

Parenting Arrangements

One of the most important issues in a divorce is deciding what will happen to any children of the relationship. Decisions by parents and the courts will set out what a child's daily life will look like. Recent changes to Canada's *Divorce Act* have shifted the way we should think about these decisions. Instead of "custody" and "access", the law now refers to "parenting time". The law also considers who should be responsible for making certain important decisions about the child's well-being.

Note: Manitoba's *The Family Maintenance Act*, which governs common-law separations, still uses the terms "custody" and "access."

Parenting Time

Parenting time is time that a child is in the care of a parent or other guardian. The child does not have to physically be with the parent throughout this entire time. For example, time spent at school is considered part of parenting time, because ultimately the child is still in a parent's care. Parenting time will most often be shared between parents, and may be shared equally or unequally.

Decision-making Responsibility

Decision-making responsibility is the ability to make certain important decisions about a child's well-being. Some decisions will have a bigger impact on a child's well-being than others. For example, deciding on a treatment plan for a sick child is more important than deciding what colour shoes to buy them. A disagreement about treatment would be more likely to negatively impact the child than a disagreement about shoe colour. It might therefore be important to determine which parent can make those decisions.

The *Divorce Act* gives some examples of types of decisions that are likely to have a significant impact on the child's well-being:

- Health;
- Education;
- Culture, language, religion and spirituality; and
- Significant extra-curricular activities.

This list is not all-inclusive. It is important to look at the circumstances of each child in order to determine what might be an impactful decision for them. Some decisions might have a significant impact on one child's well-being, but not another's. For example, if it is important to one or both parents that a child is raised vegetarian, the child's diet may be an

Lesson Plan Overview

Family law is an area of law that deals with family relationships, and the rights and responsibilities associated with the creation, transformation, or discontinuation of those relationships.

This lesson plan introduces students to the concepts of parenting time and decision-making responsibility in family law, and examines and analyzes the main issues in parenting arrangement matters, including how parenting arrangements are decided, what happens if a parent or guardian wants to move with a child, how the child's wishes are considered, and contact by non-parents.

Activities & Discussion Questions:

- 1) Provide the students with Handout #1, a quiz on the general concepts of parenting arrangements.
- 2) Provide the students with Handout #2: *Haberman v Haberman*, and review the discussion points. Some answers have been provided.
- 3) Provide the students with Handout #3, an activity on access by extended family members.

Glossary

Contact Order – A court order allowing somebody other than a parent of a child to be able to spend time with the child.

Decision-Making Responsibility – The ability to make certain important decisions about a child's well-being.

Family Dispute Resolution Process – A process outside of the court system designed to help separated/divorced couples resolve disputed issues. Mediation

additional area that would require decision-making responsibility.

Decision-making responsibility applies only to the bigger, more significant decisions in the child's life. Even if one parent has all the decision-making responsibility, the other parent is still able to make ordinary day-to-day decisions during their parenting time, unless a court order prohibits this.

What Does a Parenting Arrangement Look Like?

Because every family's situation is different, there is no one parenting arrangement that will work for every family. Most often, it will be best for the child to spend time with each parent. The time spent with each parent might be equal, or the child might spend more of their time with one parent and less with the other. If there are concerns for the child's safety or care, it might be best for the child to only be able to see one parent under supervision, for example if that parent has substance issues or a history of abusive behaviour. In some relatively rare cases, it might even be best for the child not to see one parent at all. A parenting time arrangement will be as flexible or rigid as needed to serve the best interests of the child.

The same kind of variety can be shown about decision-making responsibility. The parents might have an equal say in important decisions, or one parent might be the decision-maker. Parents may also split decision-making responsibility—for example, one parent might make decisions about the child's religion, and the other might make decisions about the child's education.

Your right to access information about your child's development, such as report cards, medical or dental records, and psychological evaluations may depend on whether you have a court order under provincial or federal jurisdiction. If your order is under the *Divorce Act* (federal), unless the court order says otherwise, parents with parenting time or decision-making responsibility have a right to access information about their children's development. Under provincial legislation, both parents have the right to access information regardless of what the parenting arrangement looks like.

Who Decides on a Parenting Arrangement?

Arrangements about parenting time and decision-making responsibilities can be made a number of different ways. If the parents can agree with one another, an arrangement can simply be made by agreement. This would be an ideal scenario, since the *Divorce Act* requires parents to protect the child from any conflict arising from the divorce proceedings, to the best of their ability.

If there are disagreements about the parenting arrangement, the parents

is one example.

Mediation – A voluntary process in which disputing parties are guided to an agreement by a neutral third party.

Parenting Time – The time a child spends in a parent's care.

Parenting Order – A court order setting out the terms of a parenting arrangement.

Relocation – A move that would likely have a significant impact on the child's relationship with a parent or anyone else who is entitled to have contact with the child.

Relevant Law:

Federal Legislation:

Divorce Act

Criminal Code of Canada - sections 282 and 283

Provincial Legislation:

The Family Maintenance Act - sections 39(1), (2), (4), (2.1)

The Court of Queen's Bench Rules – 60.10(1)-(5)

The Child and Family Services Act – sections 78(1), (1.1), (4), (4.1), (4.2)

must first try to resolve their issues through a **family dispute resolution process**. This means a process outside of the court system, such as mediation. **Mediation** is a voluntary process where a neutral, third-party, skilled, professional counselor helps parents come to agreements about the care of their child. The goal of mediation is to hear the concerns of both parents and guide them toward an agreement that works for both of them. Mediation is available through the Family Resolution Service, as well as through private mediators.

If the dispute resolution process does not work, either parent can apply to the court for a **parenting order** that sets out a parenting arrangement for them. A court can also put a temporary parenting order in place until they can come up with a more permanent arrangement. Once a parenting order is in place, the parents must comply with it for as long as it is in effect.

If there is a change in the child's circumstances, either parent can apply to the court to have all or part of a parenting order changed. This may be needed, for example, if a parent's new work schedule conflicts with their parenting time set out in a parenting order. However, it is important to remember that until the change is granted, the old parenting order must still be followed.

Best Interests of the Child

Both federal and provincial law state that the best interests of the child must be the focus of any parenting order made by a court. The main things the court will consider are the child's physical, emotional, and psychological safety, security, and well-being. The *Divorce Act* lists a number of specific factors the court must consider, including:

- The child's needs;
- The nature of the child's relationship with each parent;
- The willingness and ability of each parent to maintain the child's relationship with the other parent;
- The child's history of care;
- The child's preferences, if they are known;
- The child's cultural, linguistic, religious, and spiritual upbringing;
- Any plans for the child's care;
- The willingness and ability of each parent to care for the child;
- The willingness and ability of each parent to cooperate with the other parent in matters concerning the child;
- Any history of violence in the family; and
- Any existing court order or proceeding that is relevant to the child's well-being.

This list is not all-inclusive. The court must consider all of the child's particular circumstances, including any other factors not included in the list above.

Family Resolution Service

The Family Resolution Service has various services that can help families going through separation or divorce.

Parenting Time Consistent with Best Interests of Child

Each parent should have as much parenting time as possible, as long as this does not conflict with the child's best interests. This does not mean there is a presumption of equal parenting time—it simply means that each parent should be entitled to as much parenting time as is best for the child. A parenting order granted by the court must follow this principle and allow each parent as much parenting time as is appropriate in the circumstances.

Does the Child Have a Say?

The court may consider the child's wishes when making a parenting order, but this is less common with younger children than older children. However, there is no magic age at which a child is able to decide. When considering the preferences of a child, the court will look at the maturity of the individual child, consult with professionals such as child psychologists, or request that the Family Resolution Service prepare a Brief Consultation Report. Because courts prefer to keep children out of parental conflict as much as possible, judges and lawyers typically do not speak directly to children about their wishes and concerns. The case of *Haberman v Haberman* (2011 SKQB 415) is a Saskatchewan case where the judge took a different approach.

Mobility

If a parent wishes to move to a new residence, the *Divorce Act* requires them to notify any other person who has parenting time or decision-making responsibility of the date of the move, the new address, and any new contact information that may apply.

If the move is a relocation, there are stricter requirements. A **relocation** is a move that would likely have a significant impact on the child's relationship with a parent or anyone else who is entitled to have contact with the child. A good example of a relocation would be a move to a different country or province. Even a move to a nearby town might be a relocation, for example if the other parent is not able to travel there.

When a parent wishes to relocate, they must notify the other parent at least 60 days before the move with the date of the move, their new address and contact information, and a proposal about how parenting time and decision-making responsibility could be exercised. If the other parent does not object to the relocation, or fails to object in the proper form within 30 days, the parent who wishes to relocate will be able to relocate.

If the other parent objects to the relocation, a hearing will be set for the court to decide what is in the child's best interests. When deciding what is in the child's best interests in a relocation hearing, the court must consider all the factors listed above dealing with the best interests of the

United Nations Convention on the Rights of the Child

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

child, along with some others, including:

- The reasons for the relocation;
- The impact relocation would have on the child;
- The amount of parenting time and level of involvement each parent has in the child's life;
- Whether the parent applying for the relocation complied with the notice required under the *Divorce Act* or any other legislation, agreement, or court order;
- Whether there is an existing order or agreement specifying where the child must live;
- The reasonableness of the relocating parent's parenting proposal; and
- Whether each parent has complied with their existing obligations under family law legislation, an order, or agreement, and the likelihood they will comply in the future.

Mobility cases are difficult to predict because they are based on the best interests of the child without a presumption in favour of either parent.

Under the *Criminal Code*, it is a crime to “take, entice away, conceal, detain, receive, or harbour” a child with intent to deprive a lawful parent or guardian of that child. This means that relocating a child without court approval could result in a criminal charge and possibly even a prison sentence.

Other Family Members

Grandparents and other relatives can usually reach agreements with parents about contact with children. However, in some cases there is a dispute as to whether extended family members should have contact with a child or what type of contact they should have. If this happens, the parties can try to work out their issues through a family dispute resolution process. If this fails, the *Divorce Act* allows a person other than a parent to apply to the court for a **contact order** between that person and the child. The court may also put a temporary contact order in place until a permanent decision can be made.

When making a contact order, the court must consider all the factors listed above dealing with the best interests of the child, but must also consider whether contact between the applicant and child could still happen, for example during one of the parents' parenting time.

Contact orders can take a variety of forms, just as parenting orders can. Like parenting orders, contact orders can also be varied if the child's circumstances change. If a contact order is in place, the person the contact order applies to has a right to be notified when there is a change of address, and also has the right to object to a relocation.

In Manitoba, *The Child and Family Services Act* also gives grandparents and other extended family members the right to apply for contact

Grandparent Advisor

The Grandparent Advisor provides information about access to grandparents and other extended family members. The Grandparent Advisor will consult with interested parties and try to mediate a satisfactory solution for the child and parties involved. The consideration is always what is in the best interest of the child.

If disputes can't be resolved in mediation, the grandparent advisor can also advise about next steps and refer to the Grandparents' Access Guide.

through the court. The Family Resolution Service has a Grandparent Advisor that provides information and mediation about grandparent and extended family member contact with children.