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ORIGINAL ARTICLE

Consideration of culture in Canadian courtrooms: Before and after the Divorce Act amendments

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Abstract

In Canada, the federal *Divorce Act* was revised in 2021 to include enumerated best interests factors which include a child's linguistic, religious, cultural, and spiritual heritage and upbringing, including Indigenous heritage. In this study, the authors examine how Canadian courtrooms engaged in the consideration of cultural factors prior to the recent *Divorce Act* amendments and compare these findings to decisions published following the amendments that mandated this specific consideration. Specific manners in which the courts have considered culture are identified, and the resulting three 'clusters' of decisions—including those cases (a) prioritizing a child's established culture, (b) weighing the child's greater involvement with one culture versus increased bicultural competence, and (c) considering the effect on the child of the cultural interaction—are compared pre- and post- the recent *Divorce Act* amendments. Implications for family court professionals are discussed.

KEYWORDS
best interests of the child, Canadian courts, culture, divorce act

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Key points for the family court community

- Cultural factors have become an increasingly common consideration of the courts.
- In Canada, the *Divorce Act*, a federal legislation, was revised in 2021 so as to require that decision makers, when determining the best interest of a child, consider a child's linguistic, religious, cultural, and spiritual heritage and upbringing, including Indigenous heritage. This change, which was affected by listing these considerations at section 16. (3)(f) of the Divorce Act, may have impacted the manner in which the courts consider cultural factors.
- It is possible to identify distinct patterns in the ways in which the court considers culture, and these patterns are informative for legal and mental health professionals.

INTRODUCTION

On June 21, 2019, Royal Assent was given to Bill C-78 to amend Canada's federal family laws related to divorce, parenting and enforcement of family obligations. Following over 20 years in which no substantial updates were enacted, these amendments, which came into effect on March 1, 2021, resulted in significant changes along four key objectives: promoting the best interests of the child, addressing family violence, helping to reduce child poverty, and making Canada's family justice system more accessible and efficient (Justice Canada, 2022a).

Divorce, a multifaceted and emotionally charged aspect of family life, is subject to continuous legal evolution. In the Canadian context, the *Divorce Act* stands as a pivotal legislative framework governing the dissolution of marriages and the well-being of children affected by such circumstances. In a 2016 report by the Canadian Forum on Civil Justice, a non-profit organization that advocates for civil justice reform, it was reported that over a given three-year period, 5.1% of the Canadian adult population (i.e., approximately 1.2 million Canadians) will encounter a family law issue. Further, the authors concluded that certain individuals, "… particularly those with fewer resources and those who see themselves more on the margins of society, do not view the justice system as fair, accessible or reflective of them or their needs" (Farrow et al., 2016).

The *Divorce Act* has traditionally emphasized the importance of considering the best interests of the child with reference to the child's condition, means, needs and other circumstances. The amendment to the *Divorce Act* expanded the primary consideration to be the child's physical, emotional, and psychological well-being when determining their best interests. Prior to the recent amendments, while cultural factors were not explicitly listed as one of the factors to be considered in the text of the *Divorce Act*, the courts were understood to routinely consider a child's cultural background as part of the broader assessment of their best interests. In other words, in the absence of explicit provisions addressing cultural considerations, Canadian courts historically interpreted the best interests of the child in a manner that implicitly acknowledged the significance of the child's cultural background and circumstances. The legal system operated under the overarching principles of the Canadian Charter of Rights and Freedoms, aiming to interpret the law consistently with the preservation and enhancement of the multicultural heritage

of Canadians. Courts often considered a child's cultural identity as part of a holistic assessment, recognizing the potential impact of cultural factors on their well-being. This was particularly so when the Canadian courts were presented with a conflict regarding the cultural circumstances of the child.

Since the amendments took effect in 2021, the *Divorce Act* has set out a list of specific enumerated factors that the court is obliged to consider when deciding what would be in a child's best interests given their particular situation. Following the primary consideration of the child's physical, emotional and psychological safety and wellbeing, among the enumerated best interests factors Canadian courts are now to consider the child's *linguistic, cultural, religious and spiritual heritage and upbringing, including Indigenous heritage*. Justice Canada's published rationale for the inclusion of this best interest factor reads as follows:

> a child's culture or religion may provide an added support system for the child. A parent's ability to maintain and promote the child's understanding of, and link to, the child's cultural, linguistic and religious heritage, as well as the potential for a child to develop their own cultural identity and self-esteem, may be important factors for a court to consider. For example, in the case of Indigenous children, there may be parenting arrangements that reflect cultural aspects of Indigenous communities, such as the involvement of extended family. The weight to be given to such factors would depend on their importance to a particular child's well-being (*Justice Canada*, 2022b).

