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# THE *AFCC-Ontario PARENTING PLAN GUIDE AND TEMPLATE*: JURISDICTIONALLY-SPECIFIC RESOURCES FOR FAMILY JUSTICE PROFESSIONALS AND PARENTS

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This article discusses the development of the concept of parenting plans and the different approaches to providing materials that can help parents and professionals to make individualized, future-oriented plans for children post-separation. More than a quarter century after American states began to enact laws to encourage the use of parenting plans, Canada amended its legislation to abandon the proprietary concepts of “custody” and “access,” and encourage the use of parenting plans rather than “custody orders”. To support the making and use of individualized, child-focused parenting plans, the Ontario Chapter of the Association of Family and Conciliation Courts (AFCC-O) prepared its *Parenting Plan Guide* and *Parenting Plan Template*. These web-based materials are available without charge to parents and their professional advisors. The *Guide* discusses the value of parental co-operation and planning, while recognizing that in cases where there are serious issues of abuse, violence or parental mental health, a protective judicial role and court orders may be needed. The *Guide* offers advice on the making of developmentally-appropriate parenting plans, and the *Template* provides possible alternatives for the wording of specific clauses. While the available parenting plan materials from different jurisdictions have broadly similar content, there is value in having family justice organizations, including chapters of the AFCC, develop their own materials, that are consistent with the laws, justice processes and resources of their jurisdiction. The Ontario experience suggests that judges, lawyers and parents may be more likely to use jurisdictionally-specific materials rather than more generic resources.

## Practitioner Key Points

- The use of a voluntary parenting plan is usually a preferable way for parents to make post-separation arrangements for the care of their children, though in cases of violence, substance abuse or intransigence, the courts will continue to have a vital role in making parenting or custody orders.
- Family Law professionals, including lawyers, mediators and judges, need to have access to resources that can be provided to parents to explain the effects of separation on themselves and their children, and to help them make child-focused, developmentally appropriate plans for their children.
- It is often helpful to parents to think in terms of a four week planning schedule for planning parenting time.
- Professionals should educate parents about the need to change plans as the circumstances their children and themselves change; while it is often preferable if parents can make changes without involving professional advisors, there is an important role for professionals to be involved in reviewing and revising plans.
- Organizations of family justice professionals should take a lead in ensuring that there are materials that reflect the laws and services available to their state or province that to assist parents and professionals in making parenting plans.

**Keywords:** *Family justice professional organizations; Information for separating parents; Parenting plans.*

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## I. INTRODUCTION

More than a quarter century after American states began to enact laws to encourage use of parenting plans, in March 2021 amendments to Canada’s *Divorce Act* came into force that abandon the

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archaic, proprietary concepts of “custody” and “access,” and encourage the use of “parenting plans” to allocate or share “parenting time” and parental “decision-making responsibility.”<sup>1</sup> As part of a process of preparation for the coming into force of the new legislation, and to support and encourage the making and use of developmentally-appropriate, child-focused parenting plans, the Ontario Chapter of the Association of Family and Conciliation Courts<sup>2</sup> (AFCC-O) prepared its *Parenting Plan Guide* (the “*Guide*”) and *Parenting Plan Template* (the “*Template*”), making these web-based materials available without charge to parents and their professional advisors.<sup>3</sup> The *Guide* discusses the value of parental cooperation and planning, while recognizing that in cases where there are serious issues of abuse, violence or parental mental health, a court order may be more appropriate and protective than a voluntary agreement. The *Guide* offers advice on the making of age-appropriate parenting plans, while the *Template* offers alternatives for the wording of specific clauses of a parenting plan. These materials may be used by parents who are making plans on their own, but they are also intended to be resources that family justice professionals, including lawyers and mediators, can provide their clients so that they will be better prepared to address issues with their professional advisors.

While drafted to be consistent with Canadian legislation, the *AFCC-O Parenting Plan Guide* and *Template* are useful to parents and professionals in other jurisdictions, particularly in other parts of Canada. The preparation and dissemination of these materials had an added benefit, in so far as this project is a community-building and profile-raising undertaking for the Ontario Chapter of the AFCC.

This article begins with a discussion about the development of the concept of parenting plans, which replaces the traditional approach of having orders and agreements for custody and access (or visitation). Parenting plans are intended to encourage parents and professionals to make individualized, future-oriented plans for their children post-separation. We then focus on the Ontario project, explaining the process that resulted in the preparation of these materials. We discuss the utility for the making of parenting plans and their initial reception by the courts in the province.

There have been a number of similar, previous projects that developed materials to help parents and professionals make parenting plans. Some of the projects have been jurisdictionally specific and sponsored by state courts. Others are commercial ventures or have been undertaken by professional organizations, usually with a focus on specific American states. Most of the available parenting plan materials have broadly similar content, though some reflect the legislation in specific jurisdictions, including some states that have a legislative presumption of equal shared parenting in that jurisdiction.<sup>4</sup> The experience reveals that there is value in having family justice organizations, including chapters of the AFCC, develop their own jurisdictionally-specific materials. The recent Ontario experience suggests that judges, lawyers and parents may be more likely to use jurisdictionally based materials than more generic resources.

## II. PARENTING PLANS

### A. UNITED STATES

The idea of having a parenting plan, rather than the more traditional order (or agreement) for custody and access,<sup>5</sup> developed in the United States and first received legislative recognition in Washington State in 1987.<sup>6</sup> The traditional approach to divorce and separation was premised on one parent (usually the custodial mother) having virtually all of the rights and responsibilities regarding children, and the other parent having narrowly defined rights to visit at specified times and an obligation to pay child support. The traditional regime was also premised on a court making a final order, as is the common conclusion of civil proceedings. Although parents could end their custody litigation without a trial, it was normally expected that this agreement would be reflected in a court order. While legislation allowed for the “variation” of a prior custody order, it required that the moving party persuade the Court that there has been a “material change in circumstances.”<sup>7</sup>

By contrast, a parenting plan is premised on the recognition of parental responsibilities rather than parental rights. A parenting plan sets out a more detailed, individualized articulation of post-separation parenting responsibilities, including a schedule for the sharing of parenting time, a specification for how significant decisions are to be made (including about issues such as education, health care, religion and extracurricular activities). Parenting plans are usually premised on both parents having a substantial and continued involvement in their children's lives, and often include aspirational statements about the commitment of each parent to recognizing the importance of the other parent in their children's lives. A parenting plan may be incorporated in a court order if both parents consent, but the presumption is that a parenting plan will be a result of parental negotiation, often facilitated by professionals like mediators or lawyers, rather than litigation.

