's care;	None.

What is the change

The court must consider how parents plan to care for their children post-divorce.

Reason for the change

Parents are generally in the best position to identify what is best for their children. A key objective of the amendments is to encourage parents to develop parenting arrangements with as little intervention by the courts as possible.

A parenting plan is an effective and increasingly common tool used by many parents, mediators and lawyers. For example, Justice Canada has a Parenting Plan Tool available on its website. It provides sample clauses to assist in drafting parenting plans.

If parties agree to a parenting plan, the court must include its provisions in the parenting or contact order, unless the court finds that doing so is not in the best interests of the child.

Parents can also express their plans for parenting in other ways, such as through pleadings or affidavits.

When

The change will come into force approximately one year after Royal Assent.

Ability and willingness (Section 16(3)(h), *Divorce Act*)

New section	Old section
(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;	None.

What is the change

The court must consider the ability and willingness of each person to whom an order would apply to care for and meet the needs of the child.

Reason for the change

The past, present and future ability and willingness of a person to care for the child are important factors in determining the best interests of the child.

In some cases, a parent's physical, psychological, or other limitations may raise concerns for the child's health, safety, well-being and development. Courts must consider a person's strengths and limitations when determining parenting arrangements or contact orders.

When

The change will come into force approximately one year after Royal Assent.

Communicate and cooperate (Section 16(3)(i), *Divorce Act*)

New section	Old section
(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;	None.

What is the change

The court must consider the ability and willingness of the parties to communicate and cooperate on matters related to the child.

Reason for the change

Children benefit when their parents cooperate and communicate. Parents who cooperate and communicate are more likely to manage flexible parenting arrangements and joint decision-making about their children.

Flexible arrangements may not be appropriate for parents unable or unwilling to cooperate or communicate with each other. In these situations, parents may need detailed agreements or orders specifying the arrangements for the children. These orders or agreements make it less likely that children will be exposed to conflict between their parents.

When

The change will come into force approximately one year after Royal Assent.

Family violence
(Section 16(3)(j), *Divorce Act*)

New section	Old section
(j) any family violence and its impact on, among other things, **(i)** the ability and willingness of any person who engaged in the family 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	None.

What is the change

The court must consider the impact of family violence on parenting and contact arrangements, including its impact on the ability and willingness of the person who engaged in family violence to care for and meet the needs of the child. In cases of family violence, the court must also consider whether to require the parties to co-operate on matters related to the child.

Reason for the change

In Canada, there are significant rates of family violence against children and spouses both during and after separation. Separation can be a particularly risky period for spousal violence.

Evidence indicates that family violence has wide-ranging effects on victims and families, including long-term impacts on the behaviour, development and physical, psychological and emotional health of the child.

Prior to these amendments, the Act made no reference to family violence. Now courts will have to consider the relevance of any family violence to the parenting arrangements for a child.

To assess the ability and willingness of a perpetrator of family violence to care for and meet the needs of the child, the court must consider what the history of family violence demonstrates about that person's ability to parent in the child's best interests. For example, the court would need to consider whether the person

- might be violent with the child
- might use their relationship with the child to be violent with or control another person
- has caused the child to be fearful of them
- can be an appropriate role model for, and provide guidance to, the child

In cases of family violence, particularly spousal violence, it is crucial that the court consider whether a co-operative parenting arrangement is appropriate. A victim of family violence might be unable to co-parent due to the trauma they have experienced or ongoing fear of the perpetrator. In addition, co-operative arrangements may lead to opportunities for further family violence.

To help courts assess the impact, severity and risks of family violence, s 16(4) provides a non-exhaustive list of additional criteria related to family violence.

When

The change will come into force approximately one year after Royal Assent.

Civil or criminal proceedings (Section 16(3)(k), *Divorce Act*)

New section	Old section
(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.	None.

What is the change

The court must consider any criminal or civil proceedings, orders, recognizances, undertakings, measures or other instruments relevant to the safety or well-being of the child.

Reason for the change

To determine the best interests of the child, the court must consider all relevant information. Many types of orders related to civil and criminal proceedings may be relevant to the safety or well-being of the child. Examples include a conviction related to an assault against the child, and a current or past child protection order related to the child. Orders that do not directly concern the child may also be relevant to the best interests of the child. One example is a criminal conviction for an offence committed against a member of another family.

Considering this type of information will also promote consistency between various court orders that might have an impact on the child.

When

The change will come into force approximately one year after Royal Assent.

Factors relating to family violence (Section 16(4), *Divorce Act*)

New section	Old section
Factors relating to family violence **(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.	None.

What is the change

This amendment provides the court with a non-exhaustive list of additional factors related to family violence. The court must assess these factors along with other best interests of the child factors.

Reason for the change

There is growing evidence that each type of violence has unique impacts and effects. To determine which parenting arrangement is in the best interests of the child, the court must consider the particular nature and impact of the family violence.

At least four types of intimate-partner violence have been identified:

1. Coercive and controlling violence: a pattern of emotionally abusive intimidation, coercion and control, often combined with physical violence.

2. Violent resistance: generally in response to coercive and controlling violence, and committed to protect oneself or another person.

3. Situational (or common) couple violence: generally due to an inability to manage conflict or anger in a particular situation, this violence is not necessarily associated with a general desire to control a partner.

4. Separation-instigated violence: ranging from minor to severe, this generally occurs around the time of separation and involves a small number of incidents.

Real-life situations of family violence rarely will fall exclusively into one category of this or other typologies of family violence. It is important to look at the severity of the violence in each case.

However, while all violence is of concern, generally the most serious type of violence in family law is coercive and controlling violence. This is because it is part of an ongoing pattern, tends to be more dangerous and is more likely to affect parenting.

When

The change will come into force approximately one year after Royal Assent.

Nature, seriousness and frequency (Section 16(4)(a), *Divorce Act*)

New section	Old section
(a) the nature, seriousness and frequency of the family violence and when it occurred;	None.

What is the change

The court must consider the type and severity of the family violence, as well as when and how frequently it occurred.

Reason for the change

The type, severity and frequency of family violence are all important in assessing whether family violence and harm to family members will continue. Physical violence accompanied by psychological violence, for example, tends to indicate a pattern of control, while acts of sexual violence are associated with a higher risk of death. Frequent or severe family violence in the past increases the risk of future family violence. Research indicates that the risk of harm to children from exposure to spousal violence increases with the duration and frequency of the violence.

The court must also consider when the family violence occurred, along with other circumstances. For example, a serious incident of family violence that occurred in the distant past, but which is part of an overall pattern of coercion and control, may be of greater concern than a single less serious incident of family violence that occurred around the time of separation.

When

The change will come into force approximately one year after Royal Assent.

Pattern of coercive and controlling behaviour (Section 16(4)(b), *Divorce Act*)

New section	Old section
(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;	None.

What is the change

The court must consider whether the family violence is coercive and controlling.

Reason for the change

Coercive and controlling family violence involves a cumulative pattern of behaviour aimed at controlling or dominating another person through a variety of means. Along with physical violence, the controlling partner might resort to emotional, psychological, sexual, financial or other forms of abuse, such as choosing a partner's clothing, controlling their money, or preventing them from working or seeing friends.

A controlling partner often tries to use the children to control their former spouse. For example, a controlling partner might refuse to comply with parenting orders, or threaten their former spouse with the loss of parenting time. This type of behaviour is particularly relevant when determining the best interests of the child.

Those who commit coercive and controlling family violence are more likely than those who commit situational couple violence to continue the family violence in the future. Perpetrators of coercive and controlling violence are less capable of separating their role as a spouse from their role as a parent, and therefore are more likely to abuse their children after divorce.

When

The change will come into force approximately one year after Royal Assent.

Child's experience of family violence (Section 16(4)(c), *Divorce Act*)

New section	Old section
(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;	None.

What is the change

The court must consider whether the family violence was directed at the child or whether the child was exposed to family violence.

Reason for the change

Children who are exposed to family violence often suffer emotional, social, cognitive and behavioural problems. The stress and anxiety associated with exposure to family violence can negatively affect the development of a child's brain, with life-long impacts. Exposure to intimate partner violence can have intergenerational and gendered consequences: for instance, boys who witness intimate partner violence are more likely to be violent against their partners as adults, and girls who witness intimate partner violence are more likely to be abused by their partners as adults.

When family violence is directed toward a child, the abuser is more likely to be a perpetrator of coercive and controlling violence, which substantially increases the risk of ongoing victimization after divorce.

When

The change will come into force approximately one year after Royal Assent.

Physical, emotional and psychological harm or risk of harm to the child
(Section 16(4)(d), *Divorce Act*)

New section	Old section
(d) the physical, emotional and psychological harm or risk of harm to the child;	None.

What is the change

The court must consider the physical, emotional and psychological harm, or risk of harm, to the child due to family violence.

Reason for the change

The court must consider the various types of harm that a child has suffered or could suffer as a result of family violence, which may impact on parenting arrangements and also indicate a need for services such as counseling. The word “risk” is used because harm is not always immediately apparent after the family violence has occurred.

When

The change will come into force approximately one year after Royal Assent.

Compromise to safety
(Section 16(4)(e), *Divorce Act*)

New section	Old section
(e) any compromise to the safety of the child or other family member;	None.

What is the change

The court must consider potential risks to the safety of the child and of other family members.

Reason for the change

Risks to the safety of the child increase with the likelihood of future family violence. The court must consider whether the child or another family member is likely to be a direct victim of family violence, and whether the child is likely to be exposed to family violence. This consideration is separate from the court's assessment of someone's fear for their own safety, as found in s 16(4)(f). In some cases, a person may face significant risks but not fear for their safety.

When

The change will come into force approximately one year after Royal Assent.

Fear for safety
(Section 16(4)(f), *Divorce Act*)

New section	Old section
(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;	None.

What is the change

The court must consider whether family violence causes the child or another family member to fear for their safety or for the safety of another person.

Reason for the change

In cases of intimate partner violence, a person's fear of the abuser is a reliable indicator of whether violence will reoccur. However, as noted in the description of s 16(4)(e), a person's lack of fear does not reliably predict that violence will not reoccur.

Some children exposed to intimate partner violence are also direct victims of child abuse. This overlap makes the fear on the part of the intimate partner also relevant to the court's consideration of the safety of the child.

In some cases, the child may still fear an abuser even though there is no risk of future violence. The child's fear is relevant to a court's assessment of the child's best interests. In such a case, a court may, for example, order supervised parenting time until the child's fear passes.

When

The change will come into force approximately one year after Royal Assent.

Steps to prevent further family violence by person engaging in family violence (Section 16(4)(g), *Divorce Act*)

New section	Old section
(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	None.

What is the change

The court must consider whether the perpetrator has taken any steps to address their behaviour, to prevent future family violence and to improve their ability to meet the needs of the child.

Reason for the change

There are many options that an abuser can try in order to improve their behaviour. For example, partner-abuse programs exist across Canada. There are also parenting programs aimed at abusive parents. Caring Dads is an example of a program for fathers who have abused their children, or exposed their children to intimate partner violence. Participation in these programs does not guarantee a change in behaviour, and an assessment of whether a change in behaviour has occurred is important.

When

The change will come into force approximately one year after Royal Assent.

Other relevant factors
(Section 16(4)(h), *Divorce Act*)

New section	Old section
(h) any other relevant factor.	None.

What is the change

This provision clarifies that the court must also consider relevant factors not included in the list.

Reason for the change

Other factors may be relevant to the court's assessment of the impact of family violence on the parenting arrangement.

When

The change will come into force approximately one year after Royal Assent.

Past conduct
(Section 16(5), *Divorce Act*)

New section	Old section
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.	**Past conduct** **(9)** In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

What is the change

The court must not consider the past conduct of any person unless it is relevant to parenting or to having contact with the child.

Reason for the change

Courts should only consider past conduct that is relevant to the best interests of the child when deciding on a parenting or contact order. While a similar “past conduct” provision existed under the previous version of the Act, this provision reflects new language for parenting and contact.

When

The change will come into force approximately one year after Royal Assent.

Maximum parenting time[1] (Section 16(6), *Divorce Act*)

New section	Old section
Maximum parenting time **(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.	**Maximum contact** **(10)** In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

What is the change

When making an order related to parenting time, courts must seek to ensure that the child has as much time with each spouse as is in the child's best interests.

Reason for the change

It is well accepted that unless circumstances, such as safety concerns, indicate otherwise, children should have strong relationships with each parent. Sufficient time with each parent is necessary to maintain these relationships.

However, the optimal amount of time depends on an individual child's circumstances and must be based on what is in the child's best interests. Therefore, courts must take into account all factors relating to the best interests of the child in determining what division of time would be best.

Previously, the Act included a similar principle about contact with each spouse, along with what is known as the "friendly parent rule." The friendly parent rule is now included in the list of best interests of the child factors in s 16(3). It requires that courts consider each parent's willingness to support the child's relationship with the other parent and must be considered along with other relevant factors in determining parenting arrangements.

[1] The marginal note will be modified to use wording along the lines of "Parenting time consistent with the best interests of child," which more closely reflects the legislative intent behind this provision.

As part of the best interests of the child analysis, the allocation of parenting time is subject to the overarching primary consideration of the child's safety, security and well-being.

When

The change will come into force approximately one year after Royal Assent.

Parenting order and contact order (Section 16(7), *Divorce Act*)

New section	Old section
Parenting order and contact order **(7)** In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.	None.

What is the change

In s 16, the terms “parenting order” and “contact order” include interim and variation orders.

Reason for the change

This provision allows for greater ease of reading, by avoiding repeated references to every type of order to which the section applies.

When

The change will come into force approximately one year after Royal Assent.

Parenting Orders

Parenting order
(Section 16.1(1), *Divorce Act*)

New section	Old section
Parenting Orders **Parenting order** **16.1 (1)** A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by **(a)** either or both spouses; or **(b)** a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.	**Order for custody** **16 (1)** A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

What is the change

The concept of “parenting” now replaces the concepts of “custody” and “access” in the Act. A court may make a parenting order respecting the exercise of parenting time or decision-making responsibility for the child. Either or both spouses, along with certain non-spouses, can apply for a parenting order.

Reason for the change

The Act no longer uses an approach based on “custody” and “access” but rather focuses on “parenting time” and “decision-making responsibility,” which may be allocated in a parenting order. Unlike “custody” and “access,” which are terms commonly associated with property ownership, the new terms encourage parents to focus on the needs of their children.

Other jurisdictions, including Alberta, British Columbia, several American states, the United Kingdom and Australia, have moved away from the concepts of “custody” and “access,” and many Canadian judges and mediators no longer use these terms.

Parenting orders are intended for those who either have or wish to take on responsibilities for the care and upbringing of a child. Only spouses and certain non-spouses (those who are a parent, who stand in the place of a parent, or who intend to stand in the place of a parent) may apply for a parenting order. Others, such as grandparents and other non-spouses, can apply for contact orders (see s 16.5(1)).

When

The change will come into force approximately one year after Royal Assent.

Interim order
(Section 16.1(2), *Divorce Act*)

New section	Old section
Interim order **(2)** The court may, on application by a person described in subsection (1), make an interim parenting order in respect of the child, pending the determination of an application made under that subsection.	**Interim order for custody** **(2)** Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).

What is the change

A person who may apply for a parenting order may also apply for an interim parenting order.

Reason for the change

With the introduction of parenting orders, this change is needed to ensure consistency of language. As with parenting orders, only spouses and those currently in, or seeking, a parental role can apply for an interim parenting order. Others must apply for a contact order or interim contact order.

When

The change will come into force approximately one year after Royal Assent.

Application by person other than spouse (Section 16.1(3), *Divorce Act*)

New section	Old section
Application by person other than spouse **(3)** A person described in paragraph (1)(b) may make an application under subsection (1) or (2) only with leave of the court.	**Application by other person** **(3)** A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.

What is the change

To apply for a parenting order, non-spouses (including parents, those acting as parents, and those who seek to act as a parent) must first obtain leave of the court.

Reason for the change

Under s 16.1, certain non-spouses can apply for a parenting order, but only if the court allows them to make an application. This requirement for leave of the court recognizes that divorce proceedings are generally proceedings that only involve the two spouses. When a non-spouse seeks leave of the court, the court has to determine whether it is appropriate to add them as a party to the proceeding between the spouses. Other non-spouses can apply only for a contact order.

When

The change will come into force approximately one year after Royal Assent.

Contents of parenting order (Section 16.1(4), *Divorce Act*)

New section	Old section
Contents of parenting order **(4)** The court may, in the order, **(a)** allocate parenting time in accordance with section 16.2; **(b)** allocate decision-making responsibility in accordance with section 16.3; **(c)** include requirements with respect to any means of communication, that is to occur during the parenting time allocated to a person, between a child and another person to whom parenting time or decision-making responsibility is allocated; and **(d)** provide for any other matter that the court considers appropriate.	None.

What is the change

This provision sets out the general content of a parenting order, including decision-making responsibilities, parenting time and communications. The court can also include any matter that it deems appropriate in a parenting order.

Reason for the change

This provision identifies the main components of a parenting order.

Section 16.1(4)(a) relates to parenting time, which is the period of time that the child spends in the care of a person under a parenting order, whether or not the child would be physically with that person during all of that period.

Section 16.1(4)(b) relates to decision-making responsibility, which is responsibility for making significant decisions about the child's well-being, including with respect to health and education. Section 16.3 provides the court guidance on the many ways that this responsibility can be shared or divided.

Section 16.1(4)(c) relates to communications between a parent (or someone else with parenting time or decision-making responsibility) and a child outside of that person's parenting time. For example, in some cases, courts might make orders with respect to telephone calls, texts or videoconferences (such as Skype or FaceTime) between a parent and a child when the child is under the care of another parent. The court may order that this communication is to occur and/or specify when it is to occur. These types of orders generally aim to help maintain relationships between children and parents when they are apart.

Section 16.1(4)(d) authorizes the court to include anything else in a parenting order that it considers appropriate. For example, the court may order that the child participate in a hockey camp for two weeks each year.

When

The change will come into force approximately one year after Royal Assent.

Terms and conditions
(Section 16.1(5), *Divorce Act*)

New section	Old section
Terms and conditions **(5)** The court may make an order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.	**Terms and conditions** **(6)** The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

What is the change

The court can specify that the order or particular provisions of the order are valid until a specific event occurs. The court can also include any appropriate terms, conditions and restrictions in the order.

Reason for the change

To ensure that parenting arrangements are in the best interests of the child, the court can include terms, conditions or restrictions in a parenting order. For example, the court could include a requirement for counselling for a child.

When

The change will come into force approximately one year after Royal Assent.

Family dispute resolution process (Section 16.1(6), *Divorce Act*)

New section	Old section
Family dispute resolution process **(6)** Subject to provincial law, the order may direct the parties to attend a family dispute resolution process.	None.

What is the change

The court can include in a parenting order a requirement to participate in a family dispute resolution process.

Reason for the change

This amendment aims to encourage parties to attempt to resolve disputes through a "family dispute resolution process," such as mediation, negotiation or collaborative law. Since provinces and territories are responsible for the delivery of most family justice services, the court's authority to direct parties to these processes is subject to provincial law. The court may, for example, order that for future disputes, the parties attempt some form of family dispute resolution before bringing the matter to court.

When

The change will come into force approximately one year after Royal Assent.

Relocation
(Section 16.1(7), *Divorce Act*)

New section	Old section
Relocation **(7)** The order may authorize or prohibit the relocation of the child.	None.

What is the change

A court can include a relocation decision in a parenting order.

Reason for the change

Since relocation is a change in residence that is likely to have a significant impact on the child, changes to a parenting order would be required if a relocation occurs. Therefore, this provision specifies that decisions about relocation should be part of a parenting order or variation order in respect of a parenting order.

When

The change will come into force approximately one year after Royal Assent.

Supervision
(Section 16.1(8), *Divorce Act*)

New section	Old section
Supervision **(8)** The order may require that parenting time or the transfer of the child from one person to another be supervised.	None.

What is the change

The court can include in a parenting order that the transfer of the child from one person to another must be supervised and/or that parenting time must be supervised.

