

***Divorce Act* Amendments:**

Overview of Amendments Most Likely to Impact School & Education-Related Issues

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Introduction

The purpose of this paper is to provide an overview of the *Divorce Act* amendments that are most likely to impact school and education-related issues. The paper will be broken into the following parts:

1. Background/purpose of the amendments;
2. Review of the actual amendments, with a focus on changes related to parenting terminology and the expanded best interests of the child test; and
3. Some practical issues/complications that are anticipated to arise as the changes come into force (**July 1, 2020** for most of the *Divorce Act* amendments, including all amendments discussed in Part 2., above).

1. Background/Purpose of the Amendments

The amendments to the *Divorce Act* result from [Bill C-78, 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.](#)² This was a Government Bill that received Royal Assent on June 21, 2019.³

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² For the status, coming into force information, and full-text of Bill C-78 (there are several versions, including the Royal Assent version), see Parliament of Canada LEGISinfo, *House Government Bill: C-78*, available online at: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9868788>.

³ The Royal Assent version of Bill C-78 is available online at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-78/royal-assent>.

When the Bill was first introduced, the [Government news release](#)⁴ said that the Bill's "four key objectives are to promote the best interests of the child, address family violence, help reduce child poverty, and make Canada's family justice system more accessible and efficient."

The [summary to the Bill](#)⁵ discusses the *Divorce Act*-specific amendments, as follows:

This enactment amends the *Divorce Act* to, among other things,

- (a) replace terminology related to custody and access with terminology related to parenting;
- (b) establish a non-exhaustive list of criteria with respect to the best interests of the child;
- (c) create duties for parties and legal advisers to encourage the use of family dispute resolution processes;
- (d) introduce measures to assist the courts in addressing family violence;
- (e) establish a framework for the relocation of a child; and
- (f) simplify certain processes, including those related to family support obligations.

In very general terms, the Bill was largely welcomed by members of the bar and interested stakeholder groups, many of whom have long been pushing for changes.⁶ For example, the Canadian Bar Association (CBA) made a joint submission on behalf of the "Family Law" and "Child and Youth Law" Sections (and with input from other Sections) that expressed general support for the government's decision to amend and improve the *Divorce Act*.⁷

⁴ Department of Justice Canada, "Government of Canada announces new measures to strengthen and modernize family justice", available online at: <https://www.canada.ca/en/department-justice/news/2018/05/government-of-canada-announces-new-measures-to-strengthen-and-modernize-family-justice.html>.

⁵ In the Royal Assent version of the Bill, available online at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-78/royal-assent#ID0EZC>.

⁶ See, e.g., <https://www.lawtimesnews.com/practice-areas/family/changes-to-divorce-act-reflect-modern-approach-to-parenting/266867>; <https://www.lawtimesnews.com/practice-areas/family/divorce-act-changes-bring-in-less-adversarial-language/263413>; <https://www.lawtimesnews.com/practice-areas/family/new-divorce-act-holds-beneficial-changes/263307>; <https://www.lerners.ca/lernx/proposed-changes-to-the-divorce-act-do-they-go-far-enough/>.

⁷ The Canadian Bar Association: Family and Child and Youth Law Sections, "Bill C-78, *Divorce Act amendments*", November 2018, available online at: <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10203013/br-external/CanadianBarAssociation-e.pdf>. For access to all 53 briefs submitted to the Standing Committee on Justice and Human Rights, see House of Commons, *Standing Committee on Justice and Human Rights: Work: BILL C-78: 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*, available online at: <http://www.ourcommons.ca/Committees/en/JUST/StudyActivity?studyActivityId=10292072> (click on "Briefs (53)" to expand and access the briefs).

This is the first time the *Divorce Act* has been amended in over 30 years. It was introduced in 1985, with no major changes since (with the exception of the introduction of the *Federal Child Support Guidelines*, which came into force in 1997).⁸ In addition, the Bill C-78 amendments were not “politically charged” in the sense that the government Bill received support from both Conservative and NDP MPs.⁹

2. Amendments

(a) Changes to Parenting Terminology

The defined terms “**custody**” and “**custody order**” will be repealed.