There is a recognition that judges are not well placed to make detailed orders for parenting, although increasingly the use of parenting plans is also resulting in courts making more detailed orders for parenting than in traditional custody orders, even after contested proceedings.<sup>8</sup> Unlike the traditional approach that is premised on a final resolution of issues, parenting plans are premised on the recognition that the circumstances of children and parents will change and that plans for children will need to be revised as they mature and their developmental needs evolve. Accordingly, parenting plans typically include provisions for periodic discussions between parents and a review of the plan, with a process for non-judicial dispute resolution if the parents cannot in the future agree about how the plan should be changed.

In 2002, the American Law Institute (ALI), an influential national organization that promotes law reform, published its *Principles of Family Dispute Resolution*, advocating the use of parenting plans.<sup>9</sup> More than 30 American states have now enacted legislation that permit or mandate the use of parenting plans.<sup>10</sup>

A number of bodies in the United States have prepared materials to encourage and assist in the use of parenting plans. All of these materials provide at least a brief summary of research in the area of developmentally appropriate parenting schedules for children of different ages and are informed by both legal and psychological thinking. The highly respected American Academy of Matrimonial Lawyers published its *Model for a Parenting Plan* in 2005,<sup>11</sup> and its *Child Centered Residential Guidelines* in 2015.<sup>12</sup> As stated in its Introduction, the latter document was principally authored by a prominent child psychologist with extensive experience in working with families and children going through separation, Dr. Robin Deutsch.

In a number of American states, including Arizona,<sup>13</sup> Massachusetts,<sup>14</sup> Minnesota,<sup>15</sup> Ohio,<sup>16</sup> and Washington,<sup>17</sup> guides for parenting plans have been prepared by interdisciplinary committees affiliated with the family justice system in each state, for use by parents and lawyers. These materials include a caution that they are not intended to replace legal advice and are not binding on the courts. However, given that the materials are posted on court or government websites, and that judges had some role in their preparation, the materials have a significant measure of authoritative-ness, at least in their states. All of the guides start from the premise that significant, continuing involvement of both parents is generally in the interests of children, but stress the need for individualized plans, and emphasize that if a parent is violent, abusive, or has serious mental health issues or parenting capacity issues, involvement of that parent in a child's life may need to be limited, supervised or suspended. The materials address both developmental and legal issues, but they vary considerably in depth and range of issues addressed. Some, such as the Massachusetts materials, focus mainly on communication between parents and the parenting time schedule, while others, like the Washington materials, address a broader range of issues and have helpful checklists of issues to address.

None of the free publicly available materials have suggested wording for specific clauses. There are, however, two commercial ventures, [custodyxchange.com](http://custodyxchange.com) and [ourfamilywizrd.com](http://ourfamilywizrd.com), that for a fee, allow users to get automated assistance with the drafting of a parenting plan. These commercially available materials include a relatively brief summary of developmentally appropriate information about parenting plans for children of different ages. [Custodyxchange.com](http://Custodyxchange.com) has made a particular effort to *market* its services on a jurisdictionally specific basis for users doing a Google

search in any state or province. However, the website's materials are generic and do not refer to the law of specific jurisdictions. As a consequence, Custodyxchange.com may be somewhat misleading for Ontario users about issues like child support, where the impact of different parenting time may significantly impact the amount payable.

## B. CANADA

It is only with the *Divorce Act* amendments and Ontario statutory provisions coming into force in March of 2021 that there has been much legislative recognition in Canada of the concept of "parenting plans."<sup>18</sup> However, some justice system professionals in Canada, influenced by American professional literature and practice, have long been using them. Even before the legislation came into force, Ontario courts accepted that a judge may decide to a "parenting plan," and avoid using the terms custody and access with their connotations of "winners" and "losers."<sup>19</sup>

The coming into force of the amendments to Canada's *Divorce Act*<sup>20</sup> is serving as an impetus for encouraging and formalizing their use, with the new law including the following definition:

16.6 (2) **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.

The new law provides that parents who have made a parenting plan "may" jointly submit it to the court when obtaining a divorce. If they do, the court "shall" include their parenting plan (or some portion of it) in the parenting order, unless the court determines it is not in the child's best interest to do so.<sup>21</sup>

## III. THE AFCC-O PROJECT

The project for preparation of the *AFCC-O Parenting Plan Guide and Template* originated in response to comments made by a speaker at the Family Law Summit of the Law Society of Ontario in April 2018, during a presentation on making parenting plans. Toronto lawyer, Jennifer Wilson<sup>22</sup>, who shared materials from several American jurisdictions with attendees, lamented the absence of parenting plan precedents for Ontario lawyers, judges and parents. Ms. Wilson also observed that some Ontario professionals did not seem to appreciate the developmental needs of children, especially young children, when making parenting schedules.

A number of AFCC-O members left that session motivated to address the identified needs. The impetus for developing these materials increased in May 2018 when the federal government introduced Bill C-78,<sup>23</sup> which were amendments to the parenting provisions of the *Divorce Act*, with specific reference to "parenting plans."

In December 2018, the Board of the AFCC-Ontario Chapter appointed a ten-member committee (the "Task Force"), chaired by Queen's University Law Professor, Nicholas Bala, to prepare parenting plan materials.<sup>24</sup> The Task Force had six lawyers and four mental health professionals, including members from different regions of the province. The Task Force met approximately once a month by teleconference for a year, with Professor Bala doing much of the initial drafting, but extensive input, and discussion among the members. The Task Force drew on American parenting plan documents,<sup>25</sup> as well as materials prepared by Canada's Department of Justice.<sup>26</sup> In the latter stages of the project, other professionals, including members of the judiciary, reviewed and commented on drafts of the *Guide* and *Template*.<sup>27</sup> In the Fall of 2019, the draft materials were distributed to all members of the AFCC-Ontario, and presented at the Chapter's annual conference in October 2019; comments received from the membership resulted in further revisions. The project was completed in January 2020, and the materials were posted on the Chapter's website in PDF and Word, with an express statement that the materials can be freely used or adapted. They also include

a statement that they are not intended to provide legal advice, and that the AFCC-O and the drafters accept no liability for their use.

Although the materials discuss the value of making plans without court involvement, they also discuss the importance of seeking professional advice, and in particular, in bolded statements, raise concerns about voluntary arrangements in cases where there has been domestic violence, or a parent has mental health or substance abuse problems. The materials also include hyperlinks to such sources of professional assistance in the province and mediation services affiliated with the Ontario Family Courts.

At an early stage in the drafting process, a decision was made to have both a *Parenting Plan Guide* and a *Parenting Plan Template*. The *Guide* discusses post-separation parenting and developmental considerations in making plans for children of different ages, as well as considering some of the issues that parents most commonly have to address in the context of parental separation. The *Template* briefly discusses the issues that are most commonly addressed in making Parenting Plans, and suggests wording, often with possible alternatives. The *Template* emphasizes the importance of parents making, and revising, their own plans with appropriate professional assistance, and not simply using the text provided. Having a *Template* with possible wording for different terms is a feature that is not provided by other freely available materials and adds to the utility of the Ontario materials.