Reason for the change

Supervision can help to protect the safety of family members. A court might require supervision during the transfer of the child from one parent to another if it has concerns about the safety of the child or of either parent. In some cases, a parent might not be safe in the other's presence, or the child could be exposed to high levels of conflict during a transfer. A court can also require that parenting time be supervised, particularly if there are concerns about a child's safety. A court might also order supervision when an individual and a child are being reintroduced to one another after a significant period apart. The court would order such supervision when it is in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Prohibition on removal of child (Section 16.1(9), *Divorce Act*)

New section	Old section
Prohibition on removal of child **(9)** The order may prohibit the removal of a child from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.	None.

What is the change

The court can include what is often called a “non-removal clause” in a parenting order. Such clauses prohibit the removal of a child from a specified geographic area without appropriate consent.

Reason for the change

Non-removal clauses are a tool that may be used in exceptional circumstances to help prevent parental child abduction. Such orders would clarify for parents and third parties that a parent is not authorized to travel with a child outside of the identified geographic area (ex. a province or Canada).

When

The change will come into force approximately one year after Royal Assent.

Parenting time – schedule
(Section 16.2(1), *Divorce Act*)

New section	Old section
Parenting time — schedule **16.2 (1)** Parenting time may be allocated by way of a schedule.	None.

What is the change

The court can allocate parenting time according to a schedule.

Reason for the change

A clear schedule for parenting can be beneficial in that it specifically outlines the periods in which each spouse is primarily responsible for the child. By letting the child know when they will be with each parent, a schedule can also promote stability and predictability.

In some cases, the court may determine that a schedule is not appropriate. For example, if the divorcing spouses have an amicable relationship and there is little chance of confusion or misunderstanding about parenting time, a court may decide that a schedule is unnecessary.

When

The change will come into force approximately one year after Royal Assent.

Day-to-day decisions
(Section 16.2(2), *Divorce Act*)

New section	Old section
Day-to-day decisions **(2)** Unless the court orders otherwise, a person to whom parenting time is allocated under paragraph 16.1(4)(a) has exclusive authority to make, during that time, day-today decisions affecting the child.	None.

What is the change

Unless a court makes a contrary order, a person allocated parenting time under s 16.1(4)(a) has sole responsibility for making day-to-day decisions about the child during their parenting time.

Reason for the change

In light of the nature of day-to-day decisions, such as bedtimes and what the child should eat, a person with parenting time should normally be able to make these decisions during their parenting time without the need to consult any other person with decision-making responsibility in relation to the child. However, a court could make specific orders about day-to-day decisions generally, or about certain day-to-day decisions, if it finds that this would be in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Allocation of decision-making responsibility (Section 16.3, *Divorce Act*)

New section	Old section
Allocation of decision-making responsibility **16.3** Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.	None.

What is the change

The court can allocate decision-making responsibility as a whole, or in any part, solely to one person or jointly to more than one person.

Reason for the change

This amendment clarifies that a court can allocate decision-making responsibility in a variety of ways. For example, a court can allocate responsibility for decisions about the child's health, education, religion, culture and significant extra-curricular activities to each spouse jointly, to only one spouse, or to person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent. The court may also allocate responsibility for some elements of decision-making, such as decisions about the child's health and education, to one parent and allocate responsibility for other decisions, such as decisions about religion and culture, to another parent. As always, the court must base its decisions on the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Entitlement to information (Section 16.4, *Divorce Act*)

New section	Old section
Entitlement to information **16.4** Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws.	**Access** **(5)** Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

What is the change

Any person with parenting time or decision-making responsibility can ask for information about the child's well-being from anyone else with parenting time or decision-making responsibility, and from anyone else likely to have information about the child.

Reason for the change

This amendment updates language to align with the concepts of "parenting time" and "decision-making responsibility." It also clarifies that someone with parenting time or decision-making responsibility is entitled to request and receive information about the child's well-being from anyone else with parenting time or decision-making responsibility for the same child. They can also seek relevant information directly from third parties, such as doctors, schools and others. However, a court may limit this general entitlement to information. This entitlement is also subject to applicable laws, such as, for example, a provincial law that restricts physicians' ability to share the personal health information of a mature minor.

When

The change will come into force approximately one year after Royal Assent.

Contact Orders

Contact order
(Section 16.5(1), *Divorce Act*)

New section	Old section
Contact Orders **Contact order** **16.5 (1)** A court of competent jurisdiction may, on application by a person other than a spouse, make an order providing for contact between that person and a child of the marriage.	Custody Orders **Order for custody** **16 (1)** A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

What is the change

A court can make an order for contact between a child and a person other than one of the divorcing spouses. Non-spouses can apply for a contact order.

Reason for the change

The Act uses the concepts of “parenting orders,” “parenting time” and “contact orders.” A non-spouse, such as a grandparent or someone else important to the child, can apply for a contact order.

When

The change will come into force approximately one year after Royal Assent.

Interim order
(Section 16.5(2), *Divorce Act*)

New section	Old section
Interim order **(2)** The court may, on application by a person referred to in subsection (1), make an interim order providing for contact between that person and the child, pending the determination of the application made under that subsection.	**Interim order for custody** **(2)** Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).

What is the change

The court can make an interim contact order setting out contact arrangements between the child and a non-spouse pending the final determination of the matter.

Reason for the change

This amendment reflects the new concept of “contact orders” and allows a court to order temporary contact arrangements that would be in place until a court makes a final decision on a contact order application.

When

The change will come into force approximately one year after Royal Assent.

Leave of the court
(Section 16.5(3), *Divorce Act*)

New section	Old section
Leave of the court **(3)** A person may make an application under subsection (1) or (2) only with leave of the court, unless they obtained leave of the court to make an application under section 16.1.	**Application by other person** **(3)** A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.

What is the change

A non-spouse must obtain leave of the court to apply for a final or interim contact order. This is not necessary if they have already obtained leave under the parenting order leave provision, s 16.1(3).

Reason for the change

While spouses are usually the only parties in a proceeding under the Act, this amendment allows for exceptions to be made in some cases where someone close to the child seeks a contact order. A court would assess whether to allow someone to bring a contact order application on a case-by-case basis. In deciding whether to grant leave, the court must consider all relevant factors, including the strength of the child's relationship with the applicant.

A non-spouse who was previously granted leave to apply for a parenting order but was denied a parenting order would not have to also apply for leave to seek a contact order. This reduces the burden on those seeking contact orders by limiting the steps for which court intervention is needed.

When

The change will come into force approximately one year after Royal Assent.

Factors in determining whether to make order (Section 16.5(4), *Divorce Act*)

New section	Old section
Factors in determining whether to make order **(4)** In determining whether to make a contact order under this section, the court shall consider all relevant factors, including whether contact between the applicant and the child could otherwise occur, for example during the parenting time of another person.	None.

What is the change

When determining whether to make a contact order, the court must consider all relevant factors, including whether the contact could occur during the parenting time of another person, meaning that a contact order would be unnecessary.

Reason for the change

The courts should only make orders when they are necessary to ensure the best interests of the child. Since it is preferable if the parties are able to agree on arrangements for the involvement of non-spouses in the life of a child without a court order, courts must consider whether a person seeking a contact order could have contact with the child during the parenting time of another person.

When

The change will come into force approximately one year after Royal Assent.

Contents of contact order (Section 16.5(5), *Divorce Act*)

New section	Old section
Contents of contact order **(5)** The court may, in the contact order, **(a)** provide for contact between the applicant and the child in the form of visits or by any means of communication; and **(b)** provide for any other matter that the court considers appropriate.	None.

What is the change

A contact order can authorize contact with a child in the form of visits or by any form of communication. A court can also deal with other matters in a contact order if it considers it appropriate to do so.

Reason for the change

Along with in-person visits, the court can order contact by other forms of communication, including telephone calls, texts and video chats, such as Skype and FaceTime.

When

The change will come into force approximately one year after Royal Assent.

Terms and conditions
(Section 16.5(6), *Divorce Act*)

New section	Old section
Terms and conditions **(6)** The court may make a contact order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.	**Terms and conditions** **(6)** The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

What is the change

The court can include in a contact order a variety of conditions and restrictions, and can make the order for a definite or indefinite period.

Reason for the change

Including conditions and restrictions can help to ensure that a contact order is in the best interests of the child. For example, if a child and grandparent have not seen each other for a long time, the contact order may require that initial visits occur in the home of a parent, and then subsequent visits could occur elsewhere.

When

The change will come into force approximately one year after Royal Assent.

Supervision
(Section 16.5(7), *Divorce Act*)

New section	Old section
Supervision **(7)** The order may require that the contact or transfer of the child from one person to another be supervised.	None.

What is the change

The court can include in a contact order a requirement for supervision of the contact or of the transfer of the child from one person to another.

Reason for the change

Supervision can help to protect the safety of family members. A court might require supervision during the transfer of the child from one person to another if it has concerns about the safety of the child or a party. In some cases, one party might not be safe in the other's presence, or the child could be exposed to high levels of conflict during a transfer.

A court can also require that contact be supervised, particularly if there are concerns about a child's safety. A court might also order supervision when an individual and a child are being reintroduced to one another after a significant period apart. The court would order such supervision when it is in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Prohibition on removal of child (Section 16.5(8), *Divorce Act*)

New section	Old section
Prohibition on removal of child **(8)** The order may provide that a child shall not be removed from a specified geographic area without the written consent of any specified person or without a court order authorizing the removal.	None.

What is the change

The court can include what is often called a “non-removal clause” in a contact order. Such clauses prohibit the removal of a child from a specified geographic area without appropriate consent.

Reason for the change

Non-removal clauses are a tool that may be used in exceptional circumstances to help prevent parental child abduction. This section, along with the non-removal provision for parenting orders, can help to ensure that where there is a risk of abduction, those with parenting orders and contact orders can be prohibited from removing a child**.**

When

The change will come into force approximately one year after Royal Assent.

Variation of parenting order (Section 16.5(9), *Divorce Act*)

New section	Old section
Variation of parenting order **(9)** If a parenting order in respect of the child has already been made, the court may make an order varying the parenting order to take into account a contact order it makes under this section, and subsections 17(3) and (11) apply as a consequence with any necessary modifications.	None.

What is the change

When a court makes a contact order after a parenting order, it can vary the parenting order to take into account the contact order. In these cases, ss 17(3) and 17(11), which relate to variation of parenting and contact orders, would apply.

Reason for the change

When a contact order is made after a parenting order, it may be necessary to change the parenting order. Under s 17(3), a court can include any provision in the new parenting order that it would otherwise have been able to include in the original parenting order. Under s 17(11), a copy of the new parenting order must be sent to the court that made the previous parenting order.

When

The change will come into force approximately one year after Royal Assent.

Parenting Plan

Parenting plan
(Section 16.6(1), *Divorce Act*)

New section	Old section
Parenting Plan **Parenting plan** **16.6 (1)** The court shall include in a parenting order or a contact order, as the case may be, any parenting plan submitted by the parties unless, in the opinion of the court, it is not in the best interests of the child to do so, in which case the court may make any modifications to the plan that it considers appropriate and include it in the order.	None.

What is the change

The court must include in parenting and contact orders any parenting plan agreed to by the parties, unless the court considers that the plan is not in the best interests of the child. In such cases, the court can omit or modify the parenting plan.

Reason for the change

Parents are generally in the best position to decide what type of parenting arrangement would be best for their child. If the parties are able to come to an agreement about some or all parenting arrangements, the court should accept the agreement, unless it is not in the best interests of the child. This provision encourages the use of parenting plans and promotes agreement between parties.

Justice Canada has developed a Parenting Plan Tool to assist parents in developing a parenting plan. It is available on the Justice Canada website.

When

The change will come into force approximately one year after Royal Assent.

Definition of *parenting plan* (Section 16.6(2), *Divorce Act*)

New section	Old section
Definition of *parenting plan* **(2)** In subsection (1), ***parenting plan*** means a document or part of a document that contains the elements relating to parenting time, decision-making responsibility or contact to which the parties agree.	None.

What is the change

This amendment defines parenting plan as a written agreement reached by the parties regarding parenting or contact.

Reason for the change

The amendment specifies that for a document to be considered a parenting plan, the parties must agree to it.

When

The change will come into force approximately one year after Royal Assent.

Change in Place of Residence

Non-application
(Section 16.7, *Divorce Act*)

New section	Old section
Change in Place of Residence **Non-application** **16.7** Section 16.8 does not apply to a change in the place of residence that is a relocation.	None.

What is the change

This amendment clarifies that s 16.8 does not apply when a change of residence is a relocation.

Reason for the change

Under the Act, a change of residence and a relocation differ in significant ways. In particular, the notice requirements are different. Section 16.8 addresses notice of a change of residence and s 16.9 addresses notice of a proposed relocation.

When

The change will come into force approximately one year after Royal Assent.

Notice
(Section 16.8(1), *Divorce Act*)

New section	Old section
Notice **16.8 (1)** A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to change their place of residence or that of the child shall notify any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.	None.

What is the change

Before changing their residence (or the residence of the child), anyone with parenting time or decision-making responsibility must give notice to anyone who has parenting time, decision-making responsibility or contact with the child.

Reason for the change

It is important that everyone who has parenting time, decision-making responsibility or contact with the child have up-to-date information about changes in residence. This is important for practical reasons. For example, a person with parenting time needs to know where to pick up or drop off the child.

When

The change will come into force approximately one year after Royal Assent.

Form and content of notice (Section 16.8(2), *Divorce Act*)

New section	Old section
Form and content of notice **(2)** The notice shall be given in writing and shall set out **(a)** the date on which the change is expected to occur; and **(b)** the address of the new place of residence and contact information of the person or child, as the case may be.	None.

What is the change

This amendment sets out that a notice of change of residence must include the new address and date of the move.

Reason for the change

To facilitate parenting time or contact, the notice must include the date of the move, the new address and any new contact information, such as telephone number.

When

The change will come into force approximately one year after Royal Assent.

Exception
(Section 16.8(3), *Divorce Act*)

New section	Old section
Exception **(3)** Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections do not apply or may modify them, including where there is a risk of family violence.	None.

What is the change
The court can waive or modify the requirement to provide notice of a change in place of residence.

Reason for the change
In exceptional cases, such as when the child or a family member's safety is at risk, it may not be appropriate for the court to require notice of a change of residence. Courts therefore have discretion to make any necessary changes to notice requirements, including waiving the notice requirement or changing the content of the required notice.

When
The change will come into force approximately one year after Royal Assent.

Application without notice (Section 16.8(4), *Divorce Act*)

New section	Old section
Application without notice **(4)** An application referred to in subsection (3) may be made without notice to any other party.	None.

What is the change

An application to waive or modify the requirements for notice of a change in residence can be made without notifying any other party.

Reason for the change

In some cases, requiring notice of an application for exemption from the notice requirements may not be appropriate. For example, when an application is made by someone fleeing family violence, providing notice to other parties may create a serious safety risk. Therefore, applications can be made on an *ex parte* basis, meaning without notice to other parties. When an *ex parte* application is made, the court would decide whether proceeding without notifying other parties is appropriate.

When

The change will come into force approximately one year after Royal Assent.

Relocation

Notice
(Section 16.9(1), *Divorce Act*)

New section	Old section
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.	None.

What is the change

Before relocating themselves or the child, anyone who has parenting time or decision-making responsibility must give notice as required by the Act to anyone else who has parenting time, decision-making responsibility or contact with the child. The notice must provide specified information at least 60 days before the relocation.

Reason for the change

Section 2(1) defines relocation as a move expected to have a significant impact on the child's relationships with specified individuals. Requiring 60-day advance notice of a proposed relocation helps protect these relationships. The person relocating is to provide notice by completing a specific form.

Notice gives the parties the opportunity to discuss the proposed relocation and attempt to resolve any issues. It also allows for a formal objection to the move, if necessary.

When

The change will come into force approximately one year after Royal Assent.

Content of notice
(Section 16.9(2), *Divorce Act*

New section	Old section
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.	None.

What is the change
This amendment lists the information that must be included in a relocation notice.

Reason for the change
The relocation notice must not only include the moving date, new address and contact information, but also propose how parenting time, decision-making responsibility and contact will be exercised following the move. Including this information can help resolve potential disputes.

This amendment also allows for additional information to be required through regulation.

When
The change will come into force approximately one year after Royal Assent.

Exception
(Section 16.9(3), *Divorce Act*)

New section	Old section
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.	None.

What is the change

In appropriate circumstances, the court can waive or modify the relocation notice requirements set out in the Act or regulations.

Reason for the change

In exceptional cases, such as due to family violence, it may be appropriate for a court to waive or modify relocation notice requirements. The court may decide that a longer or shorter period of notice is appropriate, for example, or that it is inappropriate for an individual to know the location of the residence of the child or the parent.

When

The change will come into force approximately one year after Royal Assent.

Application without notice (Section 16.9(4), *Divorce Act*)

New section	Old section
Application without notice **(4)** An application referred to in subsection (3) may be made without notice to any other party.	None.

What is the change

An application to waive or modify the requirements for notice of a relocation can be made without notifying any other party.

Reason for the change

In some cases, requiring notice of an application for exemption from the notice requirements may not be appropriate. For example, when an application is made by someone fleeing family violence, providing notice to other parties may create a serious safety risk. Therefore, applications can be made on an *ex parte* basis, meaning without notice to other parties. When an *ex parte* application is made, the court would decide whether proceeding without notifying other parties is appropriate.

When

The change will come into force approximately one year after Royal Assent.

Relocation authorized
(Sections 16.91(1) and (2), *Divorce Act*)

New section	Old section
Relocation authorized **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;	None.

(c) the person's views on the proposal for the exercise of parenting time, decision-making 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.	

What is the change

This amendment specifies that a relocation may proceed after the notice period has expired if either: 1) the relocation is authorized by a court or 2) there is no formal objection within 30 days of receipt of the notice and no order prohibiting the move. A person with a parenting order can object in two ways – either by way of a standard form or by bringing a court application.

The amendment lists the information that the non-relocating parent must provide and allows for regulations to require additional information.

Reason for the change

This provision clarifies when a relocation is permitted. Once notice has been given, the move can take place if a court has already ordered that it can occur, or if there is no formal objection to the move.

If a person with a parenting order objects to the move by way of court application, this will commence the process for a court to decide whether the relocation can take place. If, however, they object by way of standard form, the person proposing the move would need to bring a court application to seek permission to move.

British Columbia and Nova Scotia have similar processes, although the objection takes place by way only of court application.

By authorizing the content of the form by regulations, it can be readily modified as needed.

When

The change will come into force approximately one year after Royal Assent.

Best interests of child – additional factors to be considered

Reasons for the relocation (Section 16.92(1)(a), *Divorce Act*)

New section	Old section
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;	None.

What is the change

When determining the best interests of the child in a relocation situation, the court must consider specific factors, in addition to those listed in s 16. The first factor is the reason for the relocation.

Reason for the change

Relocation is a highly contested matter in family law. Providing an explicit list of factors that the court must consider will help improve the consistency and predictability of outcomes. Parties will be better able to prepare their relocation proposals and objections. No factor is determinative, but factors provide guidance to parents and courts. British Columbia and Nova Scotia include similar factors in their relocation provisions.

The first factor (reasons for the relocation), explicitly overrules the Supreme Court of Canada decision in *Gordon v Goertz*, [1996] 2 SCR 27. The Court held that the reasons for a relocation should generally not be considered. However, the reasons for a relocation can relate directly to the best interests of the child. For example, a relocation might enable a parent to earn a significantly higher salary, improving the financial circumstances of the child. There are many reasons for relocations, and it can be important for the court to be aware of these.

When

The change will come into force approximately one year after Royal Assent.

Impact of the relocation on the child (Section 16.92(1)(b), *Divorce Act*)

New section	Old section
(b) the impact of the relocation on the child;	None.

What is the change

As part of its analysis of the best interests of the child in a proposed relocation, the court must consider the impact on the child.

Reason for the change

Understanding the impact of a relocation on the child is essential to an assessment of the best interests of the child. The court may, for example, compare the advantages and disadvantages to the child of the proposed relocation.

When

The change will come into force approximately one year after Royal Assent.

Amount of time spent with the child (Section 16.92(1)(c), *Divorce Act*)

New section	Old section
(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;	None.