In this manner, the amendments to the *Divorce Act* align with relevant articles of the United Nations' Convention on the Rights of the Child, including the notion that the Courts should "respect the right of the child to preserve his or her identity (article 8)", that "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (article 20)", and that a child of "ethnic, religious or linguistic minorities…shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language (UNCRC, 1989, pg. 9)."

The present study

The formal operationalization of children's *linguistic, cultural, religious and spiritual heritage and upbringing*, in the best interest of the child factors provides a fascinating opportunity for examination of how Canadian courts have historically considered the influence of a child's culture in family law matters, and how the relatively recent amendments may have impacted this process of practical consideration, given that there is now a specific legal imperative to do so.

In this study, the authors sought to identify trends regarding the consideration of cultural factors in published Canadian courtroom decisions, by compiling a relevant sample of published courtroom decisions, prior to the *Divorce Act* amendments, and comparing these to available published decisions following these significant legislative changes.

METHODS

Study design and selection criteria

As illustrated in Figure 1, below, this research employed a systematic review methodology following the guidelines outlined in the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) statement (Moher

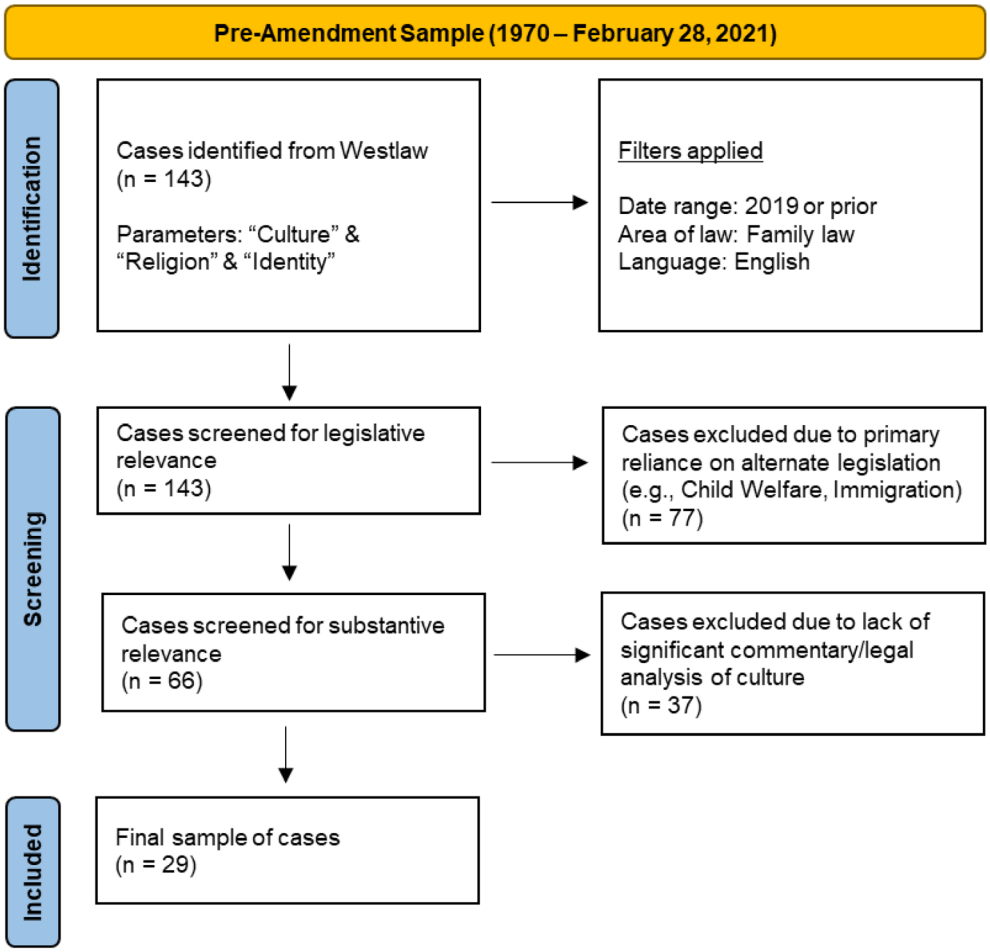

FIGURE 1 *Pre-amendments sample collection process.*

et al., 2009). The PRISMA approach was chosen due to its structured and transparent methodological framework, which enhances the rigor and reproducibility of the review process.

A comprehensive search strategy was developed making use of the Westlaw legal database. For the pre-amendments sample, search terms were carefully selected to capture all relevant cases related to the research question. Boolean operators were used to broaden the search scope. Relevant filters related to practice area, language, and levels of court were applied. For the post-amendments sample, the authors were able to simply search for cases and decisions which cited the relevant best interest factor concerning the child's linguistic, cultural, religious and spiritual heritage and upbringing (i.e., 16.(3)(f)).