The materials focus on parenting issues and do not address other related issues, such as child support, in any detail. Although the materials emphasize that there is a relationship between the financial and parenting issues, and identify that if a parenting schedule results in a shared parenting situation (each parent having a child at least 40% of the time) as this may affect child support, for a discussion of child support, readers are referred by hyperlinks to other materials such as those prepared by Community Legal Education Ontario (CLEO) and the federal government to address the details.<sup>28</sup> Parents are reminded of the value of legal advice, in particular if parenting arrangements are made or changed to result in a shared parenting situation (at least 40% of the time with each parent).

The AFCC-O *Guide* and *Template* were written to be comprehensible and useful for parents without requiring the involvement of legal or mental health professionals. These materials are also intended to be resources for family justice professionals and their clients when making parenting plans. Individual professionals may decide that they prefer other materials,<sup>29</sup> or that they will supplement the AFCC-O materials with other print, video, audio, or web-based materials. The critical need that is being met is the provision of educational materials that will help parents to orient them to the needs of children in the context of separation, and to the issues that will arise as they make parenting plans. Educational guides and templates enable the professional to be more efficient, and help parents and their children when the plan is initially made, and when it may be necessary to revise the plan.

#### IV. USING THE AFCC-O GUIDE

The *Guide* provides suggestions intended to help improve communication and cooperation between parents and offers guidance for the making of plans to co-parent a child after separation. A central theme of the *Guide*, and the recent legislative amendments, is that in most cases, it is in the best interests of the children for their parents to cooperate and minimize conflict between them and for their children to have a significant relationship with both parents.

The *Guide* provides a useful summary of basic social science knowledge about the effects of separation on children, child development, and parenting. Professionals who are involved in a family case, even on an occasional basis, should be fully familiar with the issues and approaches in these materials. Professionals, whether lawyers, judges, mediators or otherwise involved in the family dispute resolution process, should be encouraging all parents to carefully read these (or similar)

materials prior to starting to make plans. Indeed, it will be helpful for parents to read these materials if they are even considering separation.

### A. STARTING THE DISCUSSIONS – THE PARENTING TIME SCHEDULE

The parenting time schedule is often regarded as the foundation of a parenting plan, as many other issues stem from the schedule. However, if the schedule is contentious, it may be helpful to start discussions about issues that are less contentious; indeed, an interim resolution of such issues as schooling or extracurricular activities may help parents to develop a child-focused, logistically realistic schedule.

One of the features of discussions about developing a “plan” rather than seeking a court “order” is that using the term plan suggests that the parents can have a temporary plan, or a period to “test-drive” one arrangement, and then assess how it is working for themselves and their children. There may also be a “step up” plan, where a parent who was less involved in childcare is provided increased frequency or duration over a period of time as he/she gains experience having sole responsibility for the children. This type of plan may be especially appropriate if children are very young and need relatively intensive care, or where the primary caregiver has genuine fears and needs to be reassured that the other parent can meet the children’s needs.

While some individuals and groups in Canada advocated for the enactment of a presumption of equal parenting time, the law in Ontario (both federal and provincial) does *not* have any presumptions about parenting time schedules.<sup>30</sup> Indeed, consistent with social science research, the law requires that parenting schedules are based on an assessment of the best interests of the individual child. The statutory amendments provide that the court shall give “primary consideration to the child’s physical, emotional and psychological safety, security and well-being.”<sup>31</sup> Factors that should be taken into account when making an agreement or seeking an order include:

- the children’s needs, given their ages and stages of development, including the children’s need for stability;
- the nature and strength of the children’s relationships with parents, family and others;
- each parent’s willingness to support the children’s relationship with the other parent;
- the children’s views and preferences, giving due weight to their age and maturity;
- the children’s upbringing and heritage, including indigenous upbringing and heritage; and
- any family violence.

Although the legislation and Canadian case law clearly do not establish a presumption of equal parenting time, many self-represented parents, (and some lawyers) seem to assume that there will be equal time (very often week-on-week-off, even for very young children), even if parents were not equally sharing parental responsibility while living together. Reference to the *Guide* may help to dispel such misconceptions.

### B. DEVELOPMENTALLY APPROPRIATE PARENTING SCHEDULES

The *Guide* discusses developmental stages, needs, and capacities of children of different ages, and relates developmental issues to appropriate parenting time schedules for children of different ages.<sup>32</sup> The special needs and vulnerabilities of preschool children, and especially children in the first three years of life, receive particular attention. Depending on the parenting history and the children’s needs, overnight time with each parent may well be appropriate for pre-school children, but arrangements involving relatively lengthy absences from either parent, such as a week about shared parenting arrangement, are generally not appropriate for very young children.<sup>33</sup>

The *Guide* suggests that discussions of a parenting time schedule can often be most usefully based on a “regular” schedule in a 4-week cycle, with some provisions for a holiday schedule.<sup>34</sup> Many parents implement a 2- week schedule (which, lawyers and judges often refer to in a

shorthand, but incomplete way, such as 2-2-3, or an alternate weekend plus Wednesday overnight). Even with a 2-week cycle, it is often easier for parents to understand or visualize it based on a 4-week calendar. The *Guide* and *Template* have examples with a number of different schedules, with a discussion of developmental factors to consider at different ages. Of course, in some cases, the employment schedules of parents or other factors may make it more appropriate to have a different cycle, perhaps based on a 3-week rotation.

As is common with similar materials for parents from other jurisdictions, the AFCC-O materials do *not* give citations to research studies for various statements about children's needs and parental behaviour. The concern about giving citations to specific research studies is that no list will be complete or current, and parents who lack perspective and social science education may misinterpret individual studies. Of course, parents who are interested can do their own internet-based searches for research studies, sometimes finding insight, but more often looking for support for their positions.

The AFCC-O materials reflect the collective views of a multi-disciplinary group of leading Ontario family justice researchers and professionals. They were prepared after receiving comments from a large number of professionals and reflect a professional consensus in the province about the significance of current child development research for post-separation parenting. While the materials are expected to primarily be used for informational purposes, there may be scope for judicial citing of some of the statements about child development and appropriate parenting plans for children of different ages on the basis of the evidentiary doctrine of judicial notice.<sup>35</sup> For example, there are statements in the *Guide* about the value of overnight parental care by both parents, even for infants.<sup>36</sup> There are, however, also statements about the vulnerability of very young children, and need to have graduated increases in care when one parent, usually the father, has not had much involvement with the child and the value of "step-up care" arrangements.

In *Saunders v. Ormsbee-Posthumus*, one of the parties in a dispute over parenting cited the *Guide*. In making an order that increased the father's time with the child, aged 4 ½ years, from four to five days per two weeks and established a "step-up" plan to reach equal time and joint decision-making, Justice Trousdale of the Ontario Superior Court observed:<sup>37</sup>

[73] I note that the *AFCC-O Parenting Guide* is not binding on the court. However, it does provide a great deal of very helpful information to the court, which would also be of assistance to the parties in this case now and in the future.