What is the change

As part of its analysis of the best interests of the child in a proposed relocation, the court must consider the involvement and amount of time spent with the child by each person who has or is seeking parenting time.

Reason for the change

The court must consider the level of disruption the relocation would cause to a child's relationship with their parents. For example, even if the burdens of proof based on parenting time (set out in ss 16.93(1) and 16.93(2)) do not apply, it is relevant for the court to consider that in practice, where there are arrangements that a child spends a significant amount of time with each parent, a relocation could be quite disruptive. In contrast, if one parent is clearly primarily responsible for the child and proposes to move with the child, the court must consider the impact on the child should the child not be permitted to move with that parent.

When

The change will come into force approximately one year after Royal Assent.

Compliance with notice requirements (Section 16.92(1)(d), *Divorce Act*)

New section	Old section
(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;	None.

What is the change

As part of its analysis of the best interests of the child in a proposed relocation, the court must consider whether the person who intends to relocate the child has complied with applicable notice requirements (s 16.9), provincial family laws, orders, arbitral awards and relevant agreements.

Reason for the change

How well a parent follows relevant obligations, such as the notice requirements set out in the Act, may reflect on the importance they assign to the child's relationship with the other parent. It may also provide information about the likelihood that they will comply with future orders. While this is only one factor among many for the court to consider, it creates an incentive for parents to comply with notice requirements.

When

The change will come into force approximately one year after Royal Assent.

Existence of an order, arbitral award or agreement specifying geographic area (Section 16.92(1)(e), *Divorce Act*)

New section	Old section
(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;	None.

What is the change

As part of its analysis of the best interests of the child in a proposed relocation, the court must consider the existence of an order, arbitral award or agreement that specifies the geographic area where the child must reside.

Reason for the change

Parents sometimes agree and courts sometimes order that a child must live within a specific geographic area, such as within 50 kilometres of the City of Ottawa. Parents may have negotiated this requirement in good faith, in exchange for other consideration. A court may have included the requirement for specific reasons. While circumstances related to the best interests of the child can change over time, such a term would be an important factor for the court to consider.

It is important to note that a clause related to the child's place of residence is not necessarily the same as a non-removal clause, which would limit not only where a child can reside, but also whether the child can leave a particular jurisdiction for travel purposes. Non-removal clauses are very restrictive and are generally included in orders if there is a concern about child abduction.

When

The change will come into force approximately one year after Royal Assent.

Reasonableness of proposal (Section 16.92(1)(f), *Divorce Act*)

New section	Old section
(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	None.

What is the change

As part of its analysis of the best interests of the child in a proposed relocation, the court must consider the reasonableness of the proposal to vary parenting time or decision-making responsibility.

Reason for the change

The court must assess whether the proposed changes in parenting time and decision-making responsibility associated with a relocation are practical. For example, proposing that a 14-year-old fly between Ottawa and Toronto once a month is much more practical than proposing that a three-year-old fly between Sydney, Australia and Vancouver once a month. To determine whether the proposal is in the best interests of the child, the court might consider matters such as the child's age, the distances involved, and the costs of travel and accommodations.

When

The change will come into force approximately one year after Royal Assent.

Compliance with obligations (Section 16.92(1)(g), *Divorce Act*)

New section	Old section
(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.	None.

What is the change

As part of its analysis of the best interests of the child in a proposed relocation, the court must consider whether each person who has or is seeking a parenting order complies with family law obligations and is likely to comply with future obligations.

Reason for the change

Compliance with family law obligations is relevant to the court's consideration of a proposed relocation. For example, if a person proposing a relocation has consistently refused to allow the other parent to be with the child during court-ordered parenting time, this is relevant to a court's determination of whether they are likely to comply with new parenting arrangements. On the other hand, it would also be relevant if a parent who has consistently refused to pay child support opposes a move that would allow the other parent to take a job promotion with a higher salary.

When

The change will come into force approximately one year after Royal Assent.

Factor not to be considered (Section 16.92(2), *Divorce Act*)

New section	Old section
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.	None.

What is the change

This provision would prohibit courts from considering whether a party seeking to relocate would proceed with the relocation or not relocate if they were not permitted to bring the child.

Reason for the change

Parents seeking to relocate with their children are sometimes required to answer in court the difficult question of whether or not they would proceed with a relocation if they were not permitted to bring their children. A response of "I won't relocate without my child" may be interpreted as evidence that the proposed relocation is not sufficiently important and should not be permitted. A response of "I would relocate without my child" may be interpreted as evidence that the parent is not sufficiently devoted to the child.

This provision would prohibit courts from considering this question – or the parent's response – if raised in the context of the court proceedings. This will assist in focusing on the specific legal issue before the court.

When

The change will come into force approximately one year after Royal Assent.

Burden of proof – person who intends to relocate child
(Section 16.93(1), *Divorce Act*)

New section	Old section
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.	None.

What is the change

When parents spend substantially equal time with a child pursuant to an order, arbitral award or agreement, and they generally comply with that order, award or agreement, it is up to the parent seeking a relocation to prove that the relocation is in the best interests of the child.

Reason for the change

Under the circumstances described in this section, a relocation is likely to have a very significant impact on the relationship between the child and the non-relocating parent. The parent proposing the relocation must demonstrate to the court that, despite this impact, relocation is in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Burden of proof – person who objects to relocation (Section 16.93(2), *Divorce Act*)

New section	Old section
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.	None.

What is the change

When, pursuant to an order, arbitral award or agreement with which the parents generally comply, the child spends the vast majority of the time with one parent and that parent seeks to relocate with the child, the parent who objects to the relocation must demonstrate that it is not in the best interests of the child.

Reason for the change

When one parent is responsible for the vast majority of the child's care pursuant to a court order or an agreement, disallowing a relocation is likely to have a significant impact on the child's relationship with their primary caregiver. The parent opposing the relocation must therefore demonstrate to the court that despite this impact, the disadvantages of the move would outweigh its advantages and that therefore the relocation is not in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Burden of proof – other cases (Section 16.93(3), *Divorce Act*)

New section	Old section
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.	None.

What is the change

When ss 16.93(1) and 16.93(2) do not apply, each parent must demonstrate why the proposed relocation is or is not in the best interests of the child.

Reason for the change

Sections 16.93(1) and 16.93(2) capture the clearest cases for determining whether a relocation would be in the best interests of the child. In s 16.93(1), the situation is clear because both parents are equally involved in the care of the child, and a relocation could be disruptive to the relationship between the child and the non-moving parent. In s 16.93(2), one parent is the child's clear primary caregiver, and so the other parent would have to demonstrate why potentially disrupting the child's relationship with the primary caregiver would be in the best interests of the child.

Not all proposed relocations match the scenarios described in those sections, however. In other cases, or when parenting arrangements are not set out in a court order or agreement, both parents must demonstrate to the court why the proposed relocation is or is not in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Power of court – interim order
(Section 16.94, *Divorce Act*)

New section	Old section
Power of court — interim order **16.94** A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.	None.

What is the change

For interim orders, the court can disregard the burden of proof requirements included in s 16.93.

Reason for the change

In practice, interim orders vary considerably. For example, some are intended to be short-lived so that parents can have arrangements clearly set out while they proceed toward a final order. In other cases, interim orders in effect act as final orders because parents opt not to pursue a final order.

The burden of proof requirements are intended to apply to situations where the parties have agreed, or the court has made a final determination about the best arrangement for the child. As a result, when an interim order is intended to be short-lived, the court can choose not to apply the burden-of-proof requirements.

When

The change will come into force approximately one year after Royal Assent.

Costs relating to exercise of parenting time (Section 16.95, *Divorce Act*)

New section	Old section
Costs relating to exercise of parenting time **16.95** If a court authorizes the relocation of a child of the marriage, it may provide for the apportionment of costs relating to the exercise of parenting time by a person who is not relocating between that person and the person who is relocating the child.	None.

What is the change

When a relocation is permitted, the court has the authority to decide that costs associated with exercising parenting time can be divided between the parties.

Reason for the change

A relocation can result in a significant increase in travel costs for the non-relocating parent. The costs might include the cost of gas, mileage or bus, train or plane tickets. The court can determine how to allocate these increased costs.

When

The change will come into force approximately one year after Royal Assent.

Notice – persons with contact (Section 16.96(1), *Divorce Act*)

New section	Old section
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.	None.

What is the change

Anyone with contact with the child who is planning to move must notify in writing anyone with a parenting order. They must provide them with the planned moving date, new address and contact information.

Reason for the change

It is important for everyone with parenting time to have up-to-date contact information. From a practical perspective, each parent should know where their child goes during contact visits.

When

The change will come into force approximately one year after Royal Assent.

Notice – significant impact (Section 16.96(2), *Divorce Act*)

New section	Old section
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.	None.

What is the change

When a person with contact with the child plans to move, and the move is likely to have a significant impact on their relationship with the child, the person must, at least 60 days before the planned move, provide notice using a standard form and explain how contact might change in light of the move.

Reason for the change

A move by a person with contact that is likely to have a significant impact on their relationship with the child may affect parenting arrangements, including the child's schedule. The 60-day period provides time for the parties to discuss potential changes to the schedule and resolve any issues. If the parties cannot resolve issues, an application to vary the contact order can be made to the court.

When

The change will come into force approximately one year after Royal Assent.

Exception
(Section 16.96(3), *Divorce Act*)

New section	Old section
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.	None.

What is the change

The court can waive or modify the notice requirements for a change of residence for someone with a contact order. The notice requirements include those in the Act and in regulations.

Reason for the change

In exceptional cases, such as when there has been family violence, it may be appropriate for a court to waive or modify notice requirements. The court may decide that a longer or shorter period of notice is appropriate, for example, or that certain information not be shared. The amendment allows the court to waive or modify notice requirements set out either in the Act or in regulations.

When

The change will come into force approximately one year after Royal Assent.

Application without notice (Section 16.96(4), *Divorce Act*)

New section	Old section
Application without notice **(4)** An application referred to in subsection (3) may be made without notice to any other party.	None.

What is the change

An application to waive or modify the notice requirements can be made without notice to any other party.

Reason for the change

In some cases, requiring notice of an application for exemption from the notice requirements may not be appropriate. Therefore, applications can be made on an *ex parte* basis, meaning without notice to other parties. When an *ex parte* application is made, the court would decide whether proceeding without notifying other parties is appropriate.

When

The change will come into force approximately one year after Royal Assent.

Variation, rescission, suspension

Variation order
(Section 17(1), *Divorce Act*)

New section	Old section
Subsections 17(1) to (3) of the Act are replaced by the following: **Variation order** **17 (1)** A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively, **(a)** a support order or any provision of one, on application by either or both former spouses; **(b)** a parenting order or any provision of one, on application by **(i)** either or both former spouses, or **(ii)** a person, other than a former spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent; or **(c)** a contact order or any provision of one, on application by a person to whom the order relates.	Variation, Rescission or Suspension of Orders **Order for variation, rescission or suspension** **17 (1)** A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively, **(a)** a support order or any provision thereof on application by either or both former spouses; or **(b)** a custody order or any provision thereof on application by either or both former spouses or by any other person.

What is the change

This amendment to s 17(1) of the *Divorce Act* introduces new language related to parenting.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting and contact. The term “parenting order” replaces “custody order” throughout the Act, for instance. Similarly, the term “contact order” describes an order that sets out time for children to spend with important people who are not in a parental role, such as grandparents. The court can vary contact orders in the same manner as it does other orders.

When

The change will come into force approximately one year after Royal Assent.

Leave of the court
(Section 17(2), *Divorce Act*)

New section	Old section
Leave of the court **(2)** A person to whom the parenting order in question does not relate may make an application under subparagraph (1)(b)(ii) only with leave of the court.	**Application by other person** **(2)** A person, other than a former spouse, may not make an application under paragraph (1)(b) without leave of the court.

What is the change

This amendment to s 17(2) of the *Divorce Act* introduces new language related to parenting.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting and contact. The term “parenting order” replaces “custody order” throughout the Act, for instance.

This amendment simply replaces the former language related to custody with the new terms. While this provision requires that those who are not party to a parenting order seek leave of the court to vary a parenting order, those who are party to a parenting order no longer need leave of the court to apply to vary a parenting order.

When

The change will come into force approximately one year after Royal Assent.

Variation of parenting order (Section 17(2.1), *Divorce Act*)

New section	Old section
Variation of parenting order **(2.1)** If the court makes a variation order in respect of a contact order, it may make an order varying the parenting order to take into account that variation order, and subsections (3) and (11) apply as a consequence with any necessary modifications	None.

What is the change

When varying a contact order, the court can change the parenting order to take into account the varied contact order. Sections 17(3) and 17(11) of the *Divorce Act* would apply with any necessary changes.

Reason for the change

A change to a contact order might require an adjustment to a parenting order. Section 17(3) authorizes the court to include any provision in the new parenting order that it would otherwise have been able to include in the original parenting order. Section 17(11) requires that a copy of the new parenting order be sent to the court that made the previous parenting order.

When

The change will come into force approximately one year after Royal Assent.

Variation of contact order (Section 17(2.2), *Divorce Act*)

New section	Old section
Variation of contact order **(2.2)** If the court makes a variation order in respect of a parenting order, it may make an order varying any contact order to take into account that variation order, and subsections (3) and (11) apply as a consequence with any necessary modifications.	None.

What is the change

When varying a parenting order, the court can change any contact order to take into account the varied parenting order. Sections 17(3) and 17(11) of the *Divorce Act* would apply with any necessary changes.

Reason for the change

A change to a parenting order might require an adjustment to a contact order. Section 17(3) authorizes the court to include any provision in the new contact order that it would otherwise have been able to include in the original contact order. Section 17(11) requires that a copy of the new contact order be sent to the court that made the previous parenting order.

When

The change will come into force approximately one year after Royal Assent.

Conditions of order
(Section 17(3), *Divorce Act*)

New section	Old section
Conditions of order **(3)** The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought, and the court has the same powers and obligations that it would have when making that order.	**Terms and conditions** **(3)** The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

What is the change

This amendment clarifies that courts making variation orders have the same powers and obligations as when making the original order.

Reason for the change

The amendment makes it easier to understand the court's powers and responsibilities, particularly when making parenting orders and variation orders.

When

The change will come into force approximately one year after Royal Assent.

Factors for parenting order or contact order (Section 17(5), *Divorce Act*)

New section	Old section
Subsections 17(5) and (5.1) of the Act are replaced by the following: **Factors for parenting order or contact order** **(5)** Before the court makes a variation order in respect of a parenting order or contact order, the court shall satisfy itself that there has been a change in the circumstances of the child since the making of the order or the last variation order made in respect of the order, or of an order made under subsection 16.5(9).	**Factors for custody order** **(5)** Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

What is the change

This amendment to s 17(5) of the *Divorce Act* introduces new language related to parenting.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting and contact. The term “parenting order” replaces “custody order” throughout the Act, for instance. Similarly, the term “contact order” describes an order that sets out time for children to spend with important people who are not in a parental role, such as grandparents.

The court can vary contact orders in the same manner as it does other orders. It would no longer be necessary to specify the requirement that the variation order be in the best interests of the child because s 16 creates this requirement.

When

The change will come into force approximately one year after Royal Assent.

Variation order
(Section 17(5.1), *Divorce Act*)

New section	Old section
Variation order **(5.1)** For the purposes of subsection (5), a former spouse's terminal illness or critical condition shall be considered a change in the circumstances of the child, and the court shall make a variation order in respect of a parenting order with regard to the allocation of parenting time.	**Variation order** **(5.1)** For the purposes of subsection (5), a former spouse's terminal illness or critical condition shall be considered a change of circumstances of the child of the marriage, and the court shall make a variation order in respect of access that is in the best interests of the child.

What is the change

This amendment to s 17(5.1) of the *Divorce Act* introduces new language related to parenting.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting and contact. The term "parenting order" replaces "custody order" throughout the Act, for instance. Similarly, the term "contact order" describes an order that sets out time for children to spend with important people who are not in a parental role, such as grandparents.

This amendment simply replaces the former language related to custody with the new terms. Under s 16, variation orders must be in the best interests of the child.

When

The change will come into force approximately one year after Royal Assent.

Relocation – change in circumstances (Section 17(5.2), *Divorce Act*)

New section	Old section
Relocation — change in circumstances **(5.2)** The relocation of a child is deemed to constitute a change in the circumstances of the child for the purposes of subsection (5).	None.

What is the change

This amendment establishes that a relocation of a child is a change in the circumstances of a child for the purposes of varying a parenting order or contact order.

Reason for the change

Parties seeking to vary parenting orders and contact orders under the changes must satisfy a court that there has been a change in circumstances before the court may vary the order. One reason for this is to reduce litigation by discouraging parties from attempting to vary orders over trivial matters. Relocation is a new element that may be addressed through parenting orders, and a relocation would, by definition, be expected to have a significant impact on a child's relationships with the parties to parenting and contact orders. For this reason, relocation would be explicitly recognized as a change in circumstances.

When

The change will come into force approximately one year after Royal Assent.

Relocation prohibited – no change in circumstances (Section 17(5.3), *Divorce Act*)

New section	Old section
Relocation prohibited — no change in circumstances **(5.3)** A relocation of a child that has been prohibited by a court under paragraph (1)(b) or section 16.1 does not, in itself, constitute a change in the circumstances of the child for the purposes of subsection (5)	None.

What is the change

This provision prevents the variation of an order simply on the basis that an application for relocation was denied.

Reason for the change

If there is no change to the child's circumstances, the fact that a request for relocation has been denied does not, in and of itself, form the basis for a variation.

At any time, however, if there was a material change in circumstances, a party could seek to vary a parenting order.

This provision is similar to one in British Columbia's *Family Law Act.*

When

The change will come into force approximately one year after Royal Assent.

Priority to child support (Section 17(6.6), *Divorce Act*)

New section	Old section
Section 17 of the Act is amended by adding the following after subsection (6.5): **Priority to child support** **(6.6)** Section 15.3 applies, with any necessary modifications, when a court is considering an application under paragraph (1)(a) in respect of a child support order and an application under that paragraph in respect of a spousal support order.	None.

What is the change

The amendment extends the application of the “priority to child support” rule found in s 15.3 to variation applications under s 17.

Reason for the change

When considering an application for child support and an application for spousal support, s 15.3 directs a court to prioritize child support. The same direction now applies to variation proceedings.

When

The change will come into force approximately one year after Royal Assent.

Repeal section 17(9)
(Section 17(9), *Divorce Act*)

New section	Old section
Subsection 17(9) of the Act is repealed.	**Maximum contact** **(9)** In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

What is the change

The “maximum contact” rule as it applies to variations is repealed.

Reason for the change

Reference to the maximum contact rule is no longer required. Under s 17(3), a court making a variation order has the same powers and obligations as when making the original order. As a result, the new principle in s 16(6) applies to variation orders.

When

The change will come into force approximately one year after Royal Assent.

Copy of order
(Section 17(11), *Divorce Act*)

New section	Old section
Subsection 17(11) of the Act is replaced by the following: **Copy of order** **(11)** Where a court makes a variation order in respect of a support order, parenting order or contact order made by another court, it shall send a copy of the variation order, certified by a judge or officer of the court, to that other court.	**Copy of order** **(11)** Where a court makes a variation order in respect of a support order or a custody order made by another court, it shall send a copy of the variation order, certified by a judge or officer of the court, to that other court.

What is the change

This amendment introduces new language related to orders.

Reason for the change

To emphasize the best interests of the child, the *Divorce Act* now features concepts and words that focus on relationships with children, such as parenting and contact. The term “parenting order” replaces “custody order” throughout the Act, for instance. Similarly, the term “contact order” describes an order that sets out time for children to spend with important people who are not in a parental role, such as grandparents. This amendment simply replaces the former language related to custody with the new terms.

When

The change will come into force approximately one year after Royal Assent.