Inclusion criteria were predefined based on the research question and objectives of the study. Cases were included if they met the following two criteria: first, for the pre-amendment sample, to be eligible for inclusion in the study sample cases had to be relevant with respect to legislation. For this sample, cases in which the court was primarily reliant on alternate legislation, such as child welfare and immigration legislation, were excluded. Second, for both samples, sample cases had to be relevant with respect to substance. Cases in which the court offered limited to no comment on the issue of culture were excluded.

The above process resulted in the following two final samples, as depicted in Figures 1 and 2.

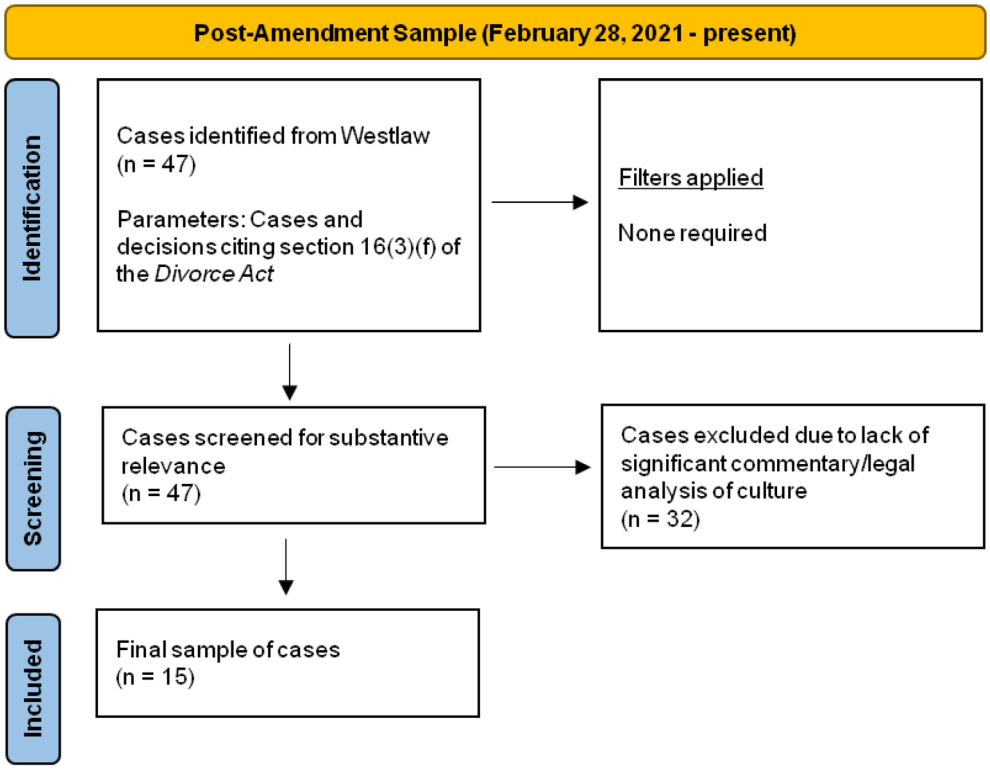

FIGURE 2 *Post-amendments sample collection process.*

Trend identification via qualitative cluster analysis

To identify differences within the sample decisions, qualitative cluster analysis was employed. This method is designed to identify patterns or clusters within narrative data to include any form of qualitative data that is presented in a narrative or story-like format (Riessman, 2008). The goal of qualitative cluster analysis is to uncover themes, motifs, or groupings of narratives that share similar characteristics or underlying structures.

Initial clusters were identified by two independent coders seeking emergent patterns within the sample by examining similarities and differences across cases, and subsequently grouping cases according to overarching themes, characteristics, or content. Upon completion, the coders met to refine the names and characterizations of each identified cluster.

Following this initial cluster identification process, validation of the clusters was conducted by three coders working independently. In cases where the coders differed in their determination of which cluster to which a case belonged ($n = 13$), the majority opinion of the coders was used to classify the case.

RESULTS

Increasing prevalence of cultural consideration over time sample

The results of the study samples reveal a steady trend of decade-over-decade increases in the number of court cases in which culture is considered in a substantive manner beginning in the 1990s and continuing onwards, as depicted

