

Publisher's Note

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Canadian Divorce Law and Practice

Canadian Divorce Law and Practice includes digests of thousands of divorce cases organized under 300 specific subjects. In addition, this product features the full text of the *Divorce Act* and other related statutes, sample pleadings and the most commonly used divorce precedents, all relevant provincial rules of practice and all prescribed forms, and extensive commentary on the Spousal Support Advisory Guidelines.

This release features updates to the case law and commentary to s. 16§24 (Corollary Relief - Order for Custody). It also includes new updates to the Words & Phrases section.

Highlights

- **Access** — The term access is not defined under the *Divorce Act*. However, it must at least include the right to make inquiries, to obtain information about the health, education and welfare of the child: s. 16(5). The sole criterion in awarding access is the best interests of the child as determined by reference to the condition, means, needs and other circumstances of the child: s. 16(8), taking into account the maximum contact principle: s. 16(10). Section 16(10) suggests that access is for the benefit of the child and not for the benefit of the parent. It

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provides that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of that child. Further, the subsection indicates the importance to the child of a cooperative attitude in the custodial parent toward access by the other parent. It follows from this provision that where two parents are otherwise equal, the one more willing to encourage access may be awarded custody.

- **Maximum Contact Principle** — Permission to relocate with a child will be granted in a high-conflict case where access will be facilitated and disruption to the child will be minimal: *Browne v. Cerasa*, 2017 ONSC 4684, 2017 CarswellOnt 12087 (Ont. S.C.J.), additional reasons 2018 CarswellOnt 5479 (Ont. S.C.J.). The mother intended to live in the US. Applying the *Gordon v. Goertz* factors, the court found that the maximum contact principle was satisfied by the mother's access plan plus additional holiday time, and that the disruption would be minimal given the child's young age and recent move to Toronto.