Interjurisdictional proceedings

Definitions
Competent authority
(Section 18, *Divorce Act*)

New section	Old section
Sections 17.1 to 19 of the Act are replaced by the following: Proceedings Between Provinces and Between a Province and a Designated Jurisdiction To Obtain, Vary, Rescind or Suspend Support Orders or To Recognize Decisions of Designated Jurisdictions Definitions **Definitions** **18** The following definitions apply in this section and in sections 18.1 to 19.1. ***competent authority*** means a court that has the authority to make an order or another entity that has the authority to make a decision with respect to support under this Act. (*autorité compétente*)	**Definitions** **18 (1)** In this section and section 19, ***Attorney General***, in respect of a province, means **(a)** for Yukon, the member of the Executive Council of Yukon designated by the Commissioner of Yukon, **(b)** for the Northwest Territories, the member of the Executive Council of the Northwest Territories designated by the Commissioner of the Northwest Territories, **(b.1)** for Nunavut, the member of the Executive Council of Nunavut designated by the Commissioner of Nunavut, and **(c)** for the other provinces, the Attorney General of the province, and includes any person authorized in writing by the member or Attorney General to act for the member or Attorney General in the performance of a function under this section or section 19; (*procureur général*) ***provisional order*** means an order made pursuant to subsection (2). (*ordonnance conditionnelle*) **Provisional order**

	(2) Notwithstanding paragraph 5(1)(a) and subsection 17(1), where an application is made to a court in a province for a variation order in respect of a support order and **(a)** the respondent in the application is ordinarily resident in another province and has not accepted the jurisdiction of the court, or both former spouses have not consented to the application of section 17.1 in respect of the matter, and **(b)** in the circumstances of the case, the court is satisfied that the issues can be adequately determined by proceeding under this section and section 19, the court shall make a variation order with or without notice to and in the absence of the respondent, but such order is provisional only and has no legal effect until it is confirmed in a proceeding under section 19 and, where so confirmed, it has legal effect in accordance with the terms of the order confirming it. **Transmission** **(3)** Where a court in a province makes a provisional order, it shall send to the Attorney General for the province **(a)** three copies of the provisional order certified by a judge or officer of the court; **(b)** a certified or sworn document setting out or summarizing the evidence given to the court; and **(c)** a statement giving any available information respecting the identification, location, income and assets of the respondent.

	Idem **(4)** On receipt of the documents referred to in subsection (3), the Attorney General shall send the documents to the Attorney General for the province in which the respondent is ordinarily resident. **Further evidence** **(5)** Where, during a proceeding under section 19, a court in a province remits the matter back for further evidence to the court that made the provisional order, the court that made the order shall, after giving notice to the applicant, receive further evidence. **Transmission** **(6)** Where evidence is received under subsection (5), the court that received the evidence shall forward to the court that remitted the matter back a certified or sworn document setting out or summarizing the evidence, together with such recommendations as the court that received the evidence considers appropriate. **Transmission** **19 (1)** On receipt of any documents sent pursuant to subsection 18(4), the Attorney General for the province in which the respondent is ordinarily resident shall send the documents to a court in the province. **Procedure** **(2)** Subject to subsection (3), where documents have been sent to a court pursuant to subsection (1), the court shall serve on the respondent a copy of the documents and a notice of a hearing

	respecting confirmation of the provisional order and shall proceed with the hearing, in the absence of the applicant, taking into consideration the certified or sworn document setting out or summarizing the evidence given to the court that made the provisional order. **Return to Attorney General** **(3)** Where documents have been sent to a court pursuant to subsection (1) and the respondent apparently is outside the province and is not likely to return, the court shall send the documents to the Attorney General for that province, together with any available information respecting the location and circumstances of the respondent. **Idem** **(4)** On receipt of any documents and information sent pursuant to subsection (3), the Attorney General shall send the documents and information to the Attorney General for the province of the court that made the provisional order. **Right of respondent** **(5)** In a proceeding under this section, the respondent may raise any matter that might have been raised before the court that made the provisional order. **Further evidence** **(6)** Where, in a proceeding under this section, the respondent satisfies the court that for the purpose of taking further evidence or for any other purpose it is necessary to remit the matter back to the court that made the provisional order, the court may so remit the matter and adjourn the proceeding for that purpose.

	Order of confirmation or refusal **(7)** Subject to subsection (7.1), at the conclusion of a proceeding under this section, the court shall make an order **(a)** confirming the provisional order without variation; **(b)** confirming the provisional order with variation; or **(c)** refusing confirmation of the provisional order. **Guidelines apply** **(7.1)** A court making an order under subsection (7) in respect of a child support order shall do so in accordance with the applicable guidelines. **Further evidence** **(8)** The court, before making an order confirming the provisional order with variation or an order refusing confirmation of the provisional order, shall decide whether to remit the matter back for further evidence to the court that made the provisional order. **Interim order for support of children** **(9)** Where a court remits a matter pursuant to this section in relation to a child support order, the court may, pending the making of an order under subsection (7), make an interim order in accordance with the applicable guidelines requiring a spouse to pay for the support of any or all children of the marriage. **Interim order for support of spouse**

	(9.1) Where a court remits a matter pursuant to this section in relation to a spousal support order, the court may make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the making of an order under subsection (7). **Terms and conditions** **(10)** The court may make an order under subsection (9) or (9.1) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just. **Provisions applicable** **(11)** Subsections 17(4), (4.1) and (6) to (7) apply, with such modifications as the circumstances require, in respect of an order made under subsection (9) or (9.1) as if it were a variation order referred to in those subsections. **Report and filing** **(12)** On making an order under subsection (7), the court in a province shall **(a)** send a copy of the order, certified by a judge or officer of the court, to the Attorney General for that province, to the court that made the provisional order and, where that court is not the court that made the support order in respect of which the provisional order was made, to the court that made the support order;

	(b) where an order is made confirming the provisional order with or without variation, file the order in the court; and **(c)** where an order is made confirming the provisional order with variation or refusing confirmation of the provisional order, give written reasons to the Attorney General for that province and to the court that made the provisional order.

What is the change

The amendment repeals ss 18 and 19, and introduces a summary application procedure similar to the one found in the uniform provincial *Inter-jurisdictional Support Orders Act* (ISO). The amendment defines the term “competent authority” for the purposes of ss 18 through 19.1.

Reason for the change

Prior to the amendments, inter-jurisdictional cases were expensive, lengthy and complex. The amendments are intended to make it easier for families to obtain or vary a support order when they live in different jurisdictions. They also ensure consistency between inter-jurisdictional proceedings, whether they are conducted under provincial legislation or the *Divorce Act*. The new process applies to domestic and international matters.

The amendments introduce an application-based procedure to establish or vary a support order when the parties reside in different provinces or when the parties live in a province and a “designated jurisdiction” (a term which is also defined). The amendments also introduce a mechanism to recognize a decision made in a designated jurisdiction that has the effect of varying a *Divorce Act* order.

For the purposes of ss 18 through 19.1, the amendment defines “competent authority” as either a court authorized to make a support order under the *Divorce Act* or an entity, such as a provincial child support service, authorized to make a decision regarding support under the Act. This definition differs from the one in s 2 of the Act, in that it applies only to ss 18 through 19.1.

When

The change will come into force approximately one year after Royal Assent.

Designated authority
(Section 18, *Divorce Act*)

New section	Old section
designated authority means a person or entity that is designated by a province to exercise the powers or perform the duties and functions set out in sections 18.1 to 19.1 within the province. (*autorité désignée*)	None.

What is the change

The amendment defines the term “designated authority.” It is a person or entity in a province responsible for performing the functions set out in ss 18.1 through 19.1.

Reason for the change

Every Canadian province and territory has an office responsible for performing administrative functions, such as sending and receiving applications between jurisdictions. These offices are “designated authorities.”

When

The change will come into force approximately one year after Royal Assent.

Designated jurisdiction (Section 18, *Divorce Act*)

New section	Old section
designated jurisdiction means a jurisdiction outside Canada — whether a country or a political subdivision of a country — that is designated under an Act that relates to the reciprocal enforcement of orders relating to support, of the province in which either of the former spouses resides. (*État désigné*)	None.

What is the change

The amendment defines “designated jurisdiction” as a jurisdiction outside Canada that has an agreement with a province or territory concerning the establishment, variation or recognition of support orders for the purpose of ss 18.1 through 19.1.

Reason for the change

Canadian provinces and territories all have reciprocity arrangements with one another, as well as with a number of foreign designated jurisdictions. The *Inter-jurisdictional Support Orders Act* (ISO Acts) are provincial and territorial laws that list these reciprocity arrangements. Under the amendment, a “designated jurisdiction” is a jurisdiction outside Canada designated under the ISO Acts. The amendment aligns terminology used in the *Divorce Act* and the ISO Acts.

When

The change will come into force approximately one year after Royal Assent.

Responsible authority
(Section 18, *Divorce Act*)

New section	Old section
responsible authority means a person or entity that, in a designated jurisdiction, performs functions that are similar to those performed by the designated authority under subsection 19(4). (*autorité responsable*)	None.

What is the change

The amendment defines the term “responsible authority” as the person or entity in a designated jurisdiction that performs functions similar to those performed by a designated authority within Canada for the purpose of ss 18.1 through 19.1.

Reason for the change

The amendment clarifies which authorities are responsible in cases where one former spouse lives in a province and the other former spouse lives in a designated jurisdiction.

When

The change will come into force approximately one year after Royal Assent.

Inter-Jurisdicitonal proceedings between provinces – Receipt and sending applications – If former spouses resides in different province (Section 18.1(1), *Divorce Act*)

New section	Old section
Inter-Jurisdictional Proceedings Between Provinces Receipt and Sending of Applications **If former spouses reside in different provinces** **18.1 (1)** If the former spouses are resident in different provinces, either of them may, without notice to the other, **(a)** commence a proceeding to obtain, vary, rescind or suspend, retroactively or prospectively, a support order; or **(b)** request to have the amount of child support calculated or recalculated, if the provincial child support service in the province in which the other former spouse habitually resides provides such a service.	None.

What is the change

This amendment establishes an application-based procedure to establish or vary a support order involving former spouses who reside in different provinces. It also enables a former spouse to request to have a child support amount calculated or recalculated by a provincial child support service if the service is available in the receiving jurisdiction.

Reason for the change

The new procedure is intended to reduce the time and costs associated with the previous two-stage hearing procedure.

As under the old procedure, it is possible to obtain the variation of a support order under the *Divorce Act.* In addition, under the new procedure, former spouses who did not seek corollary relief when their divorce was granted can request a support order. Also, a former spouse can send a request to the designated authority in their province to have child support calculated or recalculated by a provincial child support service in the province of the other spouse, if such a service exists. The provincial child support service in the receiving jurisdiction determines eligibility.

When

The change will come into force approximately one year after Royal Assent.

Procedure
(Section 18.1(2), *Divorce Act*)

New section	Old section
Procedure **(2)** A proceeding referred to in paragraph (1)(a) shall be governed by this section, sections 18.2 and 18.3 and provincial law, with any necessary modifications, to the extent that the provincial law is not inconsistent with this Act.	None.

What is the change

Under the amendment, when former spouses reside in different provinces, inter-jurisdictional proceedings are governed by ss 18.2 to 18.3 and the law of the province to the extent that it is not inconsistent with the Act.

Reason for the change

While the Act sets out the basic process for inter-jurisdictional proceedings, it is supplemented by provincial and territorial laws and procedural rules. The new framework sets out the substantive rules for inter-jurisdictional proceedings under the *Divorce Act* while permitting provincial rules to apply as long as they are not inconsistent with the Act.

When

The change will come into force approximately one year after Royal Assent.

Application
(Section 18.1(3), *Divorce Act*)

New section	Old section
Application **(3)** For the purpose of subsection (1), a former spouse shall submit an application to the designated authority of the province in which they are resident.	None.

What is the change

To commence an inter-jurisdictional proceeding, a former spouse must submit an application to the designated authority in the province where they reside.

Reason for the change

The amendment clarifies to which designated authority a person must submit their application to commence an inter-jurisdictional proceeding. The applicant is not required to notify the other party of the application.

When

The change will come into force approximately one year after Royal Assent.

Sending application to respondent's province (Section 18.1(4), *Divorce Act*)

New section	Old section
Sending application to respondent's province **(4)** After reviewing the application and ensuring that it is complete, the designated authority referred to in subsection (3) shall send it to the designated authority of the province in which the applicant believes the respondent is habitually resident.	None.

What is the change

The designated authority must review the application for completeness. Then, they send it to their counterpart in the province where the applicant believes the respondent habitually resides.

Reason for the change

One way that the new procedure will improve efficiency is to ensure the completeness of applications. The designated authority must ensure that applications include all necessary information and that completed documents are sent to the appropriate province.

When

The change will come into force approximately one year after Royal Assent.

Sending application to competent authority in respondent's province (Section 18.1(5), *Divorce Act*)

New section	Old section
Sending application to competent authority in respondent's province **(5)** Subject to subsection (9), the designated authority that receives the application under subsection (4) shall send it to the competent authority in its province.	None.

What is the change

When they receive the application, the designated authority must send it to the appropriate competent authority in the province (the respondent's province).

Reason for the change

The new procedure will improve efficiency by ensuring that each application is sent to the appropriate competent authority. Based on the content of the application, the designated authority must identify whether the appropriate competent authority is either a court (generally the one closest to the respondent's residence), or a provincial child support service (if available).

When

The change will come into force approximately one year after Royal Assent.

Provincial child support service (Section 18.1(6), *Divorce Act*)

New section	Old section
Provincial child support service **(6)** If the competent authority is a provincial child support service, the amount of child support shall be calculated or recalculated in accordance with section 25.01 or 25.1, as the case may be.	None.

What is the change

The amendment sets out the substantive provisions that apply to the calculation and recalculation of child support when the competent authority is a provincial child support service.

Reason for the change

When the competent authority is a provincial child support service, child support is calculated or recalculated in accordance with s 25.01 or 25.1. Section 25.01 applies to initial child support amounts related to divorce proceedings and judgements under the Act. Section 25.1 applies to the recalculation of existing child support amounts on the basis of accurate and up-to-date income information. The provincial child support service determines eligibility.

When

The change will come into force approximately one year after Royal Assent.

Service on respondent by court (Section 18.1(7), *Divorce Act*)

New section	Old section
Service on respondent by court **(7)** If the competent authority is a court, it or any other person who is authorized to serve documents under the law of the province shall, on receipt of the application, serve the respondent with a copy of the application and a notice setting out the manner in which the respondent shall respond to the application and the respondent's obligation to provide documents or information as required by the applicable law.	None.

What is the change

The court, or a person authorized to serve documents under provincial law, must serve the respondent with a copy of the application, as well as with a notice setting out the procedure the respondent must follow to respond to the application. The notice must also describe the respondent's obligation to provide documents or information required under the applicable law.

Reason for the change

A respondent must be properly notified when an inter-jurisdictional application has been filed in their province. Along with this notification, the amendment ensures that a respondent receives information about how to respond, and about the information or documents (generally related to income) the respondent must provide to comply with the law.

When

The change will come into force approximately one year after Royal Assent.

Service not possible – returned application (Service 18.1(8), *Divorce Act*)

New section	Old section
Service not possible — returned application **(8)** If the court or authorized person was unable to serve the documents under subsection (7), they shall return the application to the designated authority referred to in subsection (5).	None.

What is the change

The amendment clarifies that the court or the authorized person must return the application to the designated authority in their province if they are unable to properly serve the respondent.

Reason for the change

The amendment instructs the court or the authorized person on what to do if they are unable to properly serve the respondent.

When

The change will come into force approximately one year after Royal Assent.

Respondent resident in another province (Section 18.1(9), *Divorce Act*)

New section	Old section
Respondent resident in another province **(9)** If the designated authority knows that the respondent is habitually resident in another province, it shall send the application to the designated authority of that province.	None.

What is the change

When the designated authority knows that the respondent resides in another province, it must send the application to the designated authority in that province.

Reason for the change

The amendment improves efficiency and avoids unnecessary delays. When the designated authority knows that the respondent resides in another province, the application must be sent to the designated authority in the respondent's jurisdiction. The application must not be sent back to the designated authority in the applicant's province. This approach is similar to the one followed under the provincial *Inter-jurisdictional Support Orders Act*.

When

The change will come into force approximately one year after Royal Assent.

Respondent’s habitual residence unknown (Section 18.1(10), *Divorce Act*)

New section	Old section
Respondent’s habitual residence unknown **(10)** If the habitual residence of the respondent is unknown, the designated authority shall return the application to the designated authority referred to in subsection (3).	None.

What is the change

When the designated authority does not know where the respondent resides, it must return the application to the designated authority in the applicant’s province.

Reason for the change

The amendment improves efficiency and avoids unnecessary delays.

When

The change will come into force approximately one year after Royal Assent.

Applicant need not be served (Section 18.1(11), *Divorce Act*)

New section	Old section
Applicant need not be served **(11)** Service of the notice and documents or information referred to in subsection (7) on the applicant is not required.	None.

What is the change

The notice referred to in s (7) does not have to be served on the applicant.

Reason for the change

The amendment addresses concerns raised by the decision in *Waterman v Waterman*, 2014 NSCA 110. In *Waterman*, the Nova Scotia Court of Appeal found that an ISO applicant must be given proper notice of the ISO hearing in the respondent's jurisdiction, including notice of the date, time, and location of the hearing, along with a copy of any additional materials submitted to the court. The majority found that this requirement is based on the common law rules of natural justice that can only be ousted by express statutory provisions. The inter-jurisdictional process set out in this section provides the requisite express statutory provision.

The new inter-jurisdictional process aims to be streamlined and effective; the applicant rarely needs to attend the proceeding. By choosing to use this process, the applicant accepts that the hearing may be held without their participation. An applicant can indicate, however, that they wish to participate in the hearing. The amendment does not prevent a court from enabling the applicant to participate in the hearing via technology. If an applicant wants to be notified or served with the documents and other information, the applicant can also apply for a variation order using the traditional process.

When

The change will come into force approximately one year after Royal Assent.

Adjournment of proceeding (Section 18.1(12), *Divorce Act*)

New section	Old section
Adjournment of proceeding **(12)** If the court requires further evidence, it shall adjourn the proceeding. Prior to adjourning, the court may make an interim order.	None.

What is the change

If the court does not have sufficient evidence to make a determination, it must adjourn the proceeding. The court can also make an interim order before adjourning the proceeding.

Reason for the change

It is important for the court to be able to adjourn the proceeding if further evidence from the parties is required to make a determination. In some cases, however, it can take months to obtain evidence from an applicant who lives in another jurisdiction. In the meantime, families may not receive the support they need. The amendment authorizes the court to make an interim order that can remain in force until the evidence is submitted and a final determination is made.

When

The change will come into force approximately one year after Royal Assent.

Request for further evidence (Section 18.1(13), *Divorce Act*)

New section	Old section
Request for further evidence **(13)** If the court requires further evidence from the applicant, it shall request the designated authority of the province in which the court is located to communicate with the applicant or the designated authority in the province of the applicant in order to obtain the evidence.	None.

What is the change

To obtain additional evidence from the applicant, the court is authorized to work with the appropriate designated authority of the province in which the court is located.

Reason for the change

The approach promotes the efficiency of the application-based process by ensuring that the court receives the evidence needed to make an order. Since the designated authority is involved from the beginning of the inter-jurisdictional proceeding, it is best placed to obtain further evidence from the designated authority in the applicant's jurisdiction or from the applicant. In some provinces, particularly in small ones, it is common practice for the designated authority to contact the applicant directly.

When

The change will come into force approximately one year after Royal Assent.

Dismissal of application
(Section 18.1(14), *Divorce Act*)

New section	Old section
Dismissal of application **(14)** If the further evidence required under subsection (13) is not received by the court within 12 months after the day on which the court makes a request to the designated authority, the court may dismiss the application referred to in subsection (3) and terminate the interim order. The dismissal of the application does not preclude the applicant from making a new application.	None.

What is the change

If the court has not received evidence 12 months after its request to the designated authority, it can dismiss the application and terminate the interim order. However, the applicant may commence a new application.

Reason for the change

This amendment aims to improve efficiency by requiring the applicant to provide requested evidence in a timely manner. Without this provision, interim orders under the inter-jurisdictional process, which are meant to be temporary, could be in place for long periods of time. The ability to commence a new application is included to ensure that the applicant continues to have the ability to bring a new application for support.