Instead, the following new definitions will be added to s. 2(1) of the *Divorce Act* (and which refer to ss. 16.1-16.3 & 16.5):

- “**parenting order**” means an order made under s. 16.1(1); (*ordonnance parentale*)

New s. 16.1
<p>Parenting order</p> <p>16.1 (1) A court of competent jurisdiction may make an order providing for the exercise of <u>parenting time</u> or <u>decision-making responsibility</u> in respect of any child of the marriage, on application by</p> <p>(a) <u>either or both spouses</u>; or</p> <p>(b) <u>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.</u> [underlining added]</p> <p>[16.1(2): <u>interim orders</u> may also be made → essentially the same as current 16(2)]</p> <p>[16.1(3): a person described in s. 16.1(1)(b) may make an application only with leave of the court → essentially the same as current 16(3)]</p>

⁸ See the comments of John-Paul Boyd in this article: <https://globalnews.ca/news/4226594/analysis-will-changes-to-the-divorce-act-actually-make-a-difference-for-children/>.

⁹ See, e.g., Parliament of Canada LEGISinfo, House Government Bill: C-78 “Major Speeches at Second Reading”, available online at:

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9868788&billId=9868788&View=4>.

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.

[s. 16.1(5): the court may make an order for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions and restrictions that it considers appropriate → essentially the same as current s. 16(6)]

[s. 16.1(6): subject to provincial law, the order may direct the parties to attend a family dispute resolution process → a defined term, discussed more below]

[s. 16.1(7): order may authorize or prohibit the relocation of the child → also a defined term, discussed more below but largely beyond the scope of this paper]

[s. 16.1(8): order may require parenting time or the transfer of the child from one person to another be supervised]

[s. 16.1(9): order may prohibit the removal of a child from specified geographic area without the written consent of any specified person or without a court order authorizing the removal]

- **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) [Parenting order section, see above], whether or not the child is physically with that person during that entire time; (*temps parental*)

New s. 16.2

Parenting time — schedule

16.2 (1) Parenting time may be allocated by way of a schedule.

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-to-day decisions affecting the child.

The reason for the addition of ss. 16.2(1) and (2), as described by the Department of Justice¹⁰, is as follows:

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.

...

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.

- **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*)

¹⁰ Government of Canada: Department of Justice, "The *Divorce Act* Changes Explained", under the heading "Parenting Time – schedule (Section 16.2), *Divorce Act*", available online at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/art9.html#10>.

The reason for this new definition, as described by the Department of Justice¹¹, is as follows:

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.

New s. 16.3

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.

- **contact order** means an order made under subsection 16.5(1);

New s. 16.5

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. [underlining added]

[16.5(2): interim orders may also be made]

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.

¹¹ Government of Canada: Department of Justice, "The *Divorce Act* Changes Explained", under the heading "Decision making responsibility (section 2(1), *Divorce Act*)", available online at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/art2.html#10>.

<p>Factors in determining whether to make order</p> <p>(4) In determining whether to make a contact order under this section, the court <u>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.</u> [underlining added]</p> <p>Contents of contact order</p> <p>(5) The court may, in the contact order,</p> <ul style="list-style-type: none"> (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. <p>[s. 16.5(6) the court may make a contact order for a <u>definite or indefinite period or until a specified event occurs</u>, and may impose <u>terms, conditions, and restrictions</u>]</p> <p>[s. 16.5(7): the contact or transfer may be <u>supervised</u>]</p> <p>[s. 16.5(8): order may prohibit the <u>removal</u> of a child from specified geographic area without the written consent of any specified person or without a court order authorizing the removal]</p> <p>[s. 16.5(9): order may by <u>varied</u>]</p>

(b) Revised Section on Entitlement to Information

New s. 16.4	Current s. 16(5)
<p>Entitlement to information</p> <p>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.</p>	<p>Access</p> <p>(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.</p>

The change and the reason for change, as described by the Department of Justice¹², are as follows:

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.

(c) New Section on Parenting Plans

- Parenting plans encouraged but not required:

New s. 16.6

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.

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.