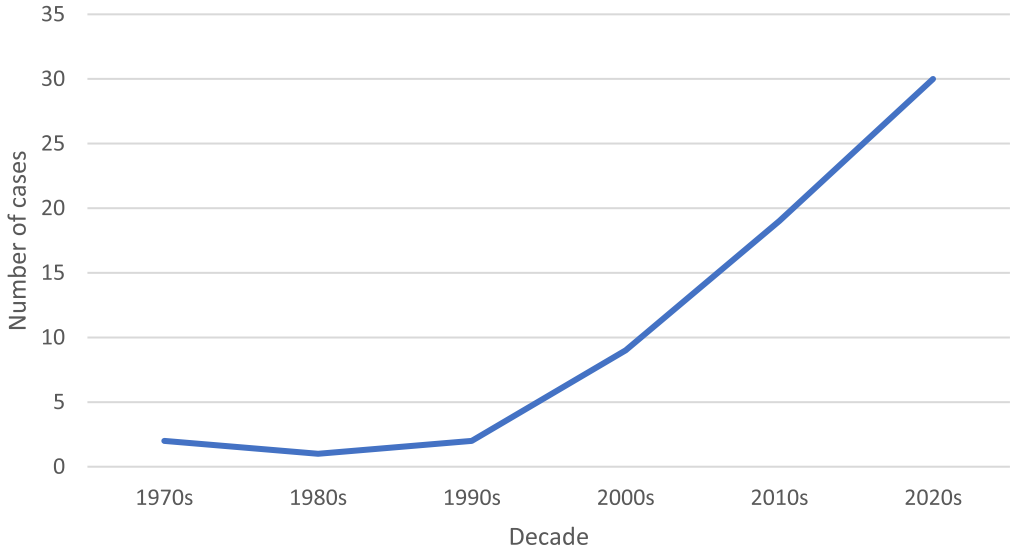

FIGURE 3 *Decade-by-decade prevalence of cultural consideration in Canadian courts. Note.* 2020s prevalence is weight-adjusted to reflect a decade still in progress.

in Figure 3. Notably, while the impacts are preliminary at this time, the introduction of the recent *Divorce Act* amendments has not yet appeared to significantly impact this pre-existing trend.

Distinct clusters as stable over time sample

The results of the study sample cluster analysis revealed three distinct clusters, which were found to be consistent across the pre-amendment and post-amendment samples. In the nomenclature below, 'pre-*n*' refers to prevalence in the pre-amendments sample, while 'post-*n*' refers to prevalence in the post-amendments sample.

Cluster a: Established culture as essential. (pre-$n = 11$, post-$n = 6$)

In this cluster of judicial decisions, the child's existing culture and family heritage were found to be significant factors in their ongoing development, and the court's decision is impacted by the conclusion that the child has an established prior cultural identity and/or the parents have an existing agreement with respect to the culture in which the child will be raised.

For example, in *HP v. PP*, the justice expressed agreement with the mother that the benefits of ensuring that the son is exposed to his Indigenous culture and heritage is very important and should be given significant weight. I also agree that she is the parent who is best suited to do this. While the father has advised that he continues to support the son having ongoing contact with his maternal grandmother who is free to teach the son about his Indigenous heritage, exposing the son to this aspect of his identity doesn't appear to be a priority for the father.

Similarly, in *Langille v. Dossa*, it was found that "the courts are not concerned with preferring one religion over another. Nor are the courts concerned with the hypocrisy or expectations of parents. The issue in a case such as the present one is whether the agreement of the parties should be enforced or whether, in the best interests of the child, it should be varied or unenforced. … In the present case, although the Court may have varied other terms of the separation agreement, it was considered to be in the best interests of the child to direct compliance with the term of the parties' agreement that the child should be raised as an Ismaili-Muslim."

Cluster B: Greater involvement with one culture versus bicultural competence. (pre-$n = 12$, post-$n = 4$)

In these cases, one parent is typically requesting a change of residence and the court is found to weigh the likely benefits to the child of enhanced exposure to one parent's culture versus the likely benefits to the child of maintaining a level of *bicultural competence*, or the child's ability to effectively navigate and engage with two cultures (Hong, 2010). In this manner, the relative significance of the child's cultural identity in the context of other parenting issues is considered.

As articulated in *SB v. VH*, "it is important that the custodial parent recognize the child's need of cultural identity and foster its development accordingly." Similarly, in *BF v. AN*, the court recognizes that the "child is in the fortunate position of having parents from two different cultures. The child's development requires that she be exposed to both."

Considering the choice between additional exposure to one parent's culture versus promoting a child's bicultural competence, in *Brown v. Kagan* it is concluded that, "education is not a zero-sum game, and the father has provided no evidence to support his contention that any increase in the daughter's knowledge of her mother's religion or heritage must come at the expense of her knowledge of the father's."

Cluster C: Effect on child of cultural interaction. (pre-$n = 6$, post-$n = 5$)

Finally, in this third cluster of decisions, the court is found to be weighing the benefits versus the risks of exposing the child to two differing (typically religious) cultures. When exposure to a culture is likely to adversely affect a child by interfering with a parental relationship and/or existing community supports, or the likelihood of harm to the child is found to outweigh the anticipated benefits (e.g., education) of the cultural exposure, the courts find a duty to intervene by restricting access.