When

The change will come into force approximately one year after Royal Assent.

Order
(Section 18.1(15), *Divorce Act*)

New section	Old section
Order **(15)** The court may, on the basis of the evidence and the submissions of the former spouses, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court, make a support order or an order varying, rescinding or suspending a support order, retroactively or prospectively.	None.

What is the change

The court can make an order based on the evidence submitted by the applicant and the respondent, as permitted by the rules of court in the respondent's jurisdiction.

Reason for the change

The amendment supports the efficiency of the application-based process. The amendment also

- provides the court flexibility as to how evidence may be submitted
- facilitates the applicant's participation in hearings by allowing the court to use any means of telecommunication permitted by the court rules
- minimizes the disadvantage faced by an applicant who resides in another province

When

The change will come into force approximately one year after Royal Assent.

Application of certain provisions (Section 18.1(16), *Divorce Act*)

New section	Old section
Application of certain provisions **(16)** Subsections 15.1(3) to (8) and 15.2(3) to (6), section 15.3 and subsections 17(3) to (4.1), (6) to (7), (10) and (11) apply, with any necessary modifications, in respect of an order referred to in subsection (15).	None.

What is the change

All of the factors and objectives that apply to the making of an order or a variation order under the *Divorce Act* also apply to an inter-jurisdictional application, subject to modifications, as circumstances require.

Reason for the change

The substantive requirements for obtaining or varying a child support order or a spousal support order are the same whether the former spouses reside in the same or in different provinces or territories. As a result, courts must apply the factors and objectives set out under the Act when making or varying a child support or spousal support order in inter-jurisdictional proceedings.

When

The change will come into force approximately one year after Royal Assent.

Broad interpretation of documents (Section 18.1(17), *Divorce Act*)

New section	Old section
Broad interpretation of documents **(17)** For greater certainty, if a court receives a document under this section that is in a form that is different from that required by the rules regulating the practice and procedure in that court, or that contains terminology that is different from that used in this Act or the regulations, the court shall give a broad interpretation to the document for the purpose of giving effect to it.	None.

What is the change

The amendment directs the court to broadly interpret documents and terminology for the purpose of giving effect to all documents it receives under the new inter-jurisdictional procedure.

Reason for the change

To promote efficiency, the various document formats and terminology used in different jurisdictions should not slow the court's work.

When

The change will come into force approximately one year after Royal Assent.

Conversion of Applications

Application to court
(Section 18.2(1), *Divorce Act*)

New section	Old section
Conversion of Applications **Application to court** **18.2 (1)** If an application is made to a court in a province under paragraph 17(1)(a) for a variation order in respect of a support order and the respondent habitually resides in a different province, the respondent may, within 40 days after being served with the application, request that the court convert the application into an application under subsection 18.1(3).	None.

What is the change

The respondent can request that the court convert a variation application made under s 17(1)(a) to an inter-jurisdictional application.

Reason for the change

The change improves efficiency by allowing the respondent to have the matter determined in their jurisdiction through the inter-jurisdictional support process, instead of the applicant's jurisdiction.

When

The change will come into force approximately one year after Royal Assent.

Conversion and sending of application (Section 18.2(2), *Divorce Act*)

New section	Old section
Conversion and sending of application **(2)** Subject to subsection (3) and despite section 5, the court that receives the request shall direct that the application made under paragraph 17(1)(a), along with the evidence in support of it, be considered as an application under subsection 18.1(3), and shall send a copy of the application and of the evidence to the designated authority of the province in which the application was made.	None.

What is the change

The amendment sets out the mechanism to convert an application to vary a support order made under s 17 to an inter-jurisdictional variation application under s 18.1. The court receiving the conversion request from the respondent is required to send a copy of the application and evidence to the designated authority of the province in which the application was made.

Reason for the change

The amendment improves efficiency by helping to ensure that variation applications made under s 17 are converted to inter-jurisdictional applications. The change also clarifies how to administer these conversions.

When

The change will come into force approximately one year after Royal Assent.

Exception
(Section 18.2(3), *Divorce Act*)

New section	Old section
Exception **(3)** If the application under paragraph 17(1)(a) is accompanied by an application under paragraph 17(1)(b) for a variation order in respect of a parenting order, the court that receives the request shall issue the direction referred to in subsection (2) only if it considers it appropriate to do so in the circumstances.	None.

What is the change

When the court receives a support variation application made under s 17 accompanied by an application to vary a parenting order, the court is not required to automatically convert the s 17 application to an inter-jurisdictional application. The court has the discretion to deny the conversion to an inter-jurisdictional application.

Reason for the change

In some situations, the court may consider it more appropriate that all proceedings take place in the jurisdiction where the child habitually resides rather than in the jurisdiction where the respondent resides. Parenting orders and child support orders are often related, and decisions on parenting arrangements may affect child support orders.

When

The change will come into force approximately one year after Royal Assent.

Application of certain provisions (Section 18.2(4), *Divorce Act*)

New section	Old section
Application of certain provisions **(4)** Once the designated authority receives the copy of the application under subsection (2), subsections 18.1(2), (4), (5), (7) and (12) to (17) apply, with any necessary modifications, in respect of that application.	None.

What is the change

Once converted to an inter-jurisdictional proceeding, s 18.1 rules apply and must be followed.

Reason for the change

Once converted, the process followed is that of an inter-jurisdictional proceeding.

When

The change will come into force approximately one year after Royal Assent.

No action by respondent (Section 18.3(1), *Divorce Act*)

New section	Old section
No action by respondent **18.3 (1)** If an application is made to a court in a province under paragraph 17(1)(a) for a variation order in respect of a support order, the respondent habitually resides in a different province and the respondent does not file an answer to the application or request a conversion under subsection 18.2(1), the court to which the application was made **(a)** shall hear and determine the application in accordance with section 17 in the respondent's absence, if it is satisfied that there is sufficient evidence to do so; or **(b)** if it is not so satisfied, may direct, despite section 5, that the application, along with the evidence in support of it, be considered as an application under subsection 18.1(3), in which case it shall send a copy of the application and of the evidence to the designated authority of the province in which the application was made.	None.

What is the change

When the respondent has not requested a s 18.1 application and has not answered such an application, the court can proceed with the support variation application under s 17. The court may also treat the application as if it were a s 18.1 application.

Reason for the change

The amendment improves the efficiency of the inter-jurisdictional process. When a former spouse applies in their own province under s 17, and the respondent has neither responded to nor requested the conversion to an inter-jurisdictional application, the court in the applicant's jurisdiction has two options. The court can hear and determine the

support variation application in the respondent's absence. Alternatively, the court can consider the support variation application to be an inter-jurisdictional application under s 18.1(3). Under this second option, the court would send a copy of the application and evidence to the designated authority of its province. This second option may be chosen as under the inter-jurisdictional process, a court in the respondent's jurisdiction can make the necessary orders to obtain financial information from either the respondent or the respondent's employer so that it can make a support determination.

When

The change will come into force approximately one year after Royal Assent.

Assignment of support order (Section 18.3(2), *Divorce Act*)

New section	Old section
Assignment of support order **(2)** Before the court hears and determines an application under paragraph (1)(a), the court shall take into consideration **(a)** whether the support order has been assigned under subsection 20.1(1); and **(b)** if the support order has been assigned, whether the order assignee received notice of the application and did not request a conversion under subsection 18.2(1).	None.

What is the change

When the respondent does not reply to an application to vary support made under s 17, the court must satisfy itself that the original support order has not been assigned to a provincial or territorial government. If it has been assigned, the court must satisfy itself that the order assignee received notice of the application to vary and did not request the new inter-jurisdictional application proceeding.

Reason for the change

Under s 20.1(1), a support order may be assigned to a minister, member, agency or public body. This typically happens when the support recipient is on social assistance. Under s 20.1(2), an order assignee has the right to be notified of, or to participate in, proceedings under the Act to vary, rescind, suspend or enforce a support order.

The amendment ensures that a court considers if the support order has been assigned and whether the order assignee received notice of the variation application. This would allow the order assignee to participate in the proceeding, as required.

When

The change will come into force approximately one year after Royal Assent.

Application of certain provisions (Section 18.3(3), *Divorce Act*)

New section	Old section
Application of certain provisions **(3)** If paragraph (1)(b) applies, then subsections 18.1(2), (4), (5), (7) and (12) to (17) apply, with any necessary modifications, in respect of the application.	None.

What is the change

When neither the respondent nor the order assignee files a response to a support variation application under s 17, the court can convert it to an inter-jurisdictional variation application. Once the court converts the application, all inter-jurisdictional procedures apply.

Reason for the change

The amendment clarifies that the legislative framework for the inter-jurisdictional process applies.

When

The change will come into force approximately one year after Royal Assent.

Proceedings Between a Province and a Designated Jurisdiction

Receipt and Sending of Designated Jurisdictions' Application – if applicant resides in designated jurisdiction (Section 19(1), *Divorce Act*)

New section	Old section
Proceedings Between a Province and a Designated Jurisdiction Receipt and Sending of Designated Jurisdictions' Applications **If applicant resides in designated jurisdiction** **19 (1)** A former spouse who is resident in a designated jurisdiction may, without notice to the other former spouse, **(a)** commence a proceeding to obtain, vary, rescind or suspend, retroactively or prospectively, a support order; or **(b)** request to have the amount of child support calculated or recalculated, if the provincial child support service in the province in which the other former spouse habitually resides provides such a service.	None.

What is the change

The amendment establishes an application-based procedure for former spouses who habitually reside in a designated jurisdiction. It also enables a former spouse to request to have a child support amount calculated or recalculated by a provincial child support service, if the service is available in the receiving jurisdiction.

Reason for the change

Until now, a former spouse living in a designated jurisdiction could not vary an order made under the *Divorce Act* unless they applied directly to a Canadian court in the jurisdiction where the respondent ordinarily resides. With the amendment, a spouse living outside of Canada in a designated jurisdiction can use the new application procedure to obtain or vary an order under the Act.

The former spouse can also apply to have an amount of child support calculated or recalculated by a provincial child support service (if this service exists in the respondent's province). The provincial child support service determines eligibility.

When

The change will come into force approximately one year after Royal Assent.

Procedure
(Section 19(2), *Divorce Act*)

New section	Old section
Procedure **(2)** A proceeding referred to in paragraph (1)(a) shall be governed by this section and provincial law, with any necessary modifications, to the extent that the provincial law is not inconsistent with this Act.	None.

What is the change

Section 19, along with the law of the province to the extent that it is not inconsistent with the *Divorce Act*, governs inter-jurisdictional proceedings with a designated jurisdiction.

Reason for the change

Provincial and territorial laws and procedural rules supplement the basic process for inter-jurisdictional proceedings established in the Act. The amendment sets out the substantive rules for inter-jurisdictional proceedings under the Act while permitting provincial rules to apply, as long as they are not inconsistent with the Act.

When

The change will come into force approximately one year after Royal Assent.

Application
(Section 19(3), *Divorce Act*)

New section	Old section
Application **(3)** For the purposes of subsection (1), a former spouse shall submit, through the responsible authority in the designated jurisdiction, an application to the designated authority of the province in which the applicant believes the respondent is habitually resident.	None.

What is the change

In order to commence an inter-jurisdictional proceeding, a former spouse must submit an application to a responsible authority in the designated jurisdiction. The responsible authority would send the application to the designated authority in the province where the applicant thinks the respondent is habitually resident.

Reason for the change

The process is similar to that for provincial inter-jurisdictional proceedings, but the application would be made to the responsible authority in the applicant's jurisdiction (designated jurisdiction). The responsible authority in the applicant's jurisdiction has similar functions to a designated authority in a province. As is the case for provincial inter-jurisdictional proceedings, there is no requirement for the applicant to notify the other party of the application.

When

The change will come into force approximately one year after Royal Assent.

Sending application to competent authority in respondent's province (Section 19(4), *Divorce Act*)

New section	Old section
Sending application to competent authority in respondent's province **(4)** After reviewing the application and ensuring that it is complete, the designated authority referred to in subsection (3) shall send it to the competent authority in its province.	None.

What is the change

After receiving an application, the provincial designated authority must review the form for completeness and send the application to the appropriate competent authority in its province. The competent authority may be a court (generally the court closest to the respondent's residence), or the provincial child support service (if available in the receiving jurisdiction).

Reason for the change

The amendment improves administrative efficiency. The designated authority must ensure that the application includes all information necessary for a court to make an order or for a provincial child support service to make a decision. The designated authority must also send the completed application to the appropriate competent authority.

When

The change will come into force approximately one year after Royal Assent.

Provincial child support service (Section 19(5), *Divorce Act*)

New section	Old section
Provincial child support service **(5)** If the competent authority is a provincial child support service, the amount of child support shall be calculated or recalculated in accordance with section 25.01 or 25.1, as the case may be.	None.

What is the change

The amendment sets out the substantive provisions that apply to the calculation or recalculation of child support when the competent authority is a provincial child support service.

Reason for the change

When the competent authority is a provincial child support service, child support is calculated or recalculated in accordance with s 25.01 or s 25.1. Section 25.01 applies to initial child support amounts related to divorce proceedings and judgements under the Act. Section 25.1 applies to the recalculation of existing child support amounts on the basis of accurate and up-to-date income information. The provincial child support service determines eligibility.

When

The change will come into force approximately one year after Royal Assent.

Service on respondent by court (Section 19(6), *Divorce Act*)

New section	Old section
Service on respondent by court **(6)** If the competent authority is a court, it or any other person who is authorized to serve documents under the law of the province shall, on receipt of the application, serve the respondent with a copy of the application and a notice setting out the manner in which the respondent shall respond to the application and the respondent's obligation to provide documents or information as required by the applicable law.	None.

What is the change

The court, or person authorized to serve documents under provincial law, must serve the respondent with a copy of the application, as well as a notice setting out the procedure through which the respondent has to respond to the application. The notice must also describe the respondent's obligation to provide documents or information required under the applicable law.

Reason for the change

A respondent must be properly notified when an inter-jurisdictional application has been filed in their province. Along with this notification, the amendment ensures that a respondent receives information about how to respond, and about the information or documents (generally related to income) the respondent must provide to comply with the law.

When

The change will come into force approximately one year after Royal Assent.

Service not possible – returned application (Section 19(7), *Divorce Act*)

New section	Old section
Service not possible — returned application **(7)** If the court or authorized person was unable to serve the documents under subsection (6), they shall return the application to the designated authority referred to in subsection (3).	None.

What is the change

The amendment clarifies that the court or the authorized person must return the application to the designated authority in their province if they are unable to properly serve the respondent.

Reason for the change

The amendment instructs the court or the authorized person on what to do if they are unable to properly serve the respondent.

When

The change will come into force approximately one year after Royal Assent.

Return of application to responsible authority (Section 19(8), *Divorce Act*)

New section	Old section
Return of application to responsible authority **(8)** The designated authority shall return the application to the responsible authority in the designated jurisdiction.	None.

What is the change

The designated authority must return the application to the responsible authority in the designated jurisdiction.

Reason for the change

The amendment clarifies procedures. The procedure is similar to the one followed under the uniform provincial *Inter-jurisdictional Support Orders Act.* The amendment improves efficiency and avoids unnecessary delays. When the designated authority is unable to serve the respondent and does not know where the respondent resides, the application must be returned to the responsible authority in the designated jurisdiction.

When

The change will come into force approximately one year after Royal Assent.

Applicant need not be served (Section 19(9), *Divorce Act*)

New section	Old section
Applicant need not be served **(9)** Service of the notice and documents or information referred to in subsection (6) on the applicant is not required.	None.

What is the change

The notice referred to in s 19(6) does not have to be served on the applicant.

Reason for the change

The amendment addresses concerns raised by the decision in *Waterman v Waterman*, 2014 NSCA 110. In *Waterman*, the Nova Scotia Court of Appeal found that an ISO applicant must be given proper notice of the hearing in the respondent's jurisdiction, including notice of the date, time, and location of the hearing, along with a copy of any additional materials submitted to the court. The majority found that this requirement is based on the common law rules of natural justice that can only be ousted by express statutory provisions. The inter-jurisdictional process set out in this section provides the requisite express statutory provision.

The new inter-jurisdictional support process aims to be streamlined and effective; the applicant rarely needs to attend the proceeding. By choosing to use this process, the applicant accepts that the hearing may be held without their participation. An applicant can, however, indicate that they wish to participate in the hearing. The amendment does not prevent a court from enabling the applicant to participate in the hearing via technology. If an applicant wants to be notified or served with the documents and other information, the applicant can also apply for a variation order using the traditional process.

When

The change will come into force approximately one year after Royal Assent.

Adjournment of proceeding (Section 19(10), *Divorce Act*)

New section	Old section
Adjournment of proceeding **(10)** If the court requires further evidence, it shall adjourn the proceeding. Prior to adjourning, the court may make an interim order.	None.

What is the change

If the court does not have sufficient evidence to make a determination, it must adjourn the proceeding. The court can also make an interim order before adjourning the proceeding.

Reason for the change

It is important for the court to be able to adjourn the proceeding if further evidence from the parties is required to make a determination. In some cases, however, it can take months to obtain evidence from an applicant who lives in another jurisdiction. In the meantime, families may not receive the support they need. The amendment authorizes the court to make an interim order that can remain in force until the evidence is submitted and a final determination is made.

When

The change will come into force approximately one year after Royal Assent.

Request for further evidence (Section 19(11), *Divorce Act*)

New section	Old section
Request for further evidence **(11)** If the court requires further evidence from the applicant, it shall request the designated authority of the province in which the court is located to communicate with the applicant or the responsible authority in the designated jurisdiction in order to obtain the evidence.	None.

What is the change

To obtain additional evidence from the applicant, the court is authorized to work with the appropriate designated authority of the province in which the court is located.

Reason for the change

The approach promotes the efficiency of the application-based process by ensuring that the court receives the evidence needed to make an order. Since the designated authority is involved from the beginning of the inter-jurisdictional proceeding, it is best placed to obtain further evidence from the responsible authority in the applicant's jurisdiction or from the applicant. In some provinces, particularly in small ones, it is common practice for the designated authority to contact the applicant directly.

When

The change will come into force approximately one year after Royal Assent.

Dismissal of application
(Section 19(12), *Divorce Act*)

New section	Old section
Dismissal of application **(12)** If the further evidence required under subsection (11) is not received by the court within 12 months after the day on which the court makes the request to the designated authority, the court may dismiss the application referred to in subsection (3) and terminate the interim order. The dismissal of the application does not preclude the applicant from making a new application.	None.

What is the change

If the court has not received the requested evidence after 12 months of its request to the designated authority, it can dismiss the application and terminate the interim order. The applicant may, however, commence a new application.

Reason for the change

This amendment aims to improve efficiency by requiring that the applicant provide requested evidence in a timely manner. Without this provision, interim orders under the inter-jurisdictional process, which are meant to be temporary, could be in place for long periods of time. The ability to commence a new application is included to ensure that the applicant continues to have the ability to bring a new application for support.

When

The change will come into force approximately one year after Royal Assent.

Order
(Section 19(13), *Divorce Act*)

New section	Old section
Order **(13)** The court may, on the basis of the evidence and the submissions of the former spouses, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court, make a support order or an order varying, rescinding or suspending a support order, retroactively or prospectively.	None.

What is the change

The court can make an order based on the evidence submitted by the applicant and the respondent, as permitted by the rules of court in the respondent's jurisdiction.

Reason for the change

The amendment supports the efficiency of the application-based process. The amendment also

- provides the court flexibility as to how evidence may be submitted;
- facilitates the applicant's participation in hearings by allowing the court to use any means of telecommunication permitted by the court rules; and
- minimizes the disadvantage faced by an applicant who resides in another province.

When

The change will come into force approximately one year after Royal Assent.

Provisional order
(Section 19(14), *Divorce Act*)

New section	Old section
Provisional order **(14)** For greater certainty, if an application under paragraph (1)(a) contains a provisional order that was made in the designated jurisdiction and does not have legal effect in Canada, the court may take the provisional order into consideration but is not bound by it.	None.