In *J.N. v. A.S.*, Justice Himel quoted several paragraphs from the *Guide* about the needs of pre-school children, aged three to five years, and stated that they provide "helpful considerations for parents, mediators, lawyers and judges when they are developing parenting time schedules,"<sup>38</sup> and she increased a father's parenting time with his four-year-old son. Justice Himel went on to quote another paragraph about the need to minimize the number of transitions in high conflict cases, like the one before her, and put into place a plan that limited the number of transitions.

### C. TENSIONS IN MAKING A PARENTING PLAN

There are inevitably tensions in making a parenting plan. Greater specificity and detail may help reduce immediate conflict, but also create a greater need for review as circumstances change. Moreover, greater specificity provides clearer expectations of each parent but may also lead to allegations of breach and applications for contempt. Professionals hope that parents will co-operate with the implementation of the plan that they agree to, but they may also be concerned about whether and how terms may be enforced in court. Plans with less detail are often helpful, because plans with too much detail may create unanticipated conflict, and the more detail that is provided, the sooner there will likely be a need for review. Once again, one size does not fit all in the development of parenting plans.

The *Guide* suggests that in most cases siblings should share the same parenting time schedule, both for logistical reasons and to allow them to provide emotional and practical support for one another.<sup>39</sup> However, there are situations, for example involving children with special needs or talents, or a large difference in age, when siblings will have different schedules, almost invariably with some opportunity for them to spend time together.

## V. DRAFTING A PARENTING PLAN: THE TEMPLATE

The *Guide* is intended to be used in conjunction with the *AFCC-Ontario Parenting Plan Template*, which offers suggestions for the wording of specific clauses and explains the practical implications of some of the choices. The *Template* offers a number of alternatives for certain clauses.

Canada has a diverse population in such dimensions as cultural and religious heritage, language, gender identity and sexual orientation of parents. The materials make an effort to recognize this diversity. However, due to space limitations, the materials are not fulsome in certain areas (such as religious holidays). Professionals may choose to supplement the AFCC-O materials with modified templates and they may wish to translate the materials into a language other than English.<sup>40</sup>

### A. A PARENTING PLAN AS A DOCUMENT

As discussed in the *Guide* and *Template*,<sup>41</sup> a parenting plan may be a distinct document or can be incorporated into a larger Separation Agreement that deals with other issues, such as property and support issues.

There is value in having a Parenting Plan as a separate document, as it emphasizes to parents that issues related to the care of their children are separate from other economic and legal affairs. This approach also facilitates future reviews of the Plan. The matters to be resolved by the parents, the nature of the parents' relationship, the stage of the separation process and the role of family justice professionals involved (e.g. judge, lawyers and/or mediator) will all influence whether the Plan is in a separate document.

In cases where court enforcement is not likely to be a concern, lawyers should consider having the Parenting Plan as an Appendix or Schedule to a Separation Agreement, with a stipulation that parents may review and amend the Plan without affecting the validity of the Separation Agreement. This may encourage timely, child-focused reviews by the parents.

### B. INCORPORATING A PARENTING PLAN INTO A COURT ORDER?

The decision about whether to ask a court to incorporate a parenting plan, or part of it, into a court order will typically be made after the Plan is complete, sometimes quite a long time after it has been negotiated and signed. It is, however, important to consider this question as negotiations and drafting proceed, as this may affect the contents of the Plan, and, in particular, the degree of detail.

The advantage of incorporating a parenting plan into a court order is that it will likely encourage compliance, as, if necessary, court processes can be used to enforce the plan, or at least its major provisions. The major disadvantage is that revising an order is a relatively complex and expensive process.

### C. DETAILS OF THE PARENTING TIME

For many parents, their plan should include both a regular schedule, and a variation for holidays, school breaks, summer, and perhaps for special days like a child's birthday. Many parents, especially in the period after separation, also benefit from a clear plan that sets out details about the



location and time for pick-ups and drop-offs, recognizing that over time these details will likely have to change. However, a plan that is detailed, or has provisions that specifies times, places or has other specific provisions, is almost certain to need to be reviewed as the circumstances of parents and children change.

#### **D. MAKE-UP TIME AND THE RIGHT OF FIRST REFUSAL**

One or both parents may wish to address the right of first refusal for instances when the parent with assigned care is unable to personally supervise the children and have a provision for “make-up time”. The *Guide and Template* identify concerns about this type of clause, as it requires parents to report their activities to one another. If conflict is high, this clause can exacerbate tensions, and if conflict is low, many parents can resolve these situations informally.

When the period of absence is short (for example three to six hours), this type of clause can be constricting as it prevents a parent from hiring a babysitter or asking family members for help until after the non-resident parent has been offered the opportunity to care for the children. Increasingly, these clauses tend to come into effect when the parent with care is not available for one or more overnights, for example, for business trip or a family emergency. Some parents prefer not to mandate a first right of refusal, choosing instead to have the flexibility for the parent with care to make the arrangements that they consider appropriate, particularly when grandparents or stepparents may be available. This clause is most likely to be appropriate if one parent only has the child for a relatively limited time, or there are likely to be significant, regular absences.<sup>42</sup>

#### **E. DECISION-MAKING RESPONSIBILITIES**

It is important for the professionals (and their clients) involved in making parenting plans to get a realistic sense of the parents’ level of conflict and ability to cooperate. Will the parents be able to communicate and compromise about significant decisions, such as education, culture, language, religion and spirituality, health and significant extra-curricular activities? The involvement of both parents in major decisions is generally desirable, so absent concerns about coercion or power imbalances, and so long as the parents can cooperate, a plan will often provide for shared decision-making for major issues, though with provision for some method of assisted dispute resolution, such as mediation, or a clause assigning final decision-making to one parent if they cannot agree.

For parents where there are concerns about the ability to cooperate, it will often be preferable to assign final responsibility for certain decisions (or all significant decisions) to one parent, with an obligation to consult the other parent before a decision is made. It may be necessary to specify what type of consultation is required. If there are concerns about the ability to cooperate and the parents have sufficient resources, appointing a parenting coordinator or a mediator to oversee the implementation of the parenting plan may help the parents to move forward.

If primary decision-making responsibility is divided, it may be necessary to specify how some “cross-over issues” are to be identified and addressed – Is psychological testing for a child a medical or educational issue? Is the decision to attend a Catholic school an education or religious decision?