Regarding the question of anticipated benefits in the context of historical conflict which poses risk to the child, in *Hill v. Hill* it is noted that, "in this case, there has already been significant conflict between the parties concerning the care, education and raising of their children … Given the history of this matter, such a clash is entirely predictable here, and has already begun to manifest itself. Accordingly, in my view, it is necessary to resolve this issue for the parties by ordering that, while the children should continue to be exposed to the Catholic faith as the applicant desires, they will not participate in the sacraments of that church without the consent of the respondent. In other words, the respondent's decision-making responsibility will include decisions respecting the religious upbringing of the girls."

Regarding the consideration of risk, in *Boots v. Sharrow* the court finds that, "it is true that the children of a lesbian in a same-sex relationship may be ostracized by some peers because of the lifestyle of their mother. However, I do not think that a rational decision by this court should be precluded by the possibility that it may provoke an irrational response in others…A lesbian relationship, conducted with discretion and sensitivity, is no more harmful to children than a heterosexual relationship, conducted with discretion and sensitivity. Heterosexual parenting is not better than lesbian parenting—just different."

DISCUSSION

The relatively recent introduction of the *Divorce Act* amendments provides a fascinating opportunity to examine not only the frequency with which the courts are considering the role of culture in family law matters, but also to gauge early returns with respect to the impact of a significant legislative change which mandates such consideration as part of the broader best interests analysis.

With respect to the findings of this study, perhaps the least surprising is the increasing prevalence of the court's consideration of cultural factors over time. This trend is in keeping with the broader movement to dispense with the

implicit assumption of 'cultural homogeneity', an assumption which arguably contributed to the rendering of cultural differences as invisible in the eyes of the law (Singh & Hayher, 2022).

Further, analysis of the case samples identified in this study revealed distinctly different clusters of decisions, suggesting that the court has been prone to the consideration of cultural factors in specific manners. Summarized briefly, the results of this study suggest that the court has had a tendency to primarily consider cultural evidence in the context of: the child's established cultural identity (Cluster A); the benefits of immersing a child more heavily within one parent's culture versus greater fluency with the differing cultures of both parents (Cluster B); or the broader environmental benefits and risks of exposing a child to two differing cultures which appear to be at least partially incongruent (Cluster C).

We anticipate that the identification of these clustered patterns will be informative to both legal and mental health professionals seeking to better understand the relevance of cultural factors to family law matters, and may wish to use these patterns to inform the manner in which such evidence is presented before the court.

With respect to the changes brought on by the *Divorce Act* amendments, given that we are presently only able to rely on 3 years' worth of decisions our findings in this study may best be described as preliminary. One notable finding of the shift to culture as a possible consideration (pre-amendments) to a mandated consideration, alongside various other best interest factors (post-amendments) is that this change appears to have further contributed to the longstanding trend of increased attention to culture in the context of family law proceedings in Canada.

From our review of this study's samples, it does appear that the changed legislation has contributed to a qualitative shift: Pre-amendments, when culture was considered more infrequently, it was commonly done so within the context of a specific legal question or culture-specific dispute. Post-amendments, culture is considered as a matter of routine in the context of the enumerated best interests of the child analysis, and its relevance is often less clearly articulated, often appearing less directly tied to the legal question at hand. Given the structure of the *Divorce Act's* best interest factors (following the *primary consideration* of the child's safety), no one factor is considered to have primacy over the others. This creates the potential for dilution of the impact of any one factor which should be considered going forward.

As courts are limited to the evidence put before them when making decisions, another possibility is that an increasing awareness among legal professionals regarding the relevance of cultural factors to family law matters has led to the occurrence of more frequent arguments related to cultural factors. Certainly, given the presence of culture as a best interests factor, decision-makers now expect parties to inform the court if they believe that culture is not a significant factor.

With respect to the limitations of the present study, the authors note with humility that, given the varied ways in which cultural issues have been referenced by the Canadian courts over time, any combination of search terms, which are themselves limited in their reliance on Boolean operators, is unlikely to capture all relevant decisions. One result of this study's prioritization of methodological rigor over conceptual comprehensiveness is that certain significant relevant cases in Canada's history were not included in the final sample. For example, the Supreme Court of Canada's *Van de Perre v. Edwards*, 2001 SCC 60 was not captured due to the court using the word "heritage" throughout the decision in reference to cultural factors. Future researchers are encouraged to build on the present findings by considering alternate strategies for compiling the breadth of historical data on this topic to enhance construct validity.