(d) Expanded Best Interests of the Child Test, Including Guidance on the Impact of Family Violence

- Best interests of the child is still the test (s. 16(1)) with a "primary consideration" (s. 16(2))

¹² Government of Canada: Department of Justice, "The *Divorce Act* Changes Explained", under the heading "Entitlement to information (section 16.4), *Divorce Act*", available online at: <https://www.justice.gc.ca/eng/fl-df/cf/mdf/dace-clde/art9.html#13>.

and an expanded list of factors (s. 16(3)):

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

- (a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (b)** the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- (c)** each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- (d)** the history of care of the child;
- (e)** the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f)** the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g)** any plans for the child's care;
- (h)** the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i)** the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j)** any family violence and its impact on, among other things,
 - (i)** the ability and willingness of any person who engaged in the family 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.

- More guidance on how the court shall consider the *impact* of any family violence (s. 16(4)):

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.

- To be read in the context of the *definition* of family violence that was added to s. 2:

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 necessities 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;
(*violenza familiare*)

- Note that there is also a *definition* of family member, which was also added to s. 2:

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*)

- Past conduct (s. 16(5), which is slightly changed from current s. 16(9) to reflect the new terminology surrounding parenting orders):

New s. 16(5)	Current s. 16(9)
<p>Past conduct</p> <p>(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.</p>	<p>Past conduct</p> <p>(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.</p>

- “Parenting time consistent with the best interest of the child” (s. 16(6), which is somewhat changed from current s. 16(10)):

New s. 16(6)	Current s. 16(10)
<p>Maximum—contact Parenting time consistent with the best interests of the child¹³</p> <p>(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.</p>	<p>Maximum contact</p> <p>(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.</p>

¹³ Note that the Minister of Justice has committed to modifying the marginal note heading for this section from “Maximum contact” as it read in the Royal Assent version “to use words along the lines of ‘Parenting time consistent with the best interests of the child’, which more closely reflects the legislative intent behind this provision.”: Government of Canada, Department of Justice, “The *Divorce Act* Changes Explained”, under the heading “Maximum parenting time”, footnote 1, available online at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/art8.html#860>.

The reason for change, as described by the Department of Justice¹⁴, is as follows:

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.

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.

(e) Other Notable Changes

- Encouraged use of a "**family dispute resolution process**" (defined term in s. 2)
 - duty on parties to try to resolve matters through a family dispute resolution process (as set out in new s. 7.3)
 - duty on legal adviser who undertakes to act on a person's behalf in any proceeding under the *Divorce Act* to encourage the person to resolve matters "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" (s. 7.7(2)(a))
 - also recall that an order may, subject to provincial law, direct the parties to attend a family dispute resolution process (s. 16.1(6))
- Other new duties on **parties to a proceeding** set out in ss. 7.1-7.6
- New duties on a "**legal adviser**" (a defined term in s. 2) set out in s. 7.7

¹⁴ Government of Canada, Department of Justice, "The *Divorce Act* Changes Explained", under the heading "Maximum parenting time (Section 16(6), *Divorce Act* [footnote omitted]", available online at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/art8.html#860>.

- New duty on a **court** set out in s. 7.8
- New framework for dealing with “**relocation**” (a defined term in s. 2) set out in ss. 16.9-16.96 (s. 16.9(1) refers to notice “at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations”)
- “Relocation” to be distinguished from a “**Change in Place of Residence**” set out in ss. 16.7-16.8

3. Practical Issues/Complications

Coming into Force

There are 3 different coming-into-force dates for the sections of the Bill that amend the *Divorce Act* (all of which refer to “a day to be fixed by order of the Governor in Council”). To date, the Governor General in Council has only fixed one date – **July 1, 2020** – as the date on which most, but not all, of the amendments to the *Divorce Act* come into force. The other two coming into force dates must *not* be before July 1, 2020.¹⁵ For our purposes, all sections discussed in the Part 2. directly above will come into effect on July 1, 2020.

“Changes to federal support enforcement laws [FOAEAA and GAPDA] will come into force within two years.”¹⁶

The delay provides time for:

- the development of public legal education and information (PLEI) and training sessions
 - Federally: The DOJ has [Information for professionals](#)¹⁷, including a lengthy document called [The Divorce Act Changes Explained](#)¹⁸. It also has plans to

¹⁵ See <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9868788&billId=9868788&View=6>.

¹⁶ Government of Canada, Department of Justice, “Changes to family laws”, available online here: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/index.html>. See also Government of Canada, Department of Justice, “Strengthening and modernizing Canada’s family justice system”, available online here: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/01.html>.

