

Changes to the *Divorce Act*: Terminology

Replacing the term “custody” and “access”

The amended *Divorce Act* no longer uses the terms “custody” or “access.” Instead of “custody” the amended Act uses the term “decision-making responsibility,” and instead of “access” it uses the term “parenting time.”

“Parenting orders” have replaced “custody orders” made under the previous version of the Act. Parenting orders set out “decision-making responsibility” and “parenting time.” A spouse, or a person who isn’t a spouse, but is a parent or a person who stands or intends to stand in the place of a parent (a “parental figure”), may apply for a parenting order.

A parental figure must obtain permission from the court before applying for a parenting order. A spouse does not need to obtain permission.

Custody is now decision-making responsibility

This means making significant decisions about a child’s well-being, including health, education, culture, language, religion and spirituality; and significant extracurricular activities.

This is not a complete list of responsibilities; decision-making responsibility can include other important decisions for a child.

A parenting order can give decision-making responsibility to one or more spouses or parental figures. The court can also divide decision-making responsibilities between different spouses or parental figures. For example, one person may have decision-making responsibility for health and education, and another person may be responsible for decisions related to religion. This arrangement is more likely to be ordered when the parties have found it difficult to make decisions together.

Access is now parenting time

This means the time that a child spends in the care of a spouse or parental figure. Parenting time does not always mean direct physical care; it can include time when a child is in school or at daycare.

The court may allocate parenting time between spouses or parental figures. It is important to note that the amended *Divorce Act* does not presume equal parenting time between parties. However, the court must give effect to the principle that a child should have as much time with each spouse as is consistent with their best interests.

Unless the court otherwise orders, the person who has parenting time is provided with exclusive authority to make day-to-day decisions affecting the child during that time. If a significant daily issue needs to be addressed, such as a dietary need, then a court can ensure that it is placed in the parenting order so that both parents must abide by it.

Contact orders

Non-spouses who are important in a child’s life can apply to the court for a “contact order.” A contact order enables a party to visit or to communicate with the child, without having to go through the child’s parents. Communication includes telephone calls, text messages and video chats. Please note: an existing parenting order must be in place before a person can apply for a contact order.

Individuals who may apply for a contact order include grandparents or other relatives important to the child. A contact order may be used in situations where the person important to the child is unable to obtain contact through a parent due to a strained relationship.

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

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.



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A person seeking a contact order must obtain permission from the court before making the application, unless he or she already has permission under a parenting order.

It is up to the court to decide whether a contact order is appropriate. The court can place certain restrictions on visits and communication, including a requirement that contact or transfer of the child from one person to another be supervised.

Existing custody and access orders and pending applications for custody and access

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

Best interests of the child

A court considers the best interests of the child when making a parenting order or a contact order, and puts a priority on the child's safety, security and well-being. The amendments to *Divorce Act* include these factors, but other factors may be considered:

- the child's needs, given his or her age and stage of development, such as the need for stability;
- the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- the history of care of the child;
- the child's views and preferences, given the child's age and maturity, unless they cannot be ascertained;
- the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- any plans for the child's care;
- the ability and willingness of each person to care for and meet the needs of the child;
- the ability and willingness of each person to communicate and cooperate, particularly with one another, on matters affecting the child;
- family violence (see Info Sheet 12); and
- any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

When determining whether to make a contact order, a court will consider whether contact could occur without a contact order being made; for example, during the parenting time of another person. It is generally considered preferable for parties to agree on the involvement of non-spouses in a child's life, without court intervention.

Unless a court otherwise orders, if a person is entitled to "custody" or "access" under a custody order, or has a pending application for "custody" or "access" under the previous version of the *Divorce Act*, he or she will have the following when the changes to the *Divorce Act* come into effect:

- "custody" becomes both "decision-making responsibility" and "parenting time";
- "access" by a spouse, or former spouse, becomes "parenting time"; and
- "access" by someone who is not a spouse, or former spouse, becomes "contact under a contact order."

No change in circumstances

The changes under *Divorce Act* do not constