

# FAMILY LAW

## MOBILITY or RELOCATIONS

# *Nova Scotia Parenting and Support Act*

# PSA: LANGUAGE

- Parenting plans: s. 17A, s. 2(ia)  
written agreements re parenting
- Orders for parenting arrangements: s. 18
  - **Custody**
  - **parenting time** if parent/guardian: s. 2(ib)
  - **contact time** if grandparent/other: s. 2(aa)
  - **best interests**: s. 18(5), 18(6)

# PSA: RELOCATION OVERVIEW

- (1) mandatory notice: ss. 18D, 18E, 18F  
relocation procedure
- (2) relocation presumptions: s. 18H(1), (3)  
pro: primary caregiver  
con: substantial shared parenting  
in-between: no presumption
- (3) new relocation factors: s. 18(4)  
include “reasons for move”

# MANDATORY NOTICE

- **2 kinds:** “change of residence”, “relocation”
- Any **change of residence**, either parent/gdn:  
mandatory 60-day written notice: s. 18D  
to “parent”, “guardian”, “person with contact”
- Any **relocation**, either parent:  
relocation defined: s. 18E(1)(b)  
mandatory 60-day written notice: s. 18E  
contents of notice more demanding  
can relocate after, if no objection
- Exceptions: family violence, no relationship, etc.  
ex parte application to waive, s. 18F

# NOTICE ISSUES: S. 18D

- Notice of “change of residence”  
s. 18D(3): “in writing”, minimum contents  
date of move, location/address, contact info
- “as much notice as possible”: s. 18D(4)  
“at least 60 days in advance”: s. 18D(5)  
or reasons why not
- But s. 18D(6):  
different notice in order/reg’d agreement
- educative: “good parental behaviour”  
non-compliance: factor in s. 18H(4)(j)

# S. 18E NOTICE: RELOCATION

- “relocation” defined: s. 18E(1)(b)  
“change of place of residence”, plus  
“significant impact” on child’s relationship
- notice of relocation: s. 18E(2), (3)  
same as s. 18D, plus proposal for change
- “as much notice”, at least 60 days
- consequences? s. 18G  
relocate on date, unless application
- non-compliance: factor in s. 18H(4)(j)

# S. 18H: RELOCATION BURDENS

- *Gordon* (SCC 1996):
  - no presumptions or burdens
- Now 3 categories of cases: s. 18H(1) PSA based on parenting arrangements
  - (1) burden on parent opposing move:
    - if “primary caregiver” moving & other parent “not substantially involved”
  - (2) burden on parent moving:
    - if “substantially shared parenting”
  - (3) both bear burden for “in-between” cases

# SHARED PARENTING

- Presumption against: s. 18H(1)(b)  
“substantially shared parenting arrangement”  
at time application is heard: s. 18H(3)
- Not just “time”: s. 18H(3)  
also care-giving, ordinary decision-making
- But how much “time”?  
50%? doesn’t say “equal”  
40%? 35%?  
not as low as 30%, but BC cases...

# PRIMARY CAREGIVER

- Presumption in favour: s. 18H(1)(a)
- Not just “primary care”: much more
- “Primary caregiver” moving
- AND other “not substantially involved in care”
- “Involvement” not enough, “substantial”
- Look to s. 18H(3): stresses “care”
- Not just “time”, but...
  - more than 60-65%, by definition
  - at least 75-80%
  - 85%
  - as high as 90%? (just 3 days/nights/mo)

# IN-BETWEEN: NO PRESUMPTION

- S. 18H(1)(c): residual category
- Both bear burden of proving “best interests”
- Defined by s. 18H(1)(a) and (c) decisions
- E.g. if 60/40 for (b), 85/15 for (a)

Would leave (c): 60 to 84%

- Also shifting parenting arrangements?

# BEST INTERESTS FACTORS IN RELOCATION

- S. 18H(4)(a) to (j), add to s. 18(6)(a) to (j)
- Must be proved by parent with burden,  
or by both parents under s. 18H(1)(c)
- Helpful guidance
- “Reasons for relocation”: s. 18H(4)(b)  
reverses *Gordon* (BC did too)
- Effects on child: (c), (d)
- Prior compliance with orders: (f)
- Given notice, proposal: s. 18H(4)(j)
- Access issues: (h) expense, (i) transportation

# PSA vs DIVORCE: RELOCATION

- *Gordon v Goertz* still law under *Divorce Act*
- Significant differences *PSA* vs *Divorce Act*
  - notice, burdens, reason for move
  - BC experience since 2013
- Divorce orders paramount
  - Variations clear: prior order
  - Unmarried parents clear: *PSA*
- Initial claims, if married
  - Spouse under *PSA*, but divorce trumps
  - Gordon* will dominate

# PSA

- Step-parent child support
  - “settled intention” test: s. 2(i)(ii) “parent”
  - reverses *Reed v Smith* (NSCA 1988)...finally
  - test same as for “standing in place of parent”  
*Divorce Act, Chartier* (SCC 1999)
- Spousal support
  - 2 years’ cohabitation in s. 2(m)(v) “spouse”
  - also now “cohabited in a conjugal relationship” and “have a child together”: s. 2(m)(vi)
- Use of family residence: s. 7
  - if “best interests”: s. 7(2)
  - if no children, s. 7(3): circumstances (a) to (d)
  - interim/temporary, not proprietary: ss. 7(4), (5)
  - enough to undo *Rudderham* (NSCA 1988)?

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Questions?

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