

# BIG CHANGES TO FAMILY LAW

Changes to Canada's Divorce Act as of March 1, 2021



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Canada's [Divorce Act](#) changed on March 1, 2021.

The Divorce Act is a federal law that applies to married spouses who are divorcing or divorced. It covers family law issues like parenting arrangements, the impact of family violence on children and parenting, relocating with a child, child support and spousal support.

This fact sheet talks about some of the important changes to the Divorce Act, and says where you can get more information and family law legal help.

## WHO DOES THE DIVORCE ACT APPLY TO?

The federal Divorce Act applies to you if:

- ▶ you are married and either you or your spouse has applied to court for a divorce
- ▶ you are divorced.

The Divorce Act does not apply to you if you were never married.

Provincial family law, Nova Scotia's [Parenting and Support Act](#), applies to:

- ▶ parents who were not in a relationship
- ▶ 'common-law' spouses who are separating
- ▶ married spouses who are separating but not divorcing or divorced.

You can get information about the Parenting and Support Act at [nsfamilylaw.ca](https://nsfamilylaw.ca)

## NEW PARENTING WORDS

The words custody and access are no longer used in the Divorce Act.

The main parenting words used now are **decision-making responsibility**, and **parenting time**. The new words focus on relationships with children, and parents' responsibilities to their children.

**Decision-making responsibility** is about who will make significant decisions about the child's well-being, based on the child's best interests. For example, this includes decisions about a child's:

- ▶ medical and dental care
- ▶ education
- ▶ culture, language, religion and spirituality
- ▶ significant extra-curricular activities
- ▶ other important decisions about the child.

Decision-making responsibility may be

- ▶ shared between parents, or
- ▶ divided between parents (for example, one parent makes health decisions and the other parent decides about schooling), or
- ▶ one parent may be responsible for all significant decisions about the child.

Most parents are expected to talk about important decisions that affect a child, regardless of who has the decision-making authority.

**Parenting time** means the time a child spends with a parent, or person who has a parenting role. It includes time when a parent is primarily responsible for the child, but the child is not actually with them. For example, when the child is in school or daycare. A parent who has parenting time has the right to make day-to-day decisions, including emergency decisions, about a child during their time with the child.

A person who has decision-making responsibility or parenting time has a right to get information from third parties about the child's health, education and well-being, unless there are privacy law limits or a court orders something different. Examples of third parties are schools, healthcare or childcare providers.

**Contact** means time spent with people who are important in the child's life (grandparents for example), but who are not the child's parents or in a parenting role.

The words **parenting time** and **contact** replace 'access'.

**Custody** is still used in Nova Scotia's Parenting and Support Act (provincial law), and means who has decision-making responsibilities and authority for the care and upbringing of a child. Under that law time with a child used to be called 'access', but is now parenting time, or contact time or interaction for non-parents.

An agreement or court order that uses 'custody' or 'access' to describe the parenting arrangements continues until it is changed ('varied') with a new agreement or court order.



**You DO NOT need a new agreement or court order just because parenting language has changed.**

## PARENTING ARRANGEMENTS

The broad term ‘parenting arrangements’ is often used to include decision-making responsibility, parenting time, custody, contact, or a combination of these terms.

Parenting arrangements do not have to be written down. Some parents prefer to have a written agreement. They might do a written Parenting Plan that talks about decision-making responsibility and parenting time. Other parents, who are not able to work together (for reasons such as violence), or who are unable to agree on parenting arrangements, use the court process to get a Parenting Order (court order).

A Parenting Plan or Parenting Order may cover things like:

- ▶ where the child will live
- ▶ each parent’s decision-making responsibilities
- ▶ the time the child will spend with each parent and other important people in the child’s life
- ▶ how the children will communicate with one parent when spending time with the other parent
- ▶ how the parents will communicate with each other about the child
- ▶ who has the right to ask for and get information about the child’s health, education and well-being
- ▶ how disputes will be resolved
- ▶ rules about relocating with a child.

## BEST INTERESTS OF THE CHILD

Judges must only consider the best interests of the child when they make decisions about children. That is not new. What’s new is that the Divorce Act now lists specific factors the judge must look at when deciding what is in a child’s best interests.

The factors include:

- ▶ the child’s needs, keeping the child’s age and developmental stage in mind
- ▶ the child’s relationship with each parent
- ▶ the child’s relationships with siblings, grandparents and other important people in their lives
- ▶ the child’s care arrangements before the separation
- ▶ future plans for care of the child
- ▶ the child’s views and preferences, if appropriate
- ▶ the child’s cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage
- ▶ family violence (see more detail below).

