

## Welcome to our first newsletter!

Family law in British Columbia is changing in a major ways when the new Family Law Act (FLA) comes into force on March 18, 2013

One big change in the new law is that it prefers and encourages out-of-court resolution processes such as collaborative family law.

In the months to come, we will be highlighting ways in which the new FLA supports the use of collaborative processes to resolve family law problems. In this newsletter, Devlin Farmer describes the new law regarding the relocation of children.

We invite your comments, suggestions or requests for newsletter articles. Please contact Beatriz Contreras at [bc@mclennanlawoffice.com](mailto:bc@mclennanlawoffice.com) or Nola Silzer at [nsilzer@mclott.com](mailto:nsilzer@mclott.com)

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## BC Collaborative Roster Society

In conjunction with the new FLA, the BC Collaborative Roster Society is holding a launch on Tuesday, March 19, 2013 for the BC Collaborative Roster. For details, see the News & Events section of our website.

## Planning on moving with the kids?

### The law is changing.

On March 18, 2013, when the Family Relations Act (“FRA”) is replaced by the Family Law Act (“FLA”), the FLA will set out new rules that a moving parent (or “guardian”) must follow, if the move will have a significant impact on the child’s relationship with the important people in the child’s life.

The intent of the mobility rules is to promote fairness and clarity, but it is uncertain how the courts will apply the new rules. Consulting a lawyer could help ensure that you don’t move your children to a new city and then have to deal with a court order telling you to move back!

### *Moving and the Collaborative Process*

The new FLA mobility rules provide two routes: a court process if a guardian is opposed to the move, and an out-of-court process if the parties can agree. The collaborative law process offers an out of court settlement created by a child’s parents, not a judge – that is enforceable like a court order.

Under the new FLA, a relocating guardian must provide 60 days written notice of the move to all other guardians and all other persons having contact with the child, with some exceptions. That’s not a lot of time, and thus a first meeting with a collaborative lawyer will be critical. The lawyer will evaluate the case based on factors.

such as how much time the other significant persons spend with the child (shared parenting, for example, is significant under the new FLA), the effect on the child, and how far away the children will be moving.

A collaborative lawyer can draft the written notice required under the FLA and also request that the other guardian(s), if they oppose the move, consider the collaborative law process, including a team of professionals to help work out a solution --instead of going to court.

### ***What happens in Court?***

A parent or guardian who opposes a move must file an objection in court within 30 days of receiving written notice, on the grounds that it is not in the child's best interests. If they don't file an objection, the other parent can move.

In court, the relocating parent must persuade the judge that he or she is moving "in good faith." The judge will also consider whether the relocating parent has proposed "reasonable and workable" ways to maintain the child's important relationships. Did the relocating parent, for example, offer to help financially with visits? Have regular phone or internet contact? The collaborative process is particularly good at working out these kinds of details.

If a judge allows a move, he or she may also impose conditions, such as how often the other guardian can visit the child and who will pay for travel expenses. If the judge does not allow the move, the relocating parent will not be allowed to move, and will have to consider grounds for an appeal or, wait to try again if circumstances change.

Because the FLA is new and the facts of mobility cases range widely, it will be difficult to predict the outcome of most cases. Going to court is often uncertain.

### ***Final Thoughts***

After March 18, 2013, BC will have new, specific rules about moving with children. The collaborative process can empower parents to create their own solution rather than having to live with a decision imposed on them by a judge.

Is the collaborative process better suited than the court process to mobility issues under the new FLA? I think it is. With a collaborative team behind them, parents and guardians will have better opportunity to fully canvass options and come to an arrangement that is best for their children.

Devlin Farmer

Collaborative Lawyer

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