What is the change

When a provisional order is made in a designated jurisdiction and is sent with the application made under s 19(2)(a), it does not have legal effect in Canada. The amendment clarifies that the court is not bound by the provisional order but can take it into consideration when making a decision under the Act.

Reason for the change

A provisional order is an order made in a designated jurisdiction that has no effect until confirmed by a court in another jurisdiction. Some designated jurisdictions still require that a provisional order be either confirmed or denied in the second jurisdiction.

When

The change will come into force approximately one year after Royal Assent.

Application of certain provisions (Section 19(15), *Divorce Act*)

New section	Old section
Application of certain provisions **(15)** Subsections 15.1(3) to (8) and 15.2(3) to (6), section 15.3 and subsections 17(3) to (4.1), (6) to (7), (10) and (11) apply, with any necessary modifications, in respect of an order referred to in subsection (13).	None.

What is the change

All of the factors and objectives that apply to the making of an order or a variation order under the *Divorce Act* also apply to an inter-jurisdictional application, subject to modifications, as circumstances require.

Reason for the change

The substantive requirements for obtaining or varying a child support order or a spousal support order are the same whether the former spouses reside in the same or in different jurisdictions. As a result, courts must apply the factors and objectives set out under the Act when making or varying a child support or spousal support order in inter-jurisdictional proceedings.

When

The change will come into force approximately one year after Royal Assent.

Broad interpretation of documents (Section 19(16), *Divorce Act*)

New section	Old section
Broad interpretation of documents **(16)** For greater certainty, if a court receives a document under this section that is in a form that is different from that required by the rules regulating the practice and procedure in that court, or that contains terminology that is different from that used in this Act or the regulations, the court shall give a broad interpretation to the document for the purpose of giving effect to it.	None.

What is the change

The amendment directs the court to broadly interpret documents and terminology for the purpose of giving effect to all documents it receives under the new inter-jurisdictional procedure.

Reason for the change

To promote efficiency, the various document formats and terminology used in different jurisdictions should not slow the court's work.

When

The change will come into force approximately one year after Royal Assent.

Recognition of Decision of designated Jurisdiction

Recognition of decision of designated jurisdiction varying support order (Section 19.1(1), *Divorce Act*)

New section	**Old section**
Recognition of Decisions of Designated Jurisdiction **Recognition of decision of designated jurisdiction varying support order** **19.1 (1)** A former spouse who is resident in a designated jurisdiction may, through the responsible authority in the designated jurisdiction, make an application to the designated authority of the province in which the respondent habitually resides for recognition and, if applicable, for enforcement, of a decision of the designated jurisdiction that has the effect of varying a support order.	None.

What is the change

A former spouse may apply for the recognition, or for the recognition and enforcement, of a foreign decision that has the effect of varying a support order originally made under the *Divorce Act*.

Reason for the change

The amendment clarifies when a court can recognize a relevant decision made in another country. The circumstances are as follows: a court in Canada grants a support order under the *Divorce Act*; one of the former spouses moves to another country (a designated jurisdiction), and the support order is subsequently modified in that country. A court in Canada can then recognize and enforce the order made in the designated jurisdiction.

When

The change will come into force approximately one year after Royal Assent.

Registration and recognition (Section 19.1(2), *Divorce Act*)

New section	Old section
Registration and recognition **(2)** The decision of the designated jurisdiction shall be registered in accordance with the law of the province and that law, including the laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada, applies in respect of the recognition of the decision.	None.

What is the change

For a foreign support order varying a *Divorce Act* order to be recognized, it must be registered according to the law of the province.

Reason for the change

For a decision made in another country (a designated jurisdiction) to be recognized in Canada and have the effect of varying an order made under the Act, provincial rules with respect to the registration of foreign orders must be followed.

Provincial law provides for the registration of a foreign order, including the grounds for objecting to its registration. Provincial legislation typically provides the respondent 30 days after receiving notice of registration to apply for it to be set aside. Generally, the grounds for the non-recognition of a support order are

- a party to the order did not have proper notice or a reasonable opportunity to be heard
- the foreign order is contrary to the public policy of the province
- the court that made the foreign order did not have jurisdiction to make the order

If there is no objection, the foreign order is registered.

When

The change will come into force approximately one year after Royal Assent.

Enforcement
(Section 19.1(3), *Divorce Act*)

New section	Old section
Enforcement **(3)** A decision that is recognized in accordance with the law of the province is deemed to be an order made under section 17, has legal effect throughout Canada and may be enforced in any manner provided for by the law of that province, including its laws respecting reciprocal enforcement between the province and a jurisdiction outside Canada.	None.

What is the change

The recognition of a foreign order in a province or territory is deemed to have the same effect as an order made under the *Divorce Act*. The order has legal effect throughout Canada as an order made under the Act and is enforceable under provincial and territorial law.

Reason for the change

The amendment clarifies the legal effect of a support order recognized under the *Divorce Act.*

When

The change will come into force approximately one year after Royal Assent.

Miscellaneous

Heading before s 20, *Divorce Act*

New section	Old section
Legal Effect, Enforcement, Compliance and Assignment	None.

What is the change

The heading describes the subject-matter of ss 20 and 20.1.

Reason for the change

The heading makes it easier to read and understand ss 20 and 20.1.

When

The change will come into force approximately one year after Royal Assent.

Legal effect of order and decisions throughout Canada
(Section 20(2), *Divorce Act*)

New section	Old section
Subsection 20(2) of the Act is replaced by the following: **Legal effect of orders and decisions throughout Canada** **(2)** An order made under this Act in respect of support, parenting time, decision-making responsibility or contact and a provincial child support service decision that calculates or recalculates the amount of child support under section 25.01 or 25.1 have legal effect throughout Canada.	**Legal effect throughout Canada** **(2)** Subject to subsection 18(2), an order made under any of sections 15.1 to 17 or subsection 19(7), (9) or (9.1) has legal effect throughout Canada.

What is the change

The amendment enumerates the orders and decisions with legal effect throughout Canada, rather than listing the specific sections of the Act.

Reason for the change

The amendment uses simpler wording to ensure that orders and decisions made under the Act have legal effect throughout Canada.

When

The change will come into force approximately one year after Royal Assent.

Enforcement
(Section 20(3), *Divorce Act*)

New section	Old section
The portion of subsection 20(3) of the Act before paragraph (a) is replaced by the following: **Enforcement** **(3)** An order or decision that has legal effect throughout Canada under subsection (2) may be	**Enforcement** **(3)** An order that has legal effect throughout Canada pursuant to subsection (2) may be

What is the change

Child support decisions made by a provincial child support service have legal effect throughout Canada, and can be registered and enforced as court orders.

Reason for the change

The amendment ensures that child support decisions made by a provincial child support service, which are akin to child support orders and would have legal effect throughout Canada, can be registered and enforced.

When

The change will come into force approximately one year after Royal Assent.

Assignment of an order to public body (Section 20.1(1)(f), *Divorce Act*)

New section	Old section
Subsection 20.1(1) of the Act is amended by striking out "or" at the end of paragraph (d), by adding "or" at the end of paragraph (e) and by adding the following after paragraph (e): **(f)** a public body referred to in Article 36 of the *2007 Convention*, as defined in section 28.	None.

What is the change

Section 20.1(1) allows for the assignment of an order to a public body referred to in Article 36 of the 2007 Convention, as required.

Reason for the change

Support orders can be assigned to a minister, member, agency or public body pursuant to the Act. These assignments often happen when the support recipient is on social assistance.

Implementation of the 2007 Convention allows for applications for the recognition and enforcement of a decision made in a State Party. The amendment allows for an order to be assigned under s 20.1 to a public body (an order assignee in the other State Party), referred to in Article 36 of the 2007 Convention.

The 2007 Convention is not yet in force.

When

The change will come into force by Order in Council.

Droit
(Section 20.1(2), French version of the *Divorce Act*)

New section	Old section
Subsection 20.1(2) of the French version of the Act is replaced by the following: **Droits** **(2)** Le ministre, le député, le membre ou l'administration à qui la créance alimentaire octroyée par une ordonnance a été cédée a droit aux sommes dues au titre de l'ordonnance et a le droit, dans le cadre de toute procédure relative à la modification, l'annulation, la suspension ou l'exécution de l'ordonnance, d'en être avisé ou d'y participer au même titre que la personne qui aurait autrement eu droit à ces sommes.	**Droits** **(2)** Le ministre, le membre ou l'administration à qui la créance alimentaire octroyée par une ordonnance a été cédée a droit aux montants dus au titre de l'ordonnance et a le droit, dans le cadre des procédures relatives à la modification, l'annulation, la suspension ou l'exécution de l'ordonnance, d'en être avisé ou d'y participer au même titre que la personne qui aurait autrement eu droit à ces montants.

What is the change

The first amendment to the French version adds the term "député" to the list of persons to whom a support order may be assigned. The second amendment replaces the term "montants" with "sommes."

Reason for the change

The changes align the French and English versions of the Act. The term "député" better reflects all of the persons and agencies specified in s 20.1(1) of the Act and makes it consistent with the English version. The term "sommes" better reflects that the provision relates to an already determined amount of money.

When

The change will come into force approximately one year after Royal Assent.

Rights – public body
(Section 20.1(3), *Divorce Act*)

New section	Old section
Section 20.1 of the Act is amended by adding the following after subsection (2): **Rights — public body** **(3)** A public body referred to in paragraph (1)(f) to whom a decision of a State Party that has the effect of varying a child support order has been assigned is entitled to the payments due under the decision, and has the same right to participate in proceedings under this Act, to recognize and enforce the decision or if the recognition of this decision is not possible, to obtain a variation order, as the person who would otherwise be entitled to the payments.	None.

What is the change

A public body to which a support order is assigned may receive payments or make an application for the recognition and enforcement of a State Party decision that has the effect of varying a child support order. If the State Party decision cannot be recognized, the public body can apply to vary an order.

Reason for the change

Under the 2007 Convention, a public body can act in place of a creditor. Under the Act, this is done through s 20.1, which deals with the assignment of orders. The amendment allows a public body (order assignee under the Act), to receive payments or to apply for the recognition and enforcement of a State Party decision that has the effect of varying a child support order. If the State Party decision cannot be recognized, the public body can apply to vary an order.

The 2007 Convention is not yet in force.

When

The change will come into force by Order in Council.

Definition of State Party (Section 20.1(4), *Divorce Act*)

New section	Old section
Definition of *State Party* **(4)** For the purpose of subsection (3), ***State Party*** has the same meaning as in section 28.	None.

What is the change

The amendment references the definition of State Party in s 28.

Reason for the change

The amendment clarifies the meaning of State Party.

When

The change will come into force approximately one year after Royal Assent.

Subsection 21.1(1) repealed (Section 21.1(1), *Divorce Act*)

New section	Old section
Subsection 21.1(1) of the Act is repealed.	**Definition of *spouse*** **21.1 (1)** In this section, ***spouse*** has the meaning assigned by subsection 2(1) and includes a former spouse.

What is the change

Subsection 21.1(1) is repealed.

Reason for the change

Section 2 of the Act defines “spouse” and specifies that in s 21.1, “spouse” includes a former spouse.

When

The change will come into force approximately one year after Royal Assent.

Recognition of foreign divorce (Section 22(1), *Divorce Act*)

New section	Old section
Subsections 22(1) and (2) of the Act are replaced by the following: **Recognition of foreign divorce** **22 (1)** A divorce granted, on or after the coming into force of this Act, by a competent authority shall be recognized for the purpose of determining the marital status in Canada of any person, if either former spouse was habitually resident in the country or subdivision of the competent authority for at least one year immediately preceding the commencement of proceedings for the divorce.	**Recognition of foreign divorce** **22 (1)** A divorce granted, on or after the coming into force of this Act, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision for at least one year immediately preceding the commencement of proceedings for the divorce.

What is the change

The amendment reflects the new definition of “competent authority” in s 2 and replaces the term “ordinarily resident” with “habitually resident” in the English version only.

Reason for the change

These technical amendments improve clarity but do not change the substance of the provision.

When

The change will come into force approximately one year after Royal Assent.

Recognition of foreign divorce (Section 22(2), *Divorce Act*)

New section	Old section
Recognition of foreign divorce **(2)** A divorce granted after July 1, 1968 by a competent authority, on the basis of the domicile of the wife in the country or subdivision of the competent authority, determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for the purpose of determining the marital status in Canada of any person.	**Idem** **(2)** A divorce granted, after July 1, 1968, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so, on the basis of the domicile of the wife in that country or subdivision determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for all purposes of determining the marital status in Canada of any person.

What is the change

The amendment reflects the new definition of “competent authority” provided in s 2(1).

Reason for the change

These technical amendments improve clarity but do not change the substance of the provision.

When

The change will come into force approximately one year after Royal Assent.

Recognition of foreign order that varies parenting or contact order
(Section 22.1(1), *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 22: **Recognition of foreign order that varies parenting or contact order** **22.1 (1)** On application by an interested person, a court in a province that has a sufficient connection with the matter shall recognize a decision made by a competent authority that has the effect of varying, rescinding or suspending a parenting order or contact order, unless **(a)** the child concerned is not habitually resident in the country other than Canada in which the competent authority is located or that competent authority of that other country would not have had jurisdiction if it applied substantially equivalent rules related to the jurisdiction as those that are set out in section 6.3; **(b)** the decision was made, except in an urgent case, without the child having been provided with the opportunity to be heard, in violation of fundamental principles of procedure of the province; **(c)** a person claims that the decision negatively affects the exercise of their parenting time or decision-making responsibility or contact under a contact order, and the decision was made, except in an urgent case, without the person having been given an opportunity to be heard;	None.

(d) recognition of the decision would be manifestly contrary to public policy, taking into consideration the best interests of the child; or **(e)** the decision is incompatible with a later decision that fulfils the requirements for recognition under this section.	

What is the change

In cases where the provisions of the 1996 *Convention on the Protection of Children* do not apply, a court must recognize an order of a foreign court that has the effect of varying a parenting order or contact order made under the *Divorce Act,* unless one of the grounds for non-recognition exists.

Reason for the change

In general, provincial and territorial laws address the recognition of foreign parenting (custody and access) orders. In cases where the 1996 Convention does not apply, but where a parenting or contact order was made under the Act and another country made a subsequent order, the foreign modifying decision must be recognized under the Act, so that it has the effect of overriding the original order.

Under this provision, the court would be required to recognize a decision of a foreign court, unless specified exceptions exist. These rules are modelled on those in the 1996 Convention.

Recognition can be refused if

a. the decision was made by an authority in a jurisdiction where the child was not habitually resident, or that would not have had jurisdiction had it applied rules similar to those set out in s 6.3. Recognition does not need to occur if the court that made the original order was not legally authorized to make the order;

b. the order was made, except in an urgent case, without the child's voice having been heard, in violation of fundamental principles of procedure of the province. For example, recognition could be refused if the foreign court, without justification, refused to consider evidence before the court about the views of the child;

c. a person claims that the foreign order negatively affects the exercise of their parental responsibilities or their contact with the child, and the order was made, except in an urgent case, without the person having been given an opportunity to be heard. This reflects the basic principle that a party affected by an order

generally should have had an opportunity to participate in the proceeding related to it;

d. recognition is manifestly contrary to public policy, taking into consideration the best interests of the child. For example, this could apply if the foreign court solely considered the interests of one or both parents, without taking into account the interests of the child; or

e. the order is incompatible with a later order that fulfils the requirements for recognition under this section. This reflects the fact that an order that is more recent, and thus more likely reflects the current situation of the child, should take precedence.

When

The change will come into force approximately one year after Royal Assent.

Effect of recognition
(Section 22.1(2), *Divorce Act*)

New section	Old section
Effect of recognition **(2)** The court's decision recognizing the competent authority's decision is deemed to be an order made under section 17 and has legal effect throughout Canada.	None.

What is the change

An order recognizing a decision is deemed to be a variation order and has legal effect across Canada.

Reason for the change

Where a court recognizes an order under s 22.1(1), the order is to be treated as a variation order. The effect of this is that it has legal effect across Canada (in all provinces and territories).

When

The change will come into force approximately one year after Royal Assent.

Effect of non-recognition (Section 22.1(3), *Divorce Act*)

New section	Old section
Effect of non-recognition **(3)** The court's decision refusing to recognize the competent authority's decision has legal effect throughout Canada.	None.

What is the change

A court decision to refuse recognition has legal effect across Canada.

Reason for the change

Where a court refuses to recognize an order under s 22.1(1), that decision has legal effect across Canada (in all provinces and territories).

When

The change will come into force approximately one year after Royal Assent.

Recognition of foreign order that varies parenting or contact order
(Section 22.1(1), *Divorce Act*)

New section	Old section
The portion of subsection 22.1(1) of the Act before paragraph (a) is replaced by the following: **Recognition of foreign order that varies parenting or contact order** **22.1 (1)** Subject to sections 30 to 31.3, on application by an interested person, a court in a province that has a sufficient connection with the matter shall recognize a decision made by a competent authority that has the effect of varying, rescinding or suspending a parenting order or contact order, unless	None.

What is the change

The addition of the words “subject to sections 30 to 31.3” clarifies that this section applies only when the provisions of the Act related to the 1996 Convention on the Protection of Children do not apply.

Reason for the change

Once the provisions related to the 1996 Convention on the Protection of Children (ss 30 to 31.3) come into force, the Convention’s rules about the recognition of foreign orders apply to cases subject to the Convention.

For cases not subject to the Convention, however, the general provisions related to the recognition of foreign orders continue to apply. An example is a foreign order made in a country that is not a State Party to the Convention.

The 1996 Convention is not yet in force.

When

The change will come into force by Order in Council.

Canada Evidence Act
(Section 23(2), *Divorce Act*)

New section	Old section
Subsection 23(2) of the Act is replaced by the following: ***Canada Evidence Act*** **(2)** The *Canada Evidence Act* applies in respect of a proceeding before the Federal Court to determine, under subsection 3(3), 4(3), 5(3) or 6.2(3), which court retains jurisdiction.	**Presumption** **(2)** For the purposes of this section, where any proceedings are transferred to the Federal Court under subsection 3(3) or 5(3), the proceedings shall be deemed to have been taken in the province specified in the direction of the Court to be the province with which both spouses or former spouses, as the case may be, are or have been most substantially connected.

What is the change

The *Canada Evidence Act* applies when the Federal Court makes a determination of which superior court retains jurisdiction when two applications related to the same matter (divorce, corollary relief or variation) are started on the same day.

Reason for the change

The amendment clarifies which rules of evidence are used in the rare situation that the same parties begin two applications on the same day.

When

The change will come into force approximately one year after Royal Assent.

Means of presenting submissions (Section 23.1, *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 23: **Means of presenting submissions** **23.1** If the parties to a proceeding are habitually resident in different provinces, a court of competent jurisdiction may, in accordance with any applicable rules regulating the practice and procedure in that court, make an order on the basis of the evidence and the submissions of the parties, whether presented orally before the court or by affidavit or any means of telecommunication permitted by the rules regulating the practice and procedure in that court.	**Variation order by affidavit, etc.** **17.1** Where both former spouses are ordinarily resident in different provinces, a court of competent jurisdiction may, in accordance with any applicable rules of the court, make a variation order pursuant to subsection 17(1) on the basis of the submissions of the former spouses, whether presented orally before the court or by means of affidavits or any means of telecommunication, if both former spouses consent thereto.

What is the change

This provision is an amendment to the former s 17.1. Parties habitually residing in different provinces can now obtain or vary an order on the basis of the evidence and submissions presented before the court in various ways. In addition, the amendment replaces “ordinarily resident” with “habitually resident,” and removes the requirement that spouses consent to the manner in which the case can be heard.

Reason for the change

The amendments increase the efficiency of the system and improve access to justice by providing greater flexibility to the courts and to parties for inter-jurisdictional cases. In such cases, a court can hear requests for an order (divorce, parenting, support) or a variation order on the basis of the parties’ submissions by affidavit or through technology.

When

The change will come into force approximately one year after Royal Assent.

Official Languages

Official languages
(Section 23.2(1), *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 23: **Official languages** **23.2 (1)** A proceeding under this Act may be conducted in English or French, or in both official languages of Canada.	None.