Other factors the judge must consider include each parent's ability and willingness to:

- ▶ care for the child
- ▶ support the child's relationship with the other parent
- ▶ cooperate and communicate about parenting issues.



In every case, **the court must give priority to the child's safety, security and well-being.**

Judges will consider all relevant circumstances. They are not limited to considering only the factors on the list because decisions must be made based on each child's needs.

## FAMILY VIOLENCE IS A FACTOR IN DECIDING ABOUT THE BEST INTERESTS OF A CHILD

Before, the Divorce Act did not mention family violence. Now, family violence is defined in the Divorce Act, and includes:

- ▶ physical abuse
- ▶ sexual abuse
- ▶ harassment, stalking
- ▶ threats of harm to people, pets and property, or actually causing that harm
- ▶ coercive and controlling behaviour
- ▶ psychological abuse, and
- ▶ financial abuse.

The behaviour does *not* have to be a crime to be considered family violence under family laws.

Before this change to the Divorce Act judges did not have to consider family violence when deciding about parenting arrangements and the child's best interests. Now, they must.

A judge must think about:

- ▶ any family violence and its impact on:
  - the ability and willingness of any person who did the family violence to care for and meet the child's needs, and
  - whether it would be appropriate to make an order that would require people to cooperate on issues affecting the child
- ▶ any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child. Examples are a peace bond (or application for one), Emergency Protection Order, or criminal charges or convictions for violent offences.

If there is violence the court must look at

- ▶ the type and seriousness of the family violence
- ▶ how recent it is
- ▶ how often it happened
- ▶ whether there is a pattern of coercive and controlling behaviour
- ▶ the harm caused, and risk of harm
- ▶ whether the violence was directed at the child, or whether the child was exposed to the violence, directly or indirectly
- ▶ any steps the person who did the violence has taken to prevent it in future, and to improve their parenting
- ▶ anything else the court thinks is relevant.

Go to [www.legalinfo.org/family-law/family-violence](http://www.legalinfo.org/family-law/family-violence) for more information about family violence.

## MOVING AFTER SEPARATION OR DIVORCE

The Divorce Act now has rules that apply when someone wants to move, either

1. with the child, or
2. on their own (without the child).



**The rules about moving are complicated, so it is always a good idea to talk with a lawyer right away if you are planning a move. There could be serious consequences if you move with a child without the consent of the people who have parenting responsibilities, and court ordered contact, with the child.**

In family law a move is called a **'relocation'** if the current arrangements will no longer work because of the move. Sometimes even a small move can be a 'relocation', as it might have a significant impact on the parenting schedule. If this fits your case then you **cannot** move unless you have a new court order to allow you to move or the written consent of the people who will be affected by the move.

### Which relocation rules apply to a planned move?

The Divorce Act (federal law) and the Parenting and Support Act (provincial law) both have relocations rules.

The Divorce Act relocation rules only apply if there is a Divorce Act court order (often called [a Corollary Relief Order](#) in Nova Scotia) under the Divorce Act that is about:

- ▶ parenting time
- ▶ decision-making responsibility
- ▶ contact, or
- ▶ custody or access (under the old Divorce Act).

In all other cases the provincial [Parenting and Support Act relocation rules apply](#), including notice requirements under that law. Go to [nsfamilylaw.ca](http://nsfamilylaw.ca) for information about relocation rules under the Parenting and Support Act.

## Notice of relocation rules and process

If family violence is a concern then the following notice rules may not apply.



**If you are afraid about your safety or your child's safety, it is very important to get legal advice about the impact of family violence about a planned relocation.**

## 60 days' notice of a planned relocation



Someone who plans to relocate – with or without the child – must give **60 DAYS'** written notice to anyone who has parenting time, decision-making responsibility or contact.

The written notice must include:

- ▶ the date of the planned move
- ▶ the new address or location
- ▶ any other new contact information for the child or person who is moving
- ▶ a new proposal for how parenting time, decision-making responsibility or contact could happen if the move goes ahead.

There is [a form you may use to provide notice](#). The form is available online at [www.justice.gc.ca/eng/fl-df/divorce/nrf-fad.html](http://www.justice.gc.ca/eng/fl-df/divorce/nrf-fad.html)

Notice gives everyone a chance to discuss the planned move and try to work things out.

If everyone cannot agree, an objection can be sent to the other person and can be filed in court — this must be done within the 30 days after notice is received.

## 30 days to disagree with a planned relocation



A person with parenting time or decision-making responsibility and who gets notice of a planned relocation, has **30 DAYS** to object to the relocation.