#### **F. CLARITY ON DAY-TO-DAY DECISIONS**

Most parenting plans and court orders address responsibility for making “significant” decisions, but leave “day-to-day decisions” to the parent with care of a child at a particular time.<sup>43</sup> These “day-to-day decisions” will generally be issues that one parent can address without the direct involvement of the other parent. Most professionals would agree that these matters would include such issues as evening routines, meals and visits with friends. These are decisions that may arise on a regular basis but that affect both parents, such as whether a child takes prescribed medication for

ADHD on the weekends, or whether a parent may cut the child's hair. Depending on the level of conflict and issues in dispute, some parents may need more specificity and examples of day-to-day decisions, while others may not.

### G. DRAFTING - DEFINE THE PARTIES

With the coming into force of the new legislative provisions, those drafting parenting plans in Canada should avoid using the terms "custodial parent" or "access parent," which have long had unfortunate connotations. However, depending on the provisions, it may be useful to use the terms "resident parent" and "non-resident parent," to describe who has care of the children at any given time, and to indicate the rights and responsibilities of each when in that role.

Parents will often find it helpful if the Plan refers to them by their first names, or if appropriate, by the terms Mother and Father. Drafters should avoid using the terms Applicant and Respondent, as they can be confusing to the parties and to others interpreting an agreement or order governing parenting.

### H. DRAFTING – STATEMENT OF PRINCIPLES

The *Guide* discusses the value for children in having parents avoiding conflict, and encourages positive cooperation and having each of the parents recognize the important role of the other parent in their children's lives. The *Template* offers suggestions for a number of statements of principle that reflect the ideas that parents may incorporate or modify for their Parenting Plan.<sup>44</sup> All of these statements have similar themes of encouraging child-focused, co-operative co-parenting. While there may be questions about the legal significance or enforceability of some of these statements, especially for cases where there is high conflict, a discussion of these principles can serve a useful educational purpose for many parents. Most parents will try to comply with the clauses that they have discussed and voluntarily accepted.

Some judges may be reluctant to include clauses in a court order that are aspirational or vague, or that may be difficult to enforce, such as: "Each parent will encourage and support the child's love and relationship for the other parent." However, s. 16.6(1) of the *Divorce Act* now requires that the court incorporate a parenting plan that the parents put forward into a court order, unless it would not be in a child's best interests. This provision suggests that courts should be incorporating parenting plans in court orders, even if they include terms that are aspirational and may be difficult to enforce. Some judges may require such clauses to be included as recitals, beginning with "Whereas the parties agree." Other judges, however, may refuse to incorporate such clauses, even on a consent basis, and at this point there is no binding appellate authority in Canada directing judges about whether to include such aspirational clauses.

### I. REVIEW CLAUSES

Children and parents change, and parenting plans or orders will need to be adjusted unless they are very general. This is particularly true if, as children grow older, their needs or preferences no longer align with the plan that was previously made.

Parenting plans should include provisions requiring parents to meet periodically to discuss their current parenting arrangements, and whether they should be adjusted. It is generally preferable for parents to undertake such a review informally, and without unnecessary involvement of family justice professionals. However, if conflict is high or there are on-going concerns of family violence or abuse, or mental health issues, professional involvement or even a court application may be necessary.

While the variation of a court order can be a relatively complex process, a parenting plan that is not incorporated into a court order (or the relevant portions are not fully incorporated), can be

amended relatively easily. A Parenting Plan should provide for periodic review, that can hopefully be mutually agreed upon without professional involvement. If parents are unable to agree when undertaking a review, the Plan should encourage or require parents to engage in a non-court family dispute resolution process, like mediation, before bringing a court application, or perhaps requiring submission of a dispute over the Parenting Plan to arbitration.

It is not uncommon for parents to informally review and revise terms of their Parenting Plan that have been incorporated into an order without returning to court. Although a court will not enforce a revision that is not incorporated in a court order, after an informal revision it is also very unlikely that the original term will be enforced. Further, the court is likely to take account of an agreed upon revision in any future variation application. While a lawyer should be cautious when providing advice about informal revisions of Plans that have been previously incorporated into court orders, these changes may be in the best interests of the children, the parents and the justice system as they offer an affordable, quicker and less conflictual way to implement changes.

## **J. NEGOTIATION AND DRAFTING: AVOID CONTENTIOUS HYPOTHETICALS**

The *Guide* and *Template* address many of the clauses that are commonly included in Parenting Plans, but no Plan is likely to address all of them. For example, some of the clauses address issues that only arise in later childhood or adolescence, such as children using social media and dating. While it is valuable for parents to be aware that these issues will need to be addressed at some point, whether in a written Parenting Plan or by some form of *de facto* resolution, discussion about contentious issues that will arise in the future, but are not present concerns, makes the process of making a Parenting Plan more challenging. Hopefully, experience in cooperating under the Plan will help parents to address future issues in a constructive, child-focused way.

## **K. ....EXCEPT PERHAPS RELOCATION**

While it is generally preferable to try to avoid resolving issues that seem hypothetical, one or both parents may wish to address in a parenting plan issues related to possible future relocation.<sup>45</sup> The amended *Divorce Act* has provisions that prevent a parent from unilaterally “relocating” with a child, specifying that “relocation” when there is a “change in the place of residence of a child ... that is likely to have a significant impact on the child’s relationship” with the other parent. Because of the vagueness of this provision, parents might want to specify what constitutes a “relocation” in terms of travel time or distance.

## **L. INVOLVING CHILDREN IN MAKING A PARENTING PLAN**

In a number of places, the *Guide* and *Template* address in general terms the sensitive issues about how to involve children in post-separation decision-making and in the review of Parenting Plans. On the one hand, Canadian law is clear that children’s perspectives and preferences are important in assessing their best interests, both when an initial Plan is made and as variation is being considered. On the other hand, there is the potential for children to be drawn into parental disputes or try to manipulate their parents, especially if there is high conflict between the parents.

The *Guide* makes the important point that “it is preferable for parents to decide together how to involve their children [in making a Parenting Plan] and develop a joint strategy.”<sup>46</sup> However, this is not always possible. This is the type of challenging issue that may require professional assistance if parents are unable to agree on a joint child-focused strategy for involving children in the making or revising of a plan. It is preferable for both parents to meet with the children together and have an age-appropriate discussion about the Plan and obtain input before any plan or revision is finalized, but in some cases, it may be necessary to have a mental health professional meet with the child and report to the parents.<sup>47</sup> If a mediator is involved in helping the parents, it may be appropriate to

have child-inclusive mediation,<sup>48</sup> with the mediator meeting the child, and ultimately having the parents, mediator and child have a joint session.