In our increasingly connected world, the importance of a family's culture—indeed, a family's *cultures*—to family law matters is not going away, and these results suggest that consideration of cultural factors has been increasing decade-over-decade for some time now. We recognize that the *Divorce Act* amendments that have served as the impetus for this study are only one example of a broader legislative trend toward the incorporation of culture as a consideration to particular sections of an enactment (e.g., the *Child, Youth and Family Enhancement Act*, 2000), and that these changes are consistent with foundational tenets of Canadian society (e.g., the *Canadian Multiculturalism Act*, 1985). Given these trends, it is incumbent upon our professional community to thoughtfully consider the importance of the ways in which cultural factors touch on the matters in which we are involved. It is our hope that this study is of some assistance to these ongoing efforts.

CONFLICT OF INTEREST STATEMENT

The authors declare no conflicts of interest.

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AUTHOR BIOGRAPHIES

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APPENDIX A: Pre-Amendments Sample Cases (1970—February 28, 2021)

Year	Case	Key paragraphs	Comment
2019	SB v VH, 2019 ONCJ 694	120–121, 149	Cluster B: Biracial child, father applied for joint custody and shared parenting, in part, to ensure that child would have access to a parent that could assist the child in navigating the world as a black and/or biracial individual. Mother sought sole custody and primary care, and the child had been in primary care to date of trial. Court directed custody to mother, but carved out times where, if racial identity questions are raised by child, mother is to reach out to father on matter.
2019	Brown v Kagan, 2019 ONSC 5033	83–105	Cluster B: When faced with a claim from father who wanted child to attend school which promoted Mi'Kmaq heritage, not Hebrew teachings mother followed. Court held that education is not a "zero-sum game" and that there was no evidence that father's religion and heritage must come at the expense of mother's.
2019	BF v AN, 2019 ONSC 3315	77–79	Cluster B: Mother expressed racist views about father's background. Court determined that it was important for the child to be exposed to both of the parties' cultures.
2019	MT v JH, 2019 NFSC 6	143–149	Cluster B: Court, in relocation, discussed importance of Child's two existing Cultures (Canadian and Ukranian) and how that might be impacted if he moved to Halifax vs. remained in Antigonish.
2017	DDS v MLS, 2017 NBBR 175	154–157	Cluster B: Question was whether father could take children to a church of his choosing on weekends when they are in his care (originally children were returned to mother to attend her church then returned to father afterwards). Court determined that it was in the children's best interest that they be exposed to both parents religion.
2017	Campbell v Campbell, 2017 ONSC 3787	212–216	Cluster C: Sought sole decision making regarding religious decision for child so as to allow the child to be baptized. Court determined that reason for baptism was not because of intent to follow religious practice, but to allow for opportunity for family gathering. Child should not be baptized if religion not to be followed by either parent.
2017	Khan v Talaoui, 2017 ONCJ 191	207–209	Cluster C: Court cited importance on ongoing connection with Moroccan culture as well as the negative impression that father and his family had of Moroccan culture and that they shared those opinions with child.
2016	Mitchell v Mitchell, 2016 ONSC 8083	349–354	Cluster A: Issue is about hockey and how it is part of the cultural make up. Father was unhappy about being responsible for taking child to hockey during his parenting time and mother's attendance at games. Court found that hockey was important to child and father should support that as being in the child's best interest.
2015	P(AS) v J(NN), 2015 BCCA 415	72–80	Cluster A: Appeal from decision in 2013 (referenced below) regarding middle and surname of child.
2015	Izyuk v Langley, 2015 ONSC 2409	54–55	Cluster B: Father seeks sole custody, one of the reasons for which he argues is to ensure that the Children are exposed to Ukranian heritage and language. Mother was alleged to have

(Continues)