There are two ways to object:

1. write to the person and explain why you object to the planned relocation, and
2. to stop the move, apply to court to have the case heard by a judge.

If the relocation does not include the child then a notice of objection does not apply. If new parenting arrangements are needed then the parents and caregivers should try to work it out. If not, then a court application may be filed to work out new parenting arrangements.

A person with a contact order cannot object to a planned relocation. If new contact arrangements are needed then the parents and caregivers should try to work it out. If not, then a court application may be filed.

### To disagree with a planned relocation:

There is [a form you may use to explain your objection](http://www.justice.gc.ca/eng/fl-df/divorce/orf-fod.html) to a planned relocation. The form is available online at [www.justice.gc.ca/eng/fl-df/divorce/orf-fod.html](http://www.justice.gc.ca/eng/fl-df/divorce/orf-fod.html)

The objection should:

- ▶ say there is an objection,
- ▶ say why you do not agree with the planned move, and
- ▶ give your views on the new proposal for parenting time, decision-making or contact in the notice of relocation.



**If you do not object, the move may go ahead, unless there is a court order or written and signed agreement that says differently.**

### Will the move happen? Best interests factors for relocation

Is a planned move in the child's best interests? The court must think about specific factors when deciding whether a planned relocation of a child should happen. These include:

- ▶ the reasons for the relocation
- ▶ how the relocation would affect the child
- ▶ the amount of time the child spends with each person who has parenting time, and their involvement in the child's life
- ▶ whether there is a court order or agreement that says the child must live in a specific geographic area
- ▶ whether proposed changes to parenting time, decision-making responsibilities or contact after a planned move are reasonable
- ▶ whether the parties have followed their family law obligations (for example, have they followed the current court order?)
- ▶ did the person who is planning to move follow the rules for notice.

These specific factors are **in addition** to the other best interest factors listed above under 'Best Interests of the Child'. No single factor will decide the case.



## Who must prove a move is in the child's best interests or not?

The rules about who has the job of proving that a move should happen or not, called the 'burden of proof', are complicated. It is best to [talk with a lawyer](#).

In general:

PARENTING TIME ARRANGEMENT	BURDEN OF PROOF IS ON
'Substantially equal' parenting time	Parent who plans to relocate to show why move is in child's best interests
Relocating parent has 'vast majority' of parenting time	Parent who opposes the relocation to show why move is not in child's best interests
Any other parenting time arrangement	Each parent must show why the planned move is, or is not, in the child's best interests

## When notice rules might be different

In some limited situations a court may order that notice of a planned relocation is not required, or may change the normal notice rules.



For example, **if there is family violence and you are scared about your or your child's safety, the court might say notice is not required, or might shorten the notice period** and say it is not appropriate for the other parent to know the location of the child's or other parent's new residence. You can apply to court to ask the court to change the notice rules in your case. You can apply to court without telling the other party (usually the other parent).

It is best to [talk with a lawyer right away](#) if you think you have a situation where the notice rules should not apply or should be changed.

## Notice is required for every move, even if it is not a relocation

If there is a parenting time or decision-making responsibility court order and you are planning a move that will **not** have a significant impact on the child's relationship with a parent or a person with contact, you must still give written notice of the planned move to anyone who has parenting time, decision-making responsibility or contact.

In this case the written notice must give:

- ▶ the date of the move
- ▶ the new address, and
- ▶ new contact information for the child or person who is moving.

## Costs to exercise parenting time

If the move is authorized then the court may consider the costs to exercise parenting time. The costs may be shared between the person relocating with the child, and the person who is not.

## When can a planned relocation go ahead?

1. When the court says the relocation can happen, or
2. (a) A person who has parenting time or decision-making responsibilities got notice of the move, and has not objected to the relocation within 30 days; and  
(b) there is no court order prohibiting the relocation.

## NEW DUTIES FOR PARENTS

### Duties for parents and others who are important in a child's life

The Divorce Act has new legal duties for parents, grandparents, step-parents and other important people in a child's life.

If the Divorce Act applies to your case then you have a duty to:

- ▶ act in the best interests of the child
- ▶ protect the child from conflict
- ▶ try to resolve family law disputes without court (through a 'family dispute resolution process'), if appropriate
- ▶ provide complete, accurate and up to date information
- ▶ follow all court orders
- ▶ confirm in writing that you are aware of and understand all these duties.

## NEW DUTIES FOR LAWYERS AND COURTS

### Duties for lawyers

The Divorce Act says lawyers must

- ▶ ask if the client believes reconciliation may be possible
- ▶ tell the client about services in the community that may help the client and their spouse explore possible reconciliation.