### M. CHILD SUPPORT AND ECONOMIC ISSUES

The materials emphasize that the parenting time schedule should be governed solely by an assessment of the child's best interests, but it is necessary for parents to be aware of the possible child support implications of their plan. Family justice professionals in Canada know that there are cases where a concern about the "40% threshold" for the invocation of the shared parenting provision in s. 9 of the *Child Support Guidelines* is an "elephant in the room," as there may be a dramatic change in child support obligations if that threshold is crossed.<sup>49</sup>

The *Guide* and *Template* make some reference to economic issues that arise in the context of separation or divorce, in particular child support. A Parenting Plan may well affect child support issues, especially if the parenting time schedule results in a "shared parenting time" (or "shared custody" situation under the *Child Support Guidelines* s.9, 40%–60% of time with each parent). The materials flag this issue for parents, with links to other sites that address them, and advise parents to get appropriate legal advice if this may be an issue.

As a matter of practice, parents and their advisers may decide that the document called a "Parenting Plan" will also deal with child support; that may be most appropriate if there are no other economic issues that need to be addressed. However, if the parents are also making an agreement that deals with property, debts or other support issues in a Separation Agreement, it will usually be appropriate to also deal with child support in that document.

## VI. THE VALUE OF THE *GUIDE* AND *TEMPLATE*: AN AFCC CHAPTER PROJECT

Since the release of the *Guide* and *Template* in January 2020, there have been a number of presentations by members of the Task Force to judges, lawyers, mediators and social workers across the province, initially in person and since the Covid-19 pandemic by webinar. In at least one reported Ontario decision about an interim application, the judge has made specific direction that the parents should receive a copy of the materials, in the hope that this would facilitate a possible settlement,<sup>50</sup> and the authors of this paper are aware of a number of judges who have referred to these materials in the course of conference discussions with parents about the possibilities of settlement.

This project has been an important undertaking for the Ontario Chapter of the AFCC. The materials themselves make a significant contribution to family justice in the province, and members of the Task Force have received significant informal, positive feedback about their value, including from the judiciary. There is, however, a need for research to study the impact of the legislative reforms on post-separation parenting, including an expected increase in the use of Parenting Plans, and research on the value of these materials.<sup>51</sup>

The initial development and circulation of draft materials helped to raise the profile of the AFCC-O within the province and gave members a sense of the value of the organization, as giving possibilities for consultative participation. Since the release, more than 1,000 family professionals from across the province have had an opportunity to attend webinars or conference sessions about the materials; while the focus of the presentations was the *Guide* and *Template*, these were also opportunities to talk about the Chapter and the AFCC more broadly and included information about membership. A further benefit derived from this initiative has been the strengthening of the connections between the AFCC-O and other stakeholders, which organized some of these presentations.

The preparation and dissemination of similar materials in other jurisdictions by multi-disciplinary family justice organizations, like chapters of the Association of Family and Conciliation

Courts, could be an important exercise in community building and provide helpful tools to parents and professionals in those jurisdictions.

## ENDNOTES

1. Bill C-78, enacted as S.C. 2019, c. 16, in force March 1, 2021. Canada's largest province, Ontario, has enacted identical amendments to the provincial *Children's Law Reform Act*, Bill 207, 1st Session, 42 Legislature, Ontario, also in force March 1, 2021. The federal *Divorce Act* applies to parents who are married and are getting a divorce, while the provincial statute applies to children whose parents are not obtaining a divorce, usually because they never married. For a fuller discussion of Bill C-78, see Bala, N. (2020), Bill C-78: The 2020 Reforms to the Parenting Provisions of Canada's Divorce Act, *Canadian Family Law Quarterly*, 39, 45-74.

2. The Association of Family & Conciliation Courts (AFCC) is an international, interdisciplinary organization of family justice professionals and researchers with over 5000 members: see <https://www.afccnet.org>.

3. *Parenting Plan Guide and Template*. (2020). Association of Family and Conciliation Courts Ontario, <https://afccontario.ca/parenting-plan-guide-and-template/>. The AFCC has 22 Chapters; 19 are American state Chapters; the provinces of Alberta and Ontario in Canada, and Australia have Chapters.

4. Before the preparation of the AFCC-O materials, some professionals in Ontario were using the *Arizona Parenting Time Guide* to help prepare parenting plans. The approach of the Arizona materials, however, reflects the fact that the Arizona statute establishes a rebuttable presumption that courts will "maximize" time with each parent, which has been interpreted as a rebuttable presumption of equal parenting time. There is no presumption of shared or equal parenting time in the federal or provincial legislation in Ontario. For a discussion of Arizona law, see Fabricius, W.V. et al. (2018), What happens when there is presumptive 50/50 parenting time? An evaluation of Arizona's new child custody statute, *Journal of Divorce and Remarriage*, 59, 414-428.

5. Legislation and caselaw in Canada used the term "access" to characterize the rights of the "non-custodial parent" to spend time with a child and receive information about the child, rather than the term "visitation," which is more common in the United States.

6. Tompkins, R. (1995), Parenting Plans: A Concept Whose Time Has Come. *Family & Conciliation Courts Rev* 33(3), 286.

7. "Material change in circumstances" is the standard for judicial variation in Canada. Because the courts want to bring an end to litigation, it has been held that the "mere passage" of time (five years) is not a basis for variation of a custody order, despite the fact that from a developmental perspective, five years is a very significant period of time in a child's life: see e.g. *Wieggers v. Gray*, 2008 CarswellSask 10, 2008 SKCA 7; and *Brown v. Lloyd*, 2015 CarswellOnt 790, 2015 ONCA 46.

8. It has been reported to the authors that some Ontario judges making parenting orders are using clauses from the *Template* if they are dissatisfied with the clauses proposed by either parent(s), or where the parent(s) have failed to provide draft clauses.

9. See Catania Jr., F.J. (2001). Learning from the Process of Decision: The Parenting Plan. *BYU Law Review*, 2001(3), 857.

10. See Langan, E.B. (2016). The Elimination of Child Custody Litigation: Using Business Branding Techniques to Transform Social Behavior. *Pace Law Review*, 36(2), 392.

11. See Kisthardt, M.K. (2005). The AAML Model for a Parenting Plan. *Journal of the American Academy of Matrimonial Lawyers*, 19(2), 223; and Kelly, J.B. (2005). Developing Beneficial Parenting Plan Models for Children following Separation and Divorce. *Journal of the American Academy of Matrimonial Lawyers*, 19(2), 237.

12. AMER. ACAD. OF MATRIMONIAL LAWYERS, CHILD CENTERED RESIDENTIAL GUIDELINES (2015), <https://www.sbcf-famlaw.com/wp-content/uploads/2015/11/AAML-Child-Centered-Residential-Guidelines.pdf>.

13. *Planning for "Parenting Time" Arizona's Guide for Parents Living Apart*, <https://www.azcourts.gov/portals/31/parentingTime/PPWguidelines.pdf>.

14. Association of Family and Conciliation Courts, Massachusetts Chapter, *Planning for Shared Parenting: A Guide for Parents Living Apart*, <https://www.mass.gov/files/documents/2017/09/01/afccsharedparenting.pdf>.

