

**Proposed Amendment to the Divorce Act approved by the  
Equal Shared Co-Parenting Advisory Council on meetings  
convoked November 6th and 7th, 2023**

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

**Primary consideration**

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being under two rebuttable presumptive principles:

(a) It is in the best interests of the child to enjoy equal time with each parent; and,

(b) It is in the best interests of the child for each parent to assume equal parental responsibility for major decisions that affect the child's welfare.

**2.1 Rebutting the presumptions.**

The presumptions in subsections 16(2) may be rebutted by compelling evidence, based on factors listed in subsections 16(3) to 16(5), that the needs of the child would be substantially enhanced by departing from the presumptions such arrangements would be detrimental to the child. If the court finds that either or

both of the presumptions are rebutted, it shall issue findings of fact and conclusions of law supporting the determination.

## **Parenting time consistent with best interests of child**

(6) In allocating parenting time, ~~the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.~~ where the circumstances under subsection (7) require a departure from the presumptions stated in subsection 16(2), then the court:

(a) shall nonetheless entrust to each spouse the maximum amount of time and parental decision-making responsibility as is practically possible and still consistent with the best interests of the child; and

(b) may designate equal parenting time but not equal parental decision-making.

## **Parenting order and contact order**

(7) In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.

**Note:** Proposed deletions indicated via ~~strikethroughs~~;  
additions in *underlined italicized* text