There are exceptions. For example, it may **not** be appropriate to discuss reconciliation where there has been family violence.

Lawyers must also:

- ▶ encourage a client to try ways to resolve their family law issues without court (family dispute resolution processes like mediation, collaborative family law, negotiation), unless it would clearly not be appropriate to do that (for example, where there is family violence)
- ▶ tell their client about their duties as a person involved in a family law case, and
- ▶ inform them of the family justice services that could help them to resolve their family law issues or to comply with an order or decision made under the Divorce Act.

## Duties for courts

Families are sometimes involved with different courts at the same time. The court has a duty to understand the circumstances of the parties when there are other court proceedings or court orders. They must take steps to know about:

- ▶ **Civil protection orders:** For example, orders that limit or prohibit contact between people, children, and property, like an Emergency Protection Order, Cyber-protection Order, or a Protection of Property Act order
- ▶ **Child protection:** If child protection is involved, whether they are doing that informally by working with the family, or formally by going through court
- ▶ **Criminal:** upcoming or existing criminal proceedings or orders, undertakings or recognizance; sentencing orders, including probation orders. This includes Peace Bonds.

The goal is to improve coordination with legal proceedings happening in other courts, to make sure court orders do not order different things, and to reduce safety risks.

For example, one parent may have been charged with a crime when the family separated. That parent signed a criminal court undertaking (“no contact order”) that limits contact with their spouse and/or child. Child protection has opened a file due to concerns about family violence, and they have a memorandum of understanding with the parents. Now, one parent applies to family court for decision making responsibility and parenting time. The family court judge needs information about the criminal court case and child protection’s involvement. If the family court judge doesn’t know about the criminal case and child protection’s involvement, the judge might give the parent who has a no contact order different rights or responsibilities than those required by the criminal court or child protection. This can make it challenging or impossible for a parent to follow both orders, and can create safety risks.

## SOLVING FAMILY LAW PROBLEMS OUT OF COURT

The Divorce Act encourages people to try to solve their family problems out of court. The Divorce Act uses the term “family dispute resolution processes” to describe ways to do that, including:

- ▶ negotiation
- ▶ court-assisted dispute resolution (“Conciliation”)
- ▶ mediation
- ▶ mediation-arbitration
- ▶ arbitration
- ▶ judge led settlement conference
- ▶ collaborative family law
- ▶ parent coordination.

Family dispute resolution options may not be appropriate if:

- ▶ there is high conflict
- ▶ there is a power imbalance

- ▶ there is family violence
- ▶ there are safety concerns
- ▶ one party is not able to fully express their voice, wishes, or those of the child
- ▶ one party is not able to work with the other as an equal.

Accredited mediators and other family justice professionals recognize the importance of screening cases to help determine whether a given dispute resolution approach is suitable in the circumstances. Screening tools are often a list of questions or a guided conversation that professionals use to find out what family dispute resolution process may be appropriate, or not, for the people who wish to participate in this process.

Remember some agreements or consent court orders are final and may not be changed (for example a division of family property, or a waiver of the right to receive spousal support). Agreements or court orders that may be changed, can only be changed based on a change in circumstances. That is why it is important to get legal advice and information about how the law applies before you start any family dispute resolution process, and again before a final decision or agreement is reached. Get independent legal advice from your own lawyer before you sign a proposed agreement.

## WAYS TO GET MORE FAMILY LAW INFORMATION AND LEGAL HELP

- ▶ The **Department of Justice Canada**'s website at [www.justice.gc.ca/eng/fl-df/cfl-mdf/fam.html](http://www.justice.gc.ca/eng/fl-df/cfl-mdf/fam.html) has more information about family law and the changes to the Divorce Act, including fact sheets on:
  - [Parenting Arrangements](#)
  - [Divorce and Family Violence](#)
  - [Child's Views and Preferences](#)
  - [Moving after separation or divorce](#)
  - [Duties for parents and others](#)
  - [Family Dispute Resolution](#)
- ▶ [www.nsfamilylaw.ca](http://www.nsfamilylaw.ca) has family law information on many topics, including divorce, parenting arrangements, spousal support and child support
- ▶ [Contact the Legal Information Society](#) of Nova Scotia at [legalinfo.org](http://legalinfo.org) for free legal information and help finding family law resources and legal help
- ▶ Contact [Nova Scotia Legal Aid](#) at [nslegalaid.ca](http://nslegalaid.ca) for family law legal information and legal advice
- ▶ Contact [a lawyer in private practice](#) (lawyer you would pay) who does family law

*This information is not intended to replace legal advice from a lawyer. If you have a legal problem or need legal advice [you should speak to a lawyer](#).*

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