What is the change

A proceeding under the *Divorce Act* may be conducted in English or French, or in both official languages of Canada.

Reason for the change

This amendment provides official language rights similar to those provided under Part XVII of the *Criminal Code* for criminal matters.

The reference to “proceeding under this Act” refers to the divorce proceedings, corollary relief proceedings and variation proceedings, which can be heard by a court of competent jurisdiction. These three types of proceedings are defined in the *Divorce Act* to include proceedings in a “court” as defined in section 2 of the Act. The definition of “court” in the Act refers to superior courts of the provinces and territories.

This subsection makes it clear that proceedings at first instance under the *Divorce Act* can be conducted in English or in French or in both official languages of Canada (i.e. bilingually).

When

The change will come into force approximately one year after Royal Assent.

Language rights
Right to use either official language
(Section 23.2(2), *Divorce Act*)

New section	Old section
Language rights **(2)** In any proceeding under this Act, **(a)** any person has the right to use either official language, including to **(i)** file pleadings or other documents, **(ii)** give evidence, or **(iii)** make submissions;	None.

What is the change

The amendment guarantees the basic right of any person to use the official language of their choice in any proceeding under the *Divorce Act* including to file pleadings or other documents, give evidence or make submissions.

Reason for the change

This amendment allows any person participating in any proceeding at first instance under the Act (e.g., parties; witnesses; legal advisors) to use the official language of their choice.

Under the provision, a person could file pleadings and other documents, such as an expert report, in either official language. A person could also give evidence (i.e., testify) and make submissions in either official language in proceedings at first instance.

When

The change will come into force approximately one year after Royal Assent.

Simultaneous interpretation (Section 23.2(2), *Divorce Act*)

New section	Old section
(b) the court shall, at the request of any person, provide simultaneous interpretation from one official language into the other;	None.

What is the change

At the request of any person participating in a proceeding at first instance under the Act, the court must provide simultaneous interpretation from one official language into the other.

Reason for the change

This amendment improves access to justice.

"Person" includes the parties, their legal advisors and witnesses. Legal advisors can use either official language to examine or cross-examine witnesses. A similar provision exists in Part III (Administration of Justice) of the *Official Languages Act* (s 15(3)) and in Part XVII (Language of the Accused) of the *Criminal Code* (s 530.1(f)).

When

The change will come into force approximately one year after Royal Assent.

Right to a judge who speaks the same official language or both (Section 23.2(2), Divorce Act)

New section	Old section
(c) any party to that proceeding has the right to a judge who speaks the same official language as that party or both official languages, as the case may be;	None.

What is the change

A party to any proceeding at first instance under the Act has the right to a judge who speaks the same official language or both official languages.

Reason for the change

The amendment improves access to justice. If the parties choose different official languages, the trial judge must speak both official languages and conduct a bilingual proceeding under the Act. A similar right exists under the *Criminal Code*, Part XVII (Language of the Accused) for preliminary inquiries and trials.

When

The change will come into force approximately one year after Royal Assent.

Right to request a transcript or recording (Section 23.2(2), *Divorce Act*)

New section	Old section
(d) any party to that proceeding has the right to request a transcript or recording, as the case may be, of **(i)** what was said during that proceeding in the official language in which it was said, if what was said was taken down by a stenographer or a sound recording apparatus, and **(ii)** any interpretation into the other official language of what was said; and	None.

What is the change

Any party to a proceeding can request a transcript or recording of the proceeding in the official language in which it was held if a stenographer or a sound-recording apparatus was used. The parties also have the right to request a transcript or recording of any interpretation in the other official language.

Reason for the change

This amendment improves access to justice. A similar provision exists under Part XVII (Language of the Accused) of the *Criminal Code* (s 530.1(g)).

When

The change will come into force approximately one year after Royal Assent.

Judgment or order
(Section 23.2(2), *Divorce Act*)

New section	Old section
(e) the court shall, at the request of any party to that proceeding, make available in that party's official language of choice any judgment or order that is rendered or made under this Act and that relates to that party.	None.

What is the change

If any party to a proceeding requests it, the court must make available any judgment or order made under the Act in the party's official language of choice.

Reason for the change

This amendment improves access to justice. Judges can decide to write their judgements or orders in the official language of their choice. They would have to provide a version in the other official language, if either party requests it. A similar provision exists in Part XVII (Language of the Accused) of the *Criminal Code* (s 530.1(h)).

When

The change will come into force approximately one year after Royal Assent.

Original version prevails
(Section 23.2(3), *Divorce Act*)

New section	Old section
Original version prevails **(3)** In the case of a discrepancy between the original version of a document referred to in paragraph (2)(a) or (e) and the translated text, the original version shall prevail.	None.

What is the change
In case of discrepancies between the original version of a document and the translated text, the original version prevails.

Reason for the change
The amendment clarifies procedure and provides guidance to courts.

When
The change will come into force approximately one year after Royal Assent.

Court forms
(Section 23.2(4), *Divorce Act*)

New section	Old section
Court forms **(4)** The court forms relating to any proceedings under this Act shall be made available in both official languages.	None.

What is the change

The court forms related to any proceedings under the Act shall be made available in both official languages.

Reason for the change

The amendment improves access to justice. This provision mirrors s 849(3) of the *Criminal Code,* which provides that pre-printed portions of forms prescribed by Part XXVIII of the *Criminal Code* shall be printed in both official languages. A similar provision can also be found in Part III (Administration of Justice) of the *Official Languages Act,* which applies to federal courts.

When

The change will come into force approximately one year after Royal Assent.

Miscellaneous

Rules for applications under section 23.1 (Section 25(2)(b.1), *Divorce Act*)

New section	Old section
Paragraph 25(2)(b.1) of the Act is replaced by the following: **(b.1)** respecting the application of section 23.1;	**(b.1)** respecting the application of section 17.1 in respect of proceedings for a variation order;

What is the change

This amendment authorizes the making of rules for applications under s 23.1 of the Act.

Reason for the change

With the repeal of s 17.1, s 23.1 authorizes orders under the Act to be made on the basis of the submissions of the parties by affidavit or by the use of technology. The numbering in s 25(2)(b.1) is a technical amendment to reflect this change.

When

The change will come into force approximately one year after Royal Assent.

Provincial child support service

Calculation of child support (Section 25.01(1), *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 25: **Provincial child support service — calculation of child support** **25.01 (1)** With the approval of the Governor in Council, the Minister of Justice may, on behalf of the Government of Canada, enter into an agreement with a province authorizing a provincial child support service designated in the agreement to calculate the amount of child support in accordance with the applicable guidelines and set it out in a decision.	None.

What is the change

The Minister of Justice may enter into an agreement with a province to allow for the administrative calculation of initial child support amounts under the Act.

Reason for the change

To increase efficiency, a designated provincial child support service could calculate an initial child support amount when the spouses initiate a divorce proceeding under the Act.

When

The change will come into force approximately one year after Royal Assent.

Application of law of province (Section 25.01(2), *Divorce Act*)

New section	Old section
Application of law of province **(2)** To the extent that it is not inconsistent with this section, the law of the province applies to a provincial child support service in the performance of its functions under this section.	None.

What is the change

Provincial law applies to the operational functions of provincial child support services to the extent they are not inconsistent with the *Divorce Act.* Provincial law includes, for example, timelines for spouses to send in various documents, including their income information.

Reason for the change

The amendment improves efficiency and helps ensure consistency between the procedures that apply to *Divorce Act* cases and non-*Divorce Act* cases. The provinces and territories can develop operational frameworks to guide the functions of their child support services, as long as they are consistent with the Act and related regulations.

When

The change will come into force approximately one year after Royal Assent.

Effect of calculation by provincial child support service
(Section 25.01(3), *Divorce Act*)

New section	Old section
Effect of calculation by provincial child support service **(3)** The amount of child support calculated under this section is the amount payable by the spouse who is subject to a provincial child support service decision.	None.

What is the change

The amendment clarifies that the amount calculated by a provincial child support service is the amount to be paid by the spouse.

Reason for the change

This amendment clarifies procedure. The child support service is an administrative entity and as a result makes a child support “decision” rather than an order. A child support decision has the same legal effect as a child support order.

When

The change will come into force approximately one year after Royal Assent.

Liability
(Section 25.01(4), *Divorce Act*)

New section	Old section
Liability **(4)** A spouse who is subject to a provincial child support service decision becomes liable to pay the amount of child support calculated under this section on the day, or on the expiry of a period, specified by the law of the province or, if no day or period is specified, on the expiry of the period prescribed by the regulations.	None.

What is the change

The amendment specifies when a spouse becomes liable to pay support decided by a provincial child support service.

Reason for the change

The amendment clarifies procedure. The provinces and territories can make rules regarding when a spouse becomes liable to pay child support under a child support decision. In the absence of legislative guidance under provincial law, the amendment sets out that a spouse becomes liable to pay support on the expiry of the period prescribed by regulations under the Act.

When

The change will come into force approximately one year after Royal Assent.

Disagreement with respect to amount (Section 25.01(5), *Divorce Act*)

New section	Old section
Disagreement with respect to amount **(5)** Either or both spouses who do not agree with the amount of the child support calculated under this section may apply to a court of competent jurisdiction for an order under section 15.1 before the day or within the period specified by the law of the province or, if no day or period is specified, within the period prescribed by the regulations.	None.

What is the change

In the event of a disagreement with the amount of child support calculated by the provincial child support service, the amendment identifies the period of time within which a spouse may make an application to seek a child support order under s 15.1 of the Act.

Reason for the change

The amendment reflects principles of fairness and the constitutional jurisdiction of superior courts. Provincial law sets out the period within which a spouse may make an application for a child support order under s 15.1 of the Act, if they do not agree with the decision of a provincial child support service. In the absence of legislative guidance under provincial law, the period prescribed by the regulations under the Act applies.

When

The change will come into force approximately one year after Royal Assent.

Effect of application
(Section 25.01(6), *Divorce Act*)

New section	Old section
Effect of application **(6)** The liability to pay the amount of child support under subsection (4) continues while the determination of the application under subsection (5) is pending.	None.

What is the change

A child support decision remains in force while a judicial determination under s 15.1 of the Act is pending.

Reason for the change

The amendment helps to ensure that children continue to benefit from child support while a court considers an application for a child support order. It can take a significant amount of time for a court to hear such an application.

When

The change will come into force approximately one year after Royal Assent.

Recalculation of amount or application for order (Section 25.01(7), *Divorce Act*)

New section	Old section
Recalculation of amount or application for order **(7)** After a spouse subject to a provincial child support service decision becomes liable to pay an amount of child support under subsection (4), either or both spouses may have the amount of child support recalculated under section 25.1 or apply to a court of competent jurisdiction for an order under section 15.1.	None.

What is the change

An amount in a child support decision can be recalculated by a provincial child support service or calculated by a court under s 15.1 of the Act.

Reason for the change

Under Canada's family law system, child support is the right of the child, and child support should be updated to reflect changes, such as changes to income.

The amendment ensures that a new amount could be determined either through a recalculation by a provincial child support service, or by a court making a child support order under s 15.1 of the Act.

When

The change will come into force approximately one year after Royal Assent.

Provincial child support service – recalculation of child support
(Section 25.1(1), *Divorce Act*)

New section	Old section
Subsection 25.1(1) of the Act is replaced by the following: **Provincial child support service — recalculation of child support** **25.1 (1)** With the approval of the Governor in Council, the Minister of Justice may, on behalf of the Government of Canada, enter into an agreement with a province authorizing a provincial child support service designated in the agreement to recalculate, in accordance with the applicable guidelines, the amount of child support orders on the basis of updated income information.	**Agreements with provinces** **25.1 (1)** With the approval of the Governor in Council, the Minister of Justice may, on behalf of the Government of Canada, enter into an agreement with a province authorizing a provincial child support service designated in the agreement to **(a)** assist courts in the province in the determination of the amount of child support; and **(b)** recalculate, at regular intervals, in accordance with the applicable guidelines, the amount of child support orders on the basis of updated income information.

What is the change

The amendment repeals paragraph (a) and removes the words “at regular intervals” from paragraph (b). In the French version, “l’accord” replaces “celui-ci.”

Reason for the change

Repealing paragraph (a) removes the concept of “to assist the court,” which better reflects that recalculation services are services that recalculate child support amounts in accordance with the applicable guidelines and on the basis of updated income information without the involvement of the court.

The amendment allows recalculation to be performed at regular intervals, or at the request of one or both former spouses. This provides greater flexibility to the provinces and territories in how their services are offered.

When

The change will come into force approximately one year after Royal Assent.

Application of law of province (section 25.1(1.1), *Divorce Act*)

New section	Old section
Application of law of province **(1.1)** To the extent that it is not inconsistent with this section, the law of the province applies to a provincial child support service in the performance of its functions under this section.	None.

What is the change

Provincial laws apply to recalculation, as long as they are not inconsistent with s 25.1.

Reason for the change

The amendment allows provinces and territories to make rules applicable to their provincial child support services, as long as they are not inconsistent with s 25.1. Provincial law addresses many operational issues, such as deadlines for former spouses to send in various documents.

When

The change will come into force approximately one year after Royal Assent.

Deeming of income
(Section 25.1(1.2), *Divorce Act*)

New section	Old section
Deeming of income **(1.2)** For the purposes of subsection (1), if a spouse does not provide the income information, a provincial child support service may deem the income of that spouse to be the amount determined in accordance with the method of calculation set out in the law of the province or, if no such method is specified, in accordance with the method prescribed by the regulations.	None.

What is the change

This amendment allows a provincial child support service to deem the income of a spouse if they do not disclose appropriate income information. The deeming of income must be done in accordance with a method of calculation set out in provincial law. If provincial law provides no such method of calculation, *Divorce Act* regulations will apply.

Reason for the change

Previously, in cases where there was a *Divorce Act* order, provincial child support services were not allowed to deem the income of a spouse who did not provide income information. This created serious problems for child support services; some spouses deliberately withheld their income information preventing recalculation and sometimes denying children adequate support. The new approach ensures that the recalculation officer follows a specific method to deem income and that no discretion is used in the deeming process. Most provinces and territories calculate deemed income using a method set out under their laws. If provinces and territories do not have a method set out in their laws, regulations under the *Divorce Act* would apply.

When

The change will come into force approximately one year after Royal Assent.

Effect of deeming of income (Section 25.1(2.1), *Divorce Act*)

New section	Old section
Subsections 25.1(3) and (4) of the Act are replaced by the following: **Effect of deeming of income** **(2.1)** Subject to subsection (5), the income determined under subsection (1.2) shall be deemed to be the spouse's income for the purposes of the child support order.	None.

What is the change

A spouse's income deemed under s 25.1(1.2) is deemed to be the income for the purposes of the child support order.

Reason for the change

This amendment clarifies procedures. The deemed income is used to determine the amount of child support payable under the child support order for future recalculation.

When

The change will come into force approximately one year after Royal Assent.

Liability
(Section 25.1(3), *Divorce Act*)

New section	Old section
Liability **(3)** The spouse against whom a child support order was made becomes liable to pay the recalculated amount on the day, or on the expiry of the period specified by the law of the province or, if no day or period is specified, on the expiry of the period prescribed by the regulations.	**Liability** **(3)** The former spouse against whom a child support order was made becomes liable to pay the amount as recalculated pursuant to this section thirty-one days after both former spouses to whom the order relates are notified of the recalculation in the manner provided for in the agreement authorizing the recalculation.

What is the change

The amendment specifies when a spouse subject to a child support order becomes liable to pay the recalculated amount.

Reason for the change

If no provincial law is in place, this amendment provides that the spouse becomes liable to pay the recalculated amount upon the expiry of the period set out in regulations under the Act.

When

The change will come into force approximately one year after Royal Assent.

Disagreement with recalculation (Section 25.1(4), *Divorce Act*)

New section	Old section
Disagreement with recalculation **(4)** If either or both spouses do not agree with the recalculated amount of the child support order, either or both of them may, before the day or within the period specified by the law of the province or, if no day or period is specified, within the period prescribed by the regulations, apply to a court of competent jurisdiction **(a)** in the case of an interim order made under subsection 15.1(2), for an order under section 15.1; **(b)** in the case of a provincial child support service decision made under section 25.01, for an order under section 15.1; or **(c)** in any other case, if they are former spouses, for an order under paragraph 17(1)(a).	**Right to vary** **(4)** Where either or both former spouses to whom a child support order relates do not agree with the amount of the order as recalculated pursuant to this section, either former spouse may, within thirty days after both former spouses are notified of the recalculation in the manner provided for in the agreement authorizing the recalculation, apply to a court of competent jurisdiction for an order under subsection 17(1).

What is the change

In case of disagreement with the recalculated amount, the amendment provides a deadline for either or both spouses to apply to court if they disagree with the recalculated amount. The amendment also provides guidance about which section of the Act applies.

Reason for the change

The amendment establishes a process in cases of disagreement with the recalculated amount. Provincial law provides a timeframe to file an application; in the absence of rules in provincial law, the timeframe would be provided in regulations under the Act.

The provision also clarifies the relevant section of the Act to apply when there is a disagreement about the recalculated amount. For example, a spouse who has an

interim order and disagrees with the recalculated amount must apply for a child support order under s 15.1.

When

The change will come into force approximately one year after Royal Assent.

Withdrawal of application (Section 25.1(6), *Divorce Act*)

New section	Old section
Subsection 25.1(6) of the Act is replaced by the following: **Withdrawal of application** **(6)** If an application made under subsection (4) is withdrawn before it is determined, the spouse against whom the child support order was made becomes liable to pay the recalculated amount on the day on which the spouse would have become liable had the application not been made.	**Withdrawal of application** **(6)** Where an application made under subsection (4) is withdrawn before the determination of the application, the former spouse against whom the order was made becomes liable to pay the amount as recalculated pursuant to this section on the day on which the former spouse would have become liable had the application not been made.

What is the change

The words “child support” and “spouse” have been added for clarity.

Reason for the change

This is a technical amendment that modernizes the language. The term “child support” is defined in s 25.1(7). There is no substantive change to the provision.

When

The change will come into force approximately one year after Royal Assent.

Definition of child support order (Section 25.1(7), Divorce Act)

New section	Old section
Definition of *child support order* **(7)** In this section, ***child support order*** has the same meaning as in subsection 2(1) and also means an interim order made under subsection 15.1(2), a provincial child support service decision made under section 25.01 and a variation order made under paragraph 17(1)(a).	None.

What is the change

This amendment defines a child support order for the purpose of s 25.1.

Reason for the change

Many people rely on interim orders for long periods; some never obtain a final child support order. This amendment allows a provincial recalculation service to recalculate interim orders, along with final child support orders and variation orders. The amendment also allows for the recalculation of decisions made by a provincial child support service under s 25.01.

When

The change will come into force approximately one year after Royal Assent.

Miscellaneous

Ministerial activities (Section 25.2, Divorce Act)

New section	Old section
The Act is amended by adding the following after section 25.1: **Ministerial activities** **25.2** The Minister of Justice may conduct activities related to matters governed by this Act, including undertaking research.	None.

What is the change

The amendment provides explicit authority to conduct activities such as research related to *Divorce Act* matters.

Reason for the change

As part of the Minister's responsibility for the administration of the *Divorce Act*, a general authority exists for federal activities in relation to matters governed by the Act, such as conducting research. The amendment makes this authority explicit and therefore more transparent. Research provides valuable information for program and policy discussions, and establishes a sound basis for program and policy development. This research also supports Justice Canada's publication of general legal information about divorce and family law for public use.

When

This provision came into force on June 21, 2019.

Règlements
(Section 26(1), French version of the *Divorce Act*)

New section	Old section
The portion of subsection 26(1) of the French version of the Act before paragraph (a) is replaced by the following: **Règlements** **26 (1)** Le gouverneur en conseil peut prendre des règlements pour l'application de la présente loi, notamment des règlements :	**Règlements** **26 (1)** Le gouverneur en conseil peut, par règlement, prendre les mesures nécessaires à l'application de la présente loi, notamment :

What is the change

The amendment modernizes two French-language expressions: "prendre des règlements pour" replaces "par règlement, prendre les mesures nécessaires à," while "notamment des règlements" replaces "notamment."