¹⁷ Government of Canada, Department of Justice, “Information for professionals”, available online at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/prof.html>.

¹⁸ Government of Canada, Department of Justice, “The *Divorce Act* Changes Explained”, available online at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/index.html> (also available at the link as a 309-page PDF version).

- provide training sessions for professionals, and to update its public-facing PLEI.
- Provincially: Community Legal Education Ontario (CLEO) has plans to update its print and online family law PLEI, including its:
 - online [Steps to Justice](#)¹⁹ website
 - online [Steps in a Family Law Case](#)²⁰ flowcharts
 - print and online [Family Law Series](#)²¹ publications
 - drafting of Regulations (including on relocation, on calculation and recalculation of child support, and consequential amendments to the *Federal Child Support Guidelines*)
 - changes to family court rules and forms
 - time for provincial/territorial governments to amend their legislation? (see below)

Transitional Provisions

There are 3 scenarios:

1. If a matter is disposed of prior to July 1, 2020 → the current / “old” parenting provisions of the *Divorce Act* apply.
2. If the matter is not disposed of prior to July 1, 2020 → the “new” provisions of the *Divorce Act* as amended by Bill C-78 apply, even for cases already started pre-July 1, 2020.
3. If it is July 1, 2020 or later → the “new” *Divorce Act* applies.

Note that the coming into force of the amendments does not constitute a change in the circumstances of the child for the purposes of s. 17(5) of the *Divorce Act*.²²

Ontario Legislation

The OBA Family Law Section sent a [submission to the provincial government](#)²³ highlighting how

¹⁹ <https://stepstojustice.ca/>

²⁰ <https://familycourt.cleo.on.ca/en/about-flowcharts>

²¹ https://www.cleo.on.ca/en/resources-and-publications/pubs?language=en&field_legal_topic_tid_i18n=87

²² See s. 35.7 [No change in circumstances] 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*, available online at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-78/royal-assent>.

²³ Ontario Bar Association, Family Law Section, “Submission Regarding Amendments to the *Divorce Act*, the *Family Orders and Agreements Enforcement Assistance Act* and the *Garnishment, Attachment and Pension Diversion Act*”,

Bill C-78 will: (a) create inconsistencies between federal and provincial law; and (b) create voids in provincial law for matters that exist in federal law. The “most practical implications” relate to different laws applying to parenting decisions for children of married spouses (usually the federal *Divorce Act*) versus those that apply to children of non-married partners (the provincial *Children’s Law Reform Act*); and the lack of clarity for the public, the legal profession, and third parties who might be involved (e.g., teachers, doctors). The differences between federal/provincial legislation are highlighted in **Schedules “A”-“E”** of the submissions.

The Ontario government has very recently asked the OBA Family Law Section for further submissions on these issues. The Ontario Legislature is currently on an extended summer break until October 28, 2019 (one week after the federal election).²⁴ So what Ontario decides to do is still very much in the air, as would be the timing of any amendments – stay tuned for further updates and let your [Family Law OBA executive reps](#)²⁵ know if you have ideas on adopting or modifying the federal changes in Ontario legislation.

In the meantime, it is even more important to be clear which legislation applies to a particular family – and put this in separation agreements, parenting plans, and court orders!

Concluding Thoughts

Many of the *Divorce Act* changes are long overdue and reflect important societal shifts. It will be interesting to see how the changes actually impact the public and the bar, and how some of the changes are interpreted by judges, mediators, arbitrators, etc.

For lawyers, this is a particularly exciting time as it is not very often that major legislation undergoes such significant amendments. Your expertise and knowledge in guiding your clients through these changes will be invaluable. There will also be unique opportunities for advocacy as you consider how the new amendments apply to a particular family’s unique circumstances.

July 2019, submitted to the Ministry of the Attorney General, Ontario, available online at: <https://www.oba.org/CMSPages/GetFile.aspx?guid=2bedae8d-5c9d-4b34-ad7b-9e67cd17cfec>.

²⁴ Legislative Assembly of Ontario, available online at <https://www.ola.org/en/node/3771>. See also <https://globalnews.ca/news/5359645/ontario-government-summer-break/>.

²⁵ <https://www.oba.org/Sections/Family-Law/Executive>