Year	Case	Key paragraphs	Comment
			undermined the children's attachment to Ukranian heritage. Court disagrees with father, raised that they believed mother's position that she supports children being exposed to hers and the father's heritage.
2015	R(J) v L(J),2015 NBQN 91	35–42	Cluster B: Although Divorce Act was the relevant legislation, Court looks to Family Services Act for definition of BIOC, which includes reference to Culture.
2014	Friedlander v Claman, 2014 BCSC 2587	113–133	Cluster A: Both parents were Jewish. Father sought child to continue in Jewish school, mother opposed. Mother thought the exclusivity of the school promoted "clanishness". Undertook multifactorial BIOC analysis, determined child should continue at Jewish school where she had attended for the most recent 3 years. Parties had prior agreement that child would attend Jewish school, and Court did not find that mother's concerns about clan-like mentality was supported by the evidence.
2013	P(AS) v J(NN), 2013 BCSC 2377	72–80	Cluster A: Addressing middle and surnames of children when both parents were Sikh. Mixed success; child's name was to include Sikh traditional middle name (father's request), but last name would remain hyphenated (mother's request).
2013	Bamford v Peckham, 2013 ONSC 5241	30–37	Cluster B: Father sought to have child attend a homogenous French Catholic School, out of concern that child will lose connection to French culture if not. Mother, who did not speak French, sought for child to attend bilingual French/English school. Court determined child to be enrolled in bilingual French/English school (French immersion) in accordance with mother's request.
2013	XG v RM, 2013 NSSC 206	58 and 72–75	Cluster B: Parties not married. Hearing proceeded pursuant to the Maintenance and Custody Act of Nova Scotia, which lists Culture as a consideration in best interest test. Therefore, it was a listed consideration for BIOC.
2011	Rapoport v Rapoport, 2011 ONSC 4456	64	Cluster A: While both parties supported children being raised in Jewish tradition, father had been more involved in ensuring children did so. Part of multifactorial determination of parenting schedule and custody, which culminated in father having custody and primary care of children.
2011	Pigott v Nochasak, 2011 NLTD(F) 26		Cluster A: Father seeking sole custody. Concerns raised by mother (Inuit) that father (non-Inuit) would fail to properly expose children to Inuit culture. Court found father had taken measure to ensure child's connection, including communicating in Inuit language.
2009	SCM v SMRJ, 2009 YKSC 32	48–51	Cluster A: Relocation case. Mother sought to relocate, father expressed concerns about relocation included that mother would not take appropriate steps to ensure that child continued to have connection to father's first-nations cultural background. Denied relocation. (multifactorial analysis, but culture was an important consideration).
2008	Petit v Petit, 2008 ONSJ 8257	180	Cluster A: Children living with father pursuant to interim custody agreement. Mother sought to have children reside with her because, in part, the primary language in the city in which she resided was French. Father resided in English city and parties had discussed the importance of children being

Year	Case	Key paragraphs	Comment
			exposed to francophone culture. Court undertook BIOC test and determined that in children's best interest to stay in father's care. Still exposed to French culture in current parenting regime.
2008	Libbus v Libbus, 2008 ONSJ 6182	culture addressed throughout decision	Cluster A: Discussion involved (but was not limited to) ensuring that the Children were able to best maintain their connection with the Jewish heritage. Directed that changing school would be best in this instance.
2008	K(AS) v K(MAB), 2008 NBQB 229	148	Cluster C: Discussion part of multifactorial analysis from Family Services Act. Considers that children have had little contact with Francophone family as a result of mother cutting ties. Also considers religious differences between parties. The Court found that the homeschooling by the mother failed to meet basic education standards.
2007	Perkins v Perkins, 2007 ONSC 56508	68–70	Cluster B: Child's biracial identity raised by father as a factor to consider when assessing best interest. Took position that, notwithstanding long estrangement between father and child, the mother should not be permitted to make decisions for child without input from father because she would not emphasize and properly consider child's biracial heritage when doing so. Father's application for joint custody denied, sole decision making to mother, cultural argument considered but not determinative.
2004	Boots v. Sharrow, 2004 ONSC 25	(Issues addressed throughout decision)	Cluster C: Both parents Mohawks. Mother became involved in same sex relationship with a non-Mohawk woman. Father raised concerns about a non-Mohawk partner and the fact that mother was in same sex relationship; a relationship type which was not accepted in Mohawk culture and could result in her ousting from the clan. Cultural considerations considered as one of various factors when determining best interest of children (134 to 136), and was considered against other concerns such as father's issues with alcohol. Held primary care to mother, noting that, even if unlikely ousting took place, mother still considered herself a Mohawk and would raise children similarly and quoted Justice Quinn when considering any backlash from being in same sex relationship who stated: "I do not think that a rational decision by this court should be predicated by the possibility that may provoke an irrational response in others". Put in cluster C as father felt that exposure to same sex relationship could negatively impact children.
2002	C(CM) v B(CD), 2002 BCSC 910	25–28	Cluster B: Father sought for child to attend French school, so as to better understand his French background and to allow him more opportunities through being bilingual. Major concern raised by mother was that she was primary caregiver and would not be able to help child with homework if it were all done in French. Court upheld trial justice's decision (hearing is a review of Notice to Appeal) that child should not change schools. Not attending French school will not deprive child of ability to learn French and be connected to French heritage.
2002	Rushton v. Paris, 2002 NSFC 10	15, 21, 29	Cluster B: Father sought to expose children to African heritage, daughter had expressed dislike for certain elements

(Continues)