15. Minnesota Judicial Branch, Child Focussed Parenting Time Guide (2019), <https://www.mncourts.gov/mncourtsgov/media/CourtForms/Child-Focused-Parenting-Time-Guide.pdf>.

16. *Planning for Parenting Time: Ohio's Guide for Parents Living Apart*, <https://www.supremecourt.ohio.gov/Publications/JCS/parentingGuide.pdf>.

17. Northwest Justice Project, *Parenting Plans: General Info* (2018), [https://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/392E7189-0DD3-1B13-D872-EDF016EC71B7/3230en\\_parenting-plans\\_general-info.pdf](https://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/392E7189-0DD3-1B13-D872-EDF016EC71B7/3230en_parenting-plans_general-info.pdf).

18. The first legislative recognition of the concept of a "parenting plan" in Canada was in the reforms enacted in one the country's smaller provinces in 2015, Nova Scotia: *Parenting and Support Act*, S.N.S. 2015, c. 44, s. 3.

19. In *M. v. F.*, 2015 CarswellOnt 5630, 2015 ONCA 277 the Ontario Court of Appeal upheld a trial decision where the judge used the terms in a “parenting plan,” proposed by an assessor, and then incorporated into a court order, without using the term custody, with Benotto JA observing (at para. 39-40):

For over twenty years, multi-disciplinary professionals have been urging the courts to move away from the highly charged terminology of “custody” and “access.” These words denote that there are winners and losers when it comes to children. They promote an adversarial approach to parenting and do little to benefit the child. The danger of this “winner/loser syndrome” in child custody battles has long been recognized

It was therefore open to the trial judge to adopt the “parenting plan” proposed by the assessor without awarding “custody.” It was also in keeping with the well-recognized view that the word “custody” denotes “winner” so consequently the other parent is the “loser” and this syndrome is not in the best interests of the child.

20. Bill C-78, enacted as SC 2019, c. 16.

21. Bill C-78, enacted as SC 2019, c. 16, s. 16.6(1).

22. Jennifer Wilson, Partner, Torkin Manes, Toronto.

23. *Divorce Act Amendments*, S.C. 2019, c. 16, coming in force March 1, 2021 (Canada, Bill C-78, 42 Parliament, 1<sup>st</sup> Session).

24. Nicholas Bala, Law professor, Kingston (Chair); Rachel Birnbaum, Social Work professor, London; Brian Burke, family lawyer, Toronto; Crystal George, Co-ordinator of Social Services, Aamjiwnaang First Nation, Sarnia; Kim Harris, psychologist, London; Andrea Himel, family lawyer, adjudicator & mediator, Toronto (now a Justice of the Ontario Superior Court); Carolyn Leach, Office of the Children’s Lawyer, Toronto; Rana Pishva, psychologist, Ottawa; Michael Saini, Social Work professor, University of Toronto; and Jennifer Wilson, family lawyer, Toronto.

25. The AFCC-O materials specifically acknowledge reliance on the work American Psychologist, Dr. Robin Deutsch, who had an important role in preparing *Planning for Shared Parenting: A Guide for Parents Living Apart*, sponsored by the Massachusetts Chapter of AFCC; and American Academy of Matrimonial Lawyers, *Child Centred Residential Guidelines* (2015).

26. Justice Canada, *Making Plans: A Guide to Parenting Arrangements After Separation or Divorce - How to Put Your Children First*, (2013); Justice Canada, *Parenting Plan Checklist* (2015); and *Parenting Plan Tool* (2019); <https://www.justice.gc.ca/eng/fl-df/parent/plan.html>. While these materials provide some very sound advice for separating parents, given the legislation, they tend to be vague about parenting time schedules. These materials are available in English and French, and it is expected that they will be revised as we move towards the coming into force of Bill C-78.

27. In Arizona and Minnesota, members of the judiciary and the courts were directly involved in preparing such materials. There is obviously value in having judges involved in such a project and giving it some “official” imprimatur, but this would not be consistent with Canadian views about the role of its appointed judiciary, in the absence of express direction from the government for such an undertaking.

28. *Parenting Plan Guide*. (2020), Association of Family and Conciliation Courts Ontario, 43 and *Parenting Plan Template*. (2020). Association of Family and Conciliation Courts Ontario, 3 & 7. The relationship of parenting and child support is discussed later in this article.

29. There are also a number of websites with good information for separated parents: see e.g. <https://www.afccnet.org/Resource-Center/Resources-for-Families>; and <https://www.helpguide.org/articles/parenting-family/co-parenting-tips-for-divorced-parents.html>. There are also many books that parents can purchase that will help them deal with post-separation parenting issues, including by Ontario Court of Justice judge, Harvey Brownstone, *Tug of War* (2009); and Moran, McCall & Sullivan, *Overcoming the Alienation Crisis: 33 Coparenting Solutions* (2020).

30. For a discussion of the Parliamentary hearings and the advocacy for an equal parenting time presumption, see Bala, N, (2020). Bill C-78: The 2020 Reforms to the Parenting Provisions of Canada’s Divorce Act. *Canadian Family Law Quarterly*, 39, 45-74.

31. Bill C-78, enacted as S.C. 2019, c. 16, in force March 1, 2021.

32. *Parenting Plan Guide*. (2020), Association of Family and Conciliation Courts Ontario, 11-24.

33. In *Wyatt v. Reindl*, 2020 SKCA 36 (C.A.) the Saskatchewan Court of Appeal upheld a trial decision for a 3-year-old girl which provided for 9 days with her father and 11 days with her mother, to fit with the father’s work schedule in an oil field. In commenting on this case, Aaron Franks and Michael Zalev (*Family Law Newsletter*, June 22, 2020) wrote (emphasis added):

Conventional wisdom tells us that children – especially young children – should generally not go for extended periods of time without seeing a parent. For example, in its recently released *Parenting Plan Guide*, the Ontario Chapter of the Association of Family and Conciliation Courts (“AFCC-O”) recommended that even in cases where the parents are involved in a shared parenting arrangement, they should still ensure that “separations from each parent [for children under 3] are not too long (no more than two to three days or two nights for example)”, and that while “it may be appropriate to have an arrangement with roughly equal care” for 3 to 5 year olds, they should still not be spending “more than 3 nights away from either parent.” The AFCC-O’s *Parenting Plan Guide* is available at: <https://afccontario.ca/parenting-plan-guideandtemplate/>. **It is an excellent resource.** Accordingly, it is exceedingly rare for a court to order a schedule for a very young child whereby the child goes for a week or more without seeing one of his/her parents.

They went on to explain the decision, and its rare circumstances.

34. It is suggested that professionals avoid terms like the “normal” schedule, as this implies that there it meets some external standards of “normalcy.”

35. Courts in Canada have cited journal review articles summarizing this type of “common sense” knowledge about children: see e.g. *R. v. Hernandez-Lopez*, 2020 BCCA 12. See also *A.M. v C.H.*, 2019 ONCA 764 and *Wandler v. Hines*, 2019 ABPC 252, on the scope of judicial decision-making about children’s best interests in family cases without expert evidence.