Reason for the change

This technical amendment standardizes the French version of the regulation-making authority under the Act.

When

This provision came into force on June 21, 2019.

Regulations – Central registry of divorce proceedings (Section 26(1)(a), *Divorce Act*)

New section	Old section
Paragraphs 26(1)(a) and (b) of the Act are replaced by the following: **(a)** respecting the establishment, mandate and operation of a central registry of divorce proceedings;	**Regulations** **26 (1)** The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and, without limiting the generality of the foregoing, may make regulations **(a)** respecting the establishment and operation of a central registry of divorce proceedings in Canada; and

What is the change

The amendment allows for regulations respecting the mandate of the Central Registry of Divorce Proceedings (CRDP).

Reason for the change

The CRDP helps courts determine whether they have jurisdiction to hear a divorce proceeding by detecting duplicate divorce applications. Canadian courts must register each divorce application they receive with the CRDP and inform the CRDP whenever a divorce is granted or a divorce proceeding is dismissed, discontinued or transferred to another court. The CRDP records this information in its database.

The CRDP sends a clearance certificate to the court when a duplicate divorce proceeding has not been detected. It also notifies the court or courts when it identifies duplicate divorce proceedings.

This amendment allows for the regulations to explicitly set out the mandate of the CRDP in regulations to increase transparency.

When

This provision came into force on June 21, 2019.

Regulations – Uniformity in rules (Section 26(1)(b), *Divorce Act*)

New section	Old section
(b) providing for uniformity in the rules made under section 25;	**(b)** providing for uniformity in the rules made pursuant to section 25.

What is the change

The word “under” replaces “pursuant.”

Reason for the change

This technical amendment modernizes the language.

When

This provision came into force on June 21, 2019.

Regulations – calculation and recalculation (Section 26(1)(c), *Divorce Act*)

New section	Old section
(c) respecting the framework for the calculation or recalculation of the amount of child support by the provincial child support service under section 25.01 or 25.1; and	None.

What is the change

The amendment provides regulation-making authority for the functions performed by provincial child support services set out in s 25.01 or 25.1 of the Act.

Reason for the change

The amendment permits the creation of a regulatory framework, which would apply in relation to functions performed by provincial child support services set out in s 25.01 or 25.1 of the Act. This would include liability provisions and the period of time within which an application to a court can be made in the event of a disagreement with the child support amount. The regulatory provisions related to s 25.01 or 25.1 of the Act would apply in the absence of provincial rules.

When

This provision came into force on June 21, 2019.

Regulations under *Divorce Act* (Section 26(1)(d), *Divorce Act*)

New section	Old section
(d) prescribing any matter or thing that by this Act is to be or may be prescribed.	None.

What is the change

This amendment authorizes the Governor in Council to make regulations relating to any matter or thing that could be or may be prescribed under the *Divorce Act*.

Reason for the change

This provision expands the Governor in Council's regulation-making authority to allow for the making of regulations in matters where the *Divorce Act* specifically says that it is prescribed by the regulations. For example, s 25.1 (3) references the expiry of a period "prescribed by the regulations."

When

This provision came into force on June 21, 2019.

Regulations prevail
(Section 26(2), *Divorce Act*)

New section	Old section
Subsection 26(2) of the Act is replaced by the following: **Regulations prevail** **(2)** Regulations made under paragraph (1)(b) prevail over rules made under section 25.	**Regulations prevail** **(2)** Any regulations made pursuant to subsection (1) to provide for uniformity in the rules prevail over those rules.

What is the change

The amendment specifies that regulations made under s 26(1)(b), which provides for uniformity in the rules, would prevail over the rules made under s 25.

Reason for the change

The Governor in Council may make regulations providing for rules that would prevail over those made under s 25. Section 25 allows a competent authority under the laws of a province to make rules regulating the practice and procedure in a court. To ensure uniformity, s 26(2) provides that regulations made under s 26(1)(b) prevail over rules made by a competent authority in a province. This is a technical change, as reference is made to s 26(1)(b) rather than s 26(1).

When

This provision came into force on June 21, 2019.

Guidelines
(Section 26.1(1), *Divorce Act*)

New section	Old section
The portion of subsection 26.1(1) of the English version of the Act before paragraph (a) is replaced by the following: **Guidelines** **26.1 (1)** The Governor in Council may establish guidelines respecting orders for child support, including, but without limiting the generality of the foregoing, guidelines	**Guidelines** **26.1 (1)** The Governor in Council may establish guidelines respecting the making of orders for child support, including, but without limiting the generality of the foregoing, guidelines

What is the change

The amendment removes the words “the making of” in the introductory portion of s 26.1(1) in the English version only.

Reason for the change

The French version includes no equivalent words and better reflects the provision’s intent.

When

This provision came into force on June 21, 2019.

Guidelines – production of information (Section 26.1(1)(h), *Divorce Act*)

New section	Old section
Paragraph 26.1(1)(h) of the Act is replaced by the following: **(h)** respecting the production of information relevant to an order for child support and providing for sanctions and other consequences when that information is not provided.	**(h)** respecting the production of income information and providing for sanctions when that information is not provided.

What is the change

The amendment removes the word “income” from s 26.1(1)(h) of the *Divorce Act* to allow for the regulatory provisions related to the production of various types of information relevant to a child support order, including information not related to income. The amendment also allows for the inclusion of other consequences when the required information is not provided.

Reason for the change

The Federal Child Support Guidelines (Federal Guidelines) include provisions dealing with the production of both income and non-income information. The amendment clarifies the enabling authority by outlining that the Federal Guidelines can regulate the production of both types of information for the purposes of child support orders. In addition to sanctions, the regulations will also be able to provide for other consequences for non-disclosure of information.

When

This provision came into force on June 21 2019.

Guidelines – “order for child support” (Section 26.1(3)(c), *Divorce Act*)

New section	Old section
Paragraph 26.1(3)(c) of the Act is replaced by the following: **(c)** an order made under subsection 18.1(15) or 19(13) in respect of a child support order.	**Definition of *order for child support*** **(3)** In subsection (1), ***order for child support*** means **(c)** an order or an interim order made under section 19.

What is the change

Under s 26.1, the Governor in Council can establish child support guidelines that address the issues listed in the section; subsection (3) defines the concept of “order for child support” for the purpose of s 26.1(1). Technical amendments are made to s 26.1(3)(c).

Reason for the change

The amendment updates the wording to reflect new numbering and to broaden the definition of “order for child support” to include orders made under s 18.1(15) or 19(13) (relating to the inter-jurisdictional support order process).

When

This provision came into force on June 21, 2019.

Guidelines – “order for child support” (Section 26.1(3), *Divorce Act*)

New section	Old section
Subsection 26.1(3) of the Act is amended by striking out “or” at the end of paragraph (b), by adding “or” at the end of paragraph (c) and by adding the following after paragraph (c): **(d)** an order made under subsection 28.5(5) or 29.1(5)	None.

What is the change

Under s 26.1, the Governor in Council can establish child support guidelines that address the issues listed in the section; s 26.1(3) defines the concept of “order for child support” for the purpose of s 26.1(1). The amendment ensures that the definition of “order for child support” includes orders made under s 28.5(5) or s 29.1(5).

Reason for the change

Section 28.5(5) and s 29.1(5) are child support orders related to the 2007 Convention, and therefore need to be included in the definition of “order for child support.”

When

This provision came into force on June 21, 2019.

Section 28 repealed
(Section 28, *Divorce Act*)

New section	Old section
Section 28 of the Act is repealed.	**Review and report** **28** The Minister of Justice shall undertake a comprehensive review of the provisions and operation of the Federal Child Support Guidelines and the determination of child support under this Act and shall cause a report on the review to be laid before each House of Parliament within five years after the coming into force of this section.

What is the change

The amendment repeals the requirement that the Minister of Justice must complete a review of the operation of the Federal Child Support Guidelines and to table a report in Parliament on that review within five years of the coming into force of s 28.

Reason for the change

The requirements under s 28 were met in 2002 with the tabling in Parliament of The Report to Parliament Reviewing the Provisions and the Operation of the Federal Child Support Guidelines – Children Come First.

When

This provision came into force on June 21, 2019.

Section 33 repealed
(Section 33, *Divorce Act*)

New section	Old section
Section 33 of the Act is repealed.	**Proceedings commenced before commencement of Act** **33** Proceedings commenced under the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, before the day on which this Act comes into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with that Act as it read immediately before that day, as though it had not been repealed.

What is the change

The amendment repeals s 33 of the Act.

Reason for the change

Section 33 is an old transitional provision that is no longer needed. Parties who received their initial divorce judgment under the 1968 *Divorce Act* but never asked the court to finalize their divorce should get professional advice from a family law lawyer.

When

The change will come into force approximately one year after Royal Assent.

Variation and enforcement of orders previously made (Section 34(1), *Divorce Act*)

New section	Old section
The portion of subsection 34(1) of the Act before paragraph (b) is replaced by the following : **Variation and enforcement of orders previously made** **34 (1)** Subject to subsection (1.1), any order made under subsection 11(1) of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day under subsection 22(2) of that Act may be varied, rescinded, suspended or enforced in accordance with sections 17 to 20, other than subsection 17(10), of this Act as if **(a)** the order were a support order, parenting order or contact order, as the case may be; and	**Variation and enforcement of orders previously made** **34 (1)** Subject to subsection (1.1), any order made under subsection 11(1) of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, including any order made pursuant to section 33 of this Act, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day pursuant to subsection 22(2) of that Act may be varied, rescinded, suspended or enforced in accordance with sections 17 to 20, other than subsection 17(10), of this Act as if **(a)** the order were a support order or custody order, as the case may be; and

What is the change

The amendment adds modern parenting terminology to s 34.

Reason for the change

Section 34 deals with existing orders made before the 1986 version of the Act came into force. The amendment enables the variation of orders made under the 1970 version of the Act.

When

The change will come into force approximately one year after Royal Assent.

Enforcement of interim orders (Section 34(2), *Divorce Act*)

New section	Old section
Subsections 34(2) and (3) of the Act are replaced by the following: **Enforcement of interim orders** **(2)** Any order made under section 10 of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, may be enforced in accordance with section 20 of this Act as if it were an order made under subsection 15.1(1) or 15.2(1) or section 16.1 or 16.5 of this Act, as the case may be.	**Enforcement of interim orders** **(2)** Any order made under section 10 of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, including any order made pursuant to section 33 of this Act, may be enforced in accordance with section 20 of this Act as if it were an order made under subsection 15.1(1) or 15.2(1) or section 16 of this Act, as the case may be.

What is the change

The amendment removes reference to repealed s 33 and inserts the terms “parenting orders” and “contact orders.”

Reason for the change

The amendment directs courts on how to deal with orders made under the 1970 *Divorce Act* that remain in force.

When

The change will come into force approximately one year after Royal Assent.

Assignment of orders previously made (Section 34(3), *Divorce Act*)

New section	Old section
Assignment of orders previously made **(3)** Any order for the maintenance of a spouse, former spouse or child of the marriage made under section 10 or 11 of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day under subsection 22(2) of that Act may be assigned to any minister, member or agency designated under section 20.1.	**Assignment of orders previously made** **(3)** Any order for the maintenance of a spouse or child of the marriage made under section 10 or 11 of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, including any order made pursuant to section 33 of this Act, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day pursuant to subsection 22(2) of that Act may be assigned to any minister, member or agency designated pursuant to section 20.1.

What is the change

The amendment

- modernizes the drafting of the provision,
- clarifies that the provision applies to support orders for the maintenance of former spouses, and
- removes the reference to repealed s 33.

Reason for the change

The amendment updates the definition of “spouse” to include “former spouse.” Section 33 is no longer needed.

When

The change will come into force approximately one year after Royal Assent.

Agreements entered into under subsection 25.1(1) (Section 35.2, *Divorce Act*)

New section	Old section
The Act is amended by adding the following after section 35.1: **Agreements entered into under subsection 25.1(1)** **35.2** Any agreement entered into by the Minister of Justice under subsection 25.1(1), as that subsection read immediately before the day on which section 27 of *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act* comes into force, and that continues to be in force on that day, is deemed to have been entered into under subsection 25.1(1), as that subsection read on that day.	None.

What is the change

The amendment clarifies that any agreement entered into by the Minister of Justice under s 25.1(1) continues to be in force and is deemed to have been entered into by the Minister of Justice under s 25.1(1) as it reads when s 27 comes into force.

Reason for the change

The amendment clarifies the status of previous agreements with provinces and territories related to the recalculation of child support. While these agreements may be amended to reflect the amendments, agreements signed prior to the coming into force of the new provisions remain in force.

When

The change will come into force approximately one year after Royal Assent.

Proceedings commenced before coming into force (Section 35.3, *Divorce Act*)

New section	Old section
Proceedings commenced before coming into force **35.3** A proceeding commenced under this Act before the day on which this section comes into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with this Act as it reads as of that day.	None.

What is the change

The amendment clarifies that any proceedings under the Act underway when the amendments come into force would be subject to the Act as amended.

Reason for the change

Proceedings under the Act often continue for years. This amendment clarifies that the Act applies to ongoing proceedings that began before the coming-into-force date of the current amendments. All of the amendments are designed to operate well with the previous version of the Act and to promote a child-centred approach to resolving family law disputes.

When

The change will come into force approximately one year after Royal Assent.

Person deemed to have parenting time and decision-making responsibility (Section 35.4, *Divorce Act*)

New section	Old section
Person deemed to have parenting time and decision-making responsibility **35.4** Unless a court orders otherwise, **(a)** a person who had custody of a child by virtue of a custody order made under this Act, immediately before the day on which this section comes into force, is deemed as of that day, to be a person to whom parenting time and decision-making responsibility have been allocated; and **(b)** a spouse or former spouse who had access to a child by virtue of a custody order made under this Act, immediately before the day on which this section comes into force, is deemed as of that date, to be a person to whom parenting time has been allocated.	None.

What is the change

The amendment deems all persons with existing custody orders to be persons with parenting time and decision-making responsibility under the amended Act. Similarly, it deems spouses with access to be persons with parenting time under the amended Act.

Reason for the change

The amendment clarifies the entitlements and responsibilities of parties with existing orders after the current amendments come into force. Parents with access are deemed to have parenting time under the Act. Any person with custody is deemed to have parenting time and decision-making responsibility. In appropriate cases, courts still have discretion to provide that no such deeming will occur.

Section 35.4 does not change the content of existing *Divorce Act* orders, but rather would help parents better understand these orders, given the change in language.

Section 35.4 does not affect the various rights and responsibilities that parents have outside of the *Divorce Act*. For example, if they have parental authority under the *Civil Code of Québec*, which is not affected by a “custody order,” section 35.4 would not change this.

When

The change will come into force approximately one year after Royal Assent.

Person deemed to have contact order (Section 35.5, *Divorce Act*)

New section	Old section
Person deemed to have contact order **35.5** If, immediately before the day on which this section comes into force, a person who is not a spouse or former spouse had access to a child by virtue of a custody order made under this Act, then, as of that day, unless a court orders otherwise, that person is deemed to be a person who has contact with the child under a contact order.	None.

What is the change

The amendment deems all non-spouses with access to a child under an existing custody order to be persons with a contact order under the amended Act.

Reason for the change

The amendment translates the terminology of existing custody orders (which may include orders for access) into the new language used in the Act.

When

The change will come into force approximately one year after Royal Assent.

No notice
(Section 35.6, *Divorce Act*)

New section	Old section
No notice **35.6** A person who is deemed under section 35.4, to be a person to whom parenting time or decision-making responsibility has been allocated is not required to give notice under either section 16.8 or 16.9 if a custody order to which they are a party specifies that no notice is required in respect of a change in the place of residence by the person or a child to whom the order relates.	None.

What is the change

The amendment provides an exception to the notice requirements related to relocation.

Reason for the change

In some situations, particularly those involving family violence, a court may order that no notice is required if a parent chooses to move with their child. Such provisions may be included for the safety of the party and/or the child. It is necessary to ensure that the notice provisions do not automatically apply to persons with these types of provisions in their existing orders.

When

The change will come into force approximately one year after Royal Assent.

No change in circumstances (Section 35.7, *Divorce Act*)

New section	Old section
No change in circumstances **35.7** For the purposes of subsection 17(5), as enacted by subsection 13(2) of *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, the coming into force of that Act does not constitute a change in the circumstances of the child.	None.

What is the change

The amendment clarifies that the coming into force of the amendments to the Act does not constitute a change in circumstances for the child, and thus does not, on its own, justify seeking a variation to an existing custody or access order.

Reason for the change

The amendments related to parenting provisions are intended to provide guidance to courts in making parenting decisions in the best interests of the child, not to create such substantive changes to the law of parenting that existing orders would be invalidated. If, in addition to the coming into force of the amendments, there is a significant change in the life of a child, parties will be able to apply to a court to vary an existing order.

When

The change will come into force approximately one year after Royal Assent.

Variation of orders previously made (Section 35.8, *Divorce Act*)

New section	Old section
Variation of orders previously made **35.8** An order made before the day on which this section comes into force under subsection 16(1), as that subsection read immediately before that day, or an order made in proceedings disposed of by the court in the manner described in section 35.3, may, as of that day, if it is still in effect, be varied, rescinded or suspended in accordance with section 17, as amended by section 13 of *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, as if the order were a parenting order or contact order.	None.

What is the change

The amendment sets out that existing custody orders (which would include orders for access) may, following the coming into force of the amendments, be varied in accordance with the amended variation provisions.

Reason for the change

Although the coming into force of Bill C-78 does not, in and of itself, constitute a change in circumstances justifying a variation to an existing custody order (see s 35.7), some parties would, over time, need to vary custody orders made under the Act. This provision allows them to do so.

When

The change will come into force approximately one year after Royal Assent.

Provisional orders
(Section 35.9, *Divorce Act*)

New section	Old section
Provisional orders **35.9** If, before the day on which this section comes into force, a provisional order was made under subsection 18(2) as it read immediately before that day, the provisional order is deemed, as of that day, to be an application made under in subsection 18.1(3) and shall be dealt with and disposed of as such.	None.

What is the change

The amendment specifies how to deal with a provisional order rendered pursuant to the old inter-jurisdictional support orders framework.

Reason for the change

The amendment provides a mechanism to deal with provisional orders made under the old s 18(2) of the Act. Such a provisional order is deemed to be an application made under s 18.1(3) of the new inter-jurisdictional support orders framework.

When

The change will come into force approximately one year after Royal Assent.

Replacing “ordinarily” with “habitually” (Sections 2(1), 3(1), 4(1)(a) and 5(1)(a), *Divorce Act*)

New section	Old section
The English version of the Act is amended by replacing “ordinarily” with “habitually” in the following provisions: **(a) the definition *age of majority* in subsection 2(1);** **(b) subsection 3(1);** **(c) paragraph 4(1)(a); and** **(d) paragraph 5(1)(a).**	**Definitions** **2(1)** In this Act, ***age of majority***, in respect of a child, means the age of majority as determined by the laws of the province where the child ordinarily resides, or, if the child ordinarily resides outside of Canada, eighteen years of age; (*majeur*) **Jurisdiction in divorce proceedings** **3 (1)** A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement of the proceeding. **Jurisdiction in corollary relief proceedings** **4 (1)** A court in a province has jurisdiction to hear and determine a corollary relief proceeding if **(a)** either former spouse is ordinarily resident in the province at the commencement of the proceeding; or **Jurisdiction in variation proceedings** **5 (1)** A court in a province has jurisdiction to hear and determine a variation proceeding if

	(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or

What is the change

The amendment replaces the term “ordinarily” with “habitually” in the English version of the Act in the definition of age of majority in s 2(1), and in ss 3(1), 4(1)(a) and 5(1)(a).

Reason for the change

The change aligns the English and French versions of the Act. In the corresponding sections, the French version uses “réside habituellement.” Many provincial and territorial statutes also include “habitually resident” in relation to jurisdiction for parenting matters. The 1996 Convention also uses the term. Case law indicates no practical difference in meaning between “ordinarily resident” and “habitually resident.”

When

The change will come into force approximately one year after Royal Assent.