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### **PARENTING LAW AND PRACTICE IN CANADA**

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**Release No. 6, November 2023**

*Parenting Law and Practice in Canada* guides the practitioner through all aspects of law and practice related to custody and access in Canada, including the impact of the changes to the *Divorce Act*. The expert commentary covers the stages of a custody access proceeding including interim proceedings, and decisions on the merits, enforcement, variation, and appeals. This work examines the substantive and procedural law as well as negotiation, tactical, and advocacy skills. Alternative dispute resolution methods are considered, as are other topics of current interest such as the expansion of access rights, including access for grandparents, child representation, mobility rights, and the effect of religion upon custody and access.

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### What's New in this Release:

- This release features updates to chapter 6 (Determining Best Interests), 7 (Change in the Place of Residence and Relocation in Parenting Cases), 9 (Parenting Time), 11 (Variation of Parenting and Contact Orders), 15 (Enforcement of Custody and Access Orders), 16 (Hague Convention on the Civil Aspects of International Abduction), and 18 (Alternative Dispute Resolution).

### Highlights:

- **Change in the Place of Residence and Relocation in Parenting Cases—Introduction; Change in the Place of Residence and Relocation in the *Divorce Act*—Case Law—Alberta**—While the mother relocated prior to the *Divorce Act* relocation amendments coming into effect, she failed to show any error in the decision ordering that the children be returned, and her formal application for relocation would have to comply with the requirements of the *Divorce Act* relocation amendments. In *YZVM v. DTT*, the parties were married with two children. In February 2021, the mother left the family home and moved to a women's shelter. On March 2, 2021, she obtained an Emergency Protection Order, alleging to have witnessed the father engaging in conduct with the children that was of asexual nature. However, an R.C.M.P. and Children's Services investigations were conducted, files were closed with no charges laid. The father applied to have the children returned to the family home. The chambers judge made an interim order that the children be returned to the Hythe area until the court had an opportunity to hear any relocation application that the mother might bring. The mother appealed. The amendments to the *Divorce Act*, regarding relocation came into force on March 1, 2021, prior to any of the orders given in this case. The rationale for the amendments requiring notice of a relocation was to help protect children's relationships with specified individuals. Notice allows the parties the opportunity to discuss the proposed relocation and attempt to resolve issues. The amendments also deter "self-help". In this case, the mother moved before the notice provisions came into force, but the relocation amendments were in effect when she eventually sought her first relocation order, after the father's successful application. Where the relief sought by the father was aimed at redressing the mother's unilateral move and restoring the status quo, it was reasonable for the chambers judge to be concerned about delay and whether her order would "put the children on a particular path" where it would be "harder for the Court to reverse the direction". The chambers judge was also not shown to have made any palpable and overriding error his appreciation of the facts. The mother's appeal was dismissed: *YZVM v. DTT*, 2022 ABCA 87, 2022 CarswellAlta 671, 69 R.F.L. (8th) 249 (Alta. C.A.).
- **Variation of Parenting and Contact Orders—Material Change a Prerequisite to Variation—Case Law—Newfoundland**—Where the judge found that the father sought variation in parenting so he could receive the child tax benefit, the judge did not err in finding no change

of circumstances and dismissing the application to vary parenting. In *S.M. v. J.A.*, orders for child support and parenting were made, with the parties having joint custody and the father ordered to pay child support. The father worked as a pipefitter on contract jobs that were not guaranteed to continue indefinitely, and this was known at the time that the orders were made. After one employment contract ended, the father did not seek pipefitting work or work at the pipefitting jobs offered to him and decided not to seek or work at any type of employment. The father's applications for a variation of parenting and child support were dismissed. The applications judge found that the father deliberately created his alleged inability to pay the existing support orders for the express purpose of avoiding his support obligations and found that the primary reason he wanted parenting varied was so that he could receive the child tax benefit and to reduce the amount of support he had to pay. The father's appeal was dismissed. The judge concluded that the father failed to establish the requisite material change in circumstances required under subss. 17(4) and 17(5) of the *Divorce Act*. The majority found that the father failed to establish any error on the part of the applications judge in these findings, and the appeal was dismissed: *S.M. v. J.A.*, 2023 NLCA 1, 2023 CarswellNfld 18, 83 R.F.L. (8th) 22 (N.L. C.A.).

## **ProView Developments**

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