

## Changes to the *Divorce Act*: Family Violence

### How changes to the *Divorce Act* address family violence

These are some of the major changes:

- a definition of family violence;
- a requirement for the court to consider the impact of family violence when determining a child's best interests, and guidance on how to assess this impact; and
- a requirement for the courts to consider other orders and proceedings, such as emergency intervention orders, criminal proceedings, and child protection proceedings, that relate to family violence.

**IMPORTANT:**  
These changes to the *Divorce Act* come into force March 1, 2021.

### How family violence is defined under the *Divorce Act*

Family violence is defined as conduct such as this by a family member towards another family member:

- violent;
- threatening;
- forming a pattern of coercive and controlling behaviour; or
- causing other family members to fear for their own safety or for the safety of another person.

In the case of a child, family violence also includes direct or indirect exposure to this conduct.

Conduct does not have to be criminal to be considered family violence under the Act.

The Act recognizes that not all forms of family violence involve physical violence. Amendments to the *Divorce Act* define behaviours that can be considered family violence:

- physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- sexual abuse;
- threats to kill or cause bodily harm to any person;
- harassment, including stalking;
- failure to provide the necessities of life;
- psychological abuse;
- financial abuse;
- threats to kill or harm an animal or damage property; and
- killing or harming an animal or damaging property.

### When does the *Divorce Act* apply?

The *Divorce Act* is a federal law that applies to legally married couples who divorce. The *Children's Law Act*, which is a Yukon law, still applies to couples who never married, when defining their legal rights and responsibilities with respect to their children.



## Best interests of the child

When the court makes parenting orders or contact orders, it is required to consider the best interests of the child, giving priority to the child's safety, security and well-being. As part of this process the court must consider family violence and its impact on these issues, among other factors:

- i. the ability and willingness of any person who engaged in family violence to care for and meet the needs of the child, and
- ii. the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child.

Amendments to the *Divorce Act* provide a list of factors to guide the court in assessing the impact of family violence:

- the nature, seriousness and frequency of the family violence and when it occurred;
- whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- the physical, emotional and psychological harm or risk of harm to the child;
- any compromise to the safety of the child or to his or her family member;
- whether the family violence causes the child or other family member to fear for his or her own safety or the safety of another person;
- any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve his or her ability to care for and meet the needs of the child; and
- any other relevant factors.

## Supervised contact and parenting time

Under the amendments to the *Divorce Act* a parenting order or a contact order may require that the transfer of a child from one person to the other be supervised. It may also require contact or parenting time to be supervised. This may be useful to a person who believes that he or she is at risk of family violence from a former partner.

## Consideration of other proceedings

In cases where there has been family violence, family members may become involved in various aspects of the legal system, including the criminal justice system and the child protection system. Relevant information regarding these various proceedings has not always been shared consistently.

Amendments to the *Divorce Act* now require the court to take into account certain types of orders and proceedings when making orders under the Act such as a parenting order or a support order, except in cases where it's clearly inappropriate to do so. The court has a duty to consider the following orders and proceedings:

- a civil protection order or a proceeding in relation to such an order;
- a child protection order, proceeding, agreement or measure; and
- an order, proceeding, undertaking or recognizance that relates to any relevant matter of a criminal nature.

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For information on the *Divorce Act* go to  
<https://laws.justice.gc.ca/eng/acts/D-3.4/index.html>