36. The issue of the overnight visits with fathers of young children has been the subject of contrary approaches by Ontario judges, effectively based on judicial notice. In *Perchaluk v. Perchaluk*, 2012 ONCJ 525 (Can. Ont. S.C.)(QL), Justice Zisman held that such visits should not occur without expert evidence that they in the child’s best interests. By way of contrast, in *Burley v Bradley*, 2019 ONCJ 624 (Can. Ont. S.C.), Justice March held that such visits should occur in the absence of evidence of harm.

37. *Saunders v. Ormsbee-Posthumus*, 2020 ONSC 2300, para. 73 (Can. Ont. S.C.).

38. *J.N. v. A.S.*, 2020 ONSC 5292, para. 69 (Can. Ont. S.C.). Before her appointment to the Bench, Justice Himel was a member of the Task Force that drafted the *Guide* and *Template*, and she is a co-author of this article. See also *I.S. v. J.W.*, 2021 ONSC 1194, where Bale J. cites the two prior decisions and refers to the *Guide* as “a useful tool in crafting child-focused and realistic parenting plans.”

39. *Parenting Plan Guide*. (2020), Association of Family and Conciliation Courts Ontario, 8.

40. The AFCC-O is seeking funding to translate the materials into French, Ontario’s second official language.

41. *Parenting Plan Guide*. (2020), Association of Family and Conciliation Courts Ontario, 7 and *Parenting Plan Template*. (2020). Association of Family and Conciliation Courts Ontario, 3 & 37.

42. *Parenting Plan Guide*. (2020), Association of Family and Conciliation Courts Ontario, 28 and *Parenting Plan Template*. (2020). Association of Family and Conciliation Courts Ontario, 17.

43. The amended *Divorce Act*, s. 16.2(2) specifies:

#### *Day-to-day decisions*

16.2(2) Unless the court orders otherwise, a person to whom parenting time is allocated under para. 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the child.

44. *Parenting Plan Template*. (2020). Association of Family and Conciliation Courts Ontario, 4-6.

45. Some practitioners in Canada have expressed concern that the abandonment of the term “custody” may create problems in cases of wrongful removal of a child from Canada, as the *Hague Convention on International Child Abduction* only allows a parent who has “rights of custody” to invoke the *Convention* to require return of a child wrongfully removed or retained. However, Article 5 of the *Convention* provides that for the purposes of proceedings under the *Convention*, “rights of custody” means rights “relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence.” Under the amended *Divorce Act*, s. 16.91, a child generally cannot be relocated without a court order or the consent of both parents. So as long as a parent has the right to parenting time, that parent will also have a continuing right to determine the child’s residence, and “rights of custody” in proceedings under that the *Convention*, in the absence of an agreement or court order to the contrary.

46. *Parenting Plan Guide*. (2020), Association of Family and Conciliation Courts Ontario, 6.

47. See e.g. Hayes, M. & Birnbaum, R. (2020). Voice of the Child Reports in Ontario: A Content Analysis of Interviews with Children. *Journal of Divorce & Remarriage*, 61(5), 301, DOI: 10.1080/10502556.2019.1619379.

48. Bell, F. et al. (2013). Outcomes of Child-Inclusive Mediation. *International Journal of Law, Policy and the Family* 27(1), 116, <https://doi.org/10.1093/lawfam/ebz017>.

49. See e.g. Bala, N. & Gordon, M. (2012). Kids and Cash: Interconnections of Child-Related and Economic Issues in Family Proceedings. *Canadian Family Law Quarterly* 31, 309-353.

50. In *Edwards v. Robinson*, 2020 ONSC 2056, at para. 6 a request for an urgent motion about parenting during the Covid 19 pandemic period of very limited court, Justice Jarvis ordered that copies took judicial notice of the *Guide* and *Template* where to be provided to the parties, along with other material, to help them prepare for the motion, or hopefully make their own, child-focused interim parenting arrangement.

51. For a study on the effect of parenting plans on dispute resolution and child outcomes, see Bruijn S.d., Poortman, A-R, & van der Lippe, T. (2018). Do Parenting Plans Work? The Effect of Parenting Plans on Procedural, Family and Child Outcomes. *International Journal of Law, Policy and The Family* 32, 394-411. That study was based on a “natural experiment,” the enactment of legislation requiring parents to make written plans. A significant limitation of that study (not addressed by the researchers) is that the legislation not only required parenting plans, but also established presumptions about shared parental decision-making and parenting time. Any research about experience in Canada will also face such confounding variables, as there will be a number of changes that are occurring as a result of the legislative reforms; it will not be possible to establish a link between any one change, like the new terminology or encouragement of parenting plans, and any observable patterns in dispute resolution or child outcomes.

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*Contract Law. Nick has law degrees from Queen's University (J.D. 1977) and Harvard (LL.M. 1980). He has been on the Faculty of Law at Queen's since 1980. His research has focused on issues related to children and families in the justice system, including: parental rights and responsibilities after divorce, including parental alienation; spousal abuse and its effects on children; judicial interviews with children and legal representation of children; the child's voice in family proceedings; same-sex marriage, unmarried cohabitation and polygamy; the role of experts in the family justice process; child witnesses in the criminal courts; and child abuse; the Charter of Rights and the family; the Hague Convention on Child Abduction; child welfare law, including issues related to Indigenous and racialized children and youth; youth justice and young offenders; and access to family justice. Much of his research work is interdisciplinary. Prof. Bala has published or co-authored 23 books and over 300 book chapters and articles in journals of law, psychology, social work and medicine. His contributions to family law research and professional education were recognized in awards from Ontario's Law Society and the Ontario Bar Association in 2009, and the Association of Family and Conciliation Courts in 2008 and 2020. In 2013 Prof. Bala was elected a Fellow of the Royal Society of Canada.*

*Madam Justice Andrea Himel is a graduate of the joint Law and Social Work program at the University of Toronto and was appointed as a Justice of the Ontario Superior Court in 2020. Justice Himel was a sole practitioner with a solution-focused mediation and family law practice, and a Dispute Resolution Office (Toronto and Hamilton). She was a Board Member (adjudication and mediation) with the Social Justice Tribunal (Child and Family Services Review Board). As a sole practitioner, Justice Himel's roles included that of a duty counsel and panel lawyer with the Office of the Children's Lawyer, as well as a child protection mediator. Previously, Justice Himel was an associate at Torkin Manes. She is an active member of the AFCC-Ontario Chapter, and before being appointed to the Bench served on The Board of Directors, including a term as President, several years as co-chair of the Annual Conference and Research & Policy Committees. She was a member of the Task Force that developed of the AFCC-O Parenting Guide and Template.*