Year	Case	Key paragraphs	Comment
			including black dolls. Assessor did not find these behaviors to be concerning, but the Justice disagreed and felt that these issues of self image of the child should have been more considered. Father's request for joint custody denied, as discord between parties too severe for joint custody. However, court directed that father should be entitled to expose children to his cultural heritage as doing so would be in their best interest.
1995	Dossa v. Langille, 1995 CanLII 4438 (NSSC)	46–52	Cluster A: Addresses the interpretation and implementation of paragraph in agreement which confirmed children will be raised in Ismaili-Muslim faith. Father Kenyan Muslim, mother Christian. Father had access, but sought to ensure that mother raised child in strict muslim practice, something he did not follow himself. Court held that allowing father to demand strict adherence by mother to muslim lifestyle when child in her care would make a mockery of joint custody. Upheld on appeal.
1995	Ducas v. Varkony, 1995 CanLII 16,208 (MBKB)	46–49	Cluster A: Interpretation of prior agreement which confirmed children would be exposed to Christianity in mother's home and Judaism in father's home.
1975	Hayre v Hayre, 1975 BCJ No. 1092	5–6	Cluster C: Court of Appeal upheld trial judges reasoning, citing paragraph 11 of BC Supreme Court in support (noted below).
1973	Hayre v Hayre, 1973, BCSC	11	Cluster C: Father Sikh, mother Irish. Child was raised Sikh to date. Court determined that it was important for child to be raised in Sikh traditions and awarded custody to father to ensure same.

APPENDIX B: Post-Amendments Sample Cases (February 28, 2021—present)

Year	Case	Key paragraphs	Comment
2023	TF v JF, 2023 BCSC 2226	110–113	Cluster A: Children had pre-existing connection with Metis culture and Court ensured that the relationship would be maintained notwithstanding the relocation.
2023	Hill v Hill, 2023 ONSC 7023	205–210	Cluster C: Children may still be exposed to two religions, but are not to be administered the sacrament in the religion to which they were newly introduced without the consent of the other party.
2023	HP v PP, 2023 NSSC 251	75–80	Cluster A: Court noted the importance of the child maintaining a connection with Indigenous heritage and that father's awareness on the issue was concerning. Factor weighed in favor of mother regarding relocation.
2023	GEI v CGB, 2023 BCSC 269	347	Cluster B: One parent wants the child to only be spoken to in English; not Portuguese. Court denied request, focusing on the importance of connection to the child's linguistic heritage.
2022	CC v SPR, 2022 BCSC 1503	83–90	Cluster A: Court expressed concern over evidence which demonstrated that the mother (who was seeking to relocate with the Child) may not prioritize exposing the Child to their Sri Lanka heritage (the biracial nature of the Child's heritage). This failure led Court to find that this factor weighed against the mother being able to relocate with Child.
2021	Al kowatli v Berrwin, 2021 ONSC 4999	45–46	Cluster C: Relocation case, parent seeking to move with Child to Lebanon. Parent who sought relocation failed to provide Court with details on how the Child would maintain connection to Canadian element of their cultural experience to date (child had resided in Canada for all but 6 months of their life). No plan provided for how the child's Canadian heritage would be protected if relocation allowed.
2021	Sondhi v Sondhi, 2021 ONSC 4788	35–36	Cluster B: Father argued that shared parenting was important as it allowed for child to have greater connection to Indian heritage. Court noted the importance of cultural connection, it did not find that shared parenting was the only parenting schedule which could support such a connection.
2021	S v D, 2021 ONSC 1710	276–286	Cluster C: Court recognizes the pre-existing connection of child with Jewish faith, which must be preserved (although puts limits on the religious holidays allocated to mother as the number are so high it negatively effects father's parenting time).
2023	AB v MM, 2023 ABKB 377	67–70	Cluster C: The children's ability to participate in frequent family traditions with one parent's side of the family favored relocation.
2023	Shipton v Shipton, 2023 ONSC 1342	127–135	Cluster A: Court discusses value of child continuing to reside in Toronto, a multicultural city with which the Child has history.
2023	AMLC V BDC, 2023 ABKB 179	47–52	Cluster B: Court focuses on how it was an error by the Arbitrator to equal Red River Metis and Alberta Metis as they are distinct despite the similarity in their names. Overturning of Arbitration Decision to deny relocation because arbitrator did not give appropriate weight to need for child to have bicultural competence.
2023	KCM v SJS, 2023 BCSC 435	119–121	Cluster A: Court considers the importance of one parent's focus on ensuring children maintain relationship with Church while in their care.

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Year	Case	Key paragraphs	Comment
2022	RBW v CDW, 2022 BCSC 1757	85–91	Cluster C: Court considers children's continued exposure to Fundamentalist Christian religion, particularly in the face of father's concerns that it will cause his daughters be homeschooled and not pursue post-secondary education.
2022	SMM v SM, 2022 NSSC 256	23	Cluster A: Court both recognized the importance of child being involved in both established cultures but denied the father's claim that his connection to his ability to ensure that the children have connection to African heritage should result in his proposed parenting schedule being preferred
2021	C v G, 2021 ONSC 5019	199 (e(I, ii, iii, iv))	Cluster B: Criticism of parenting assessment which failed to consider culture. Child's exposure to different religions or atheism found to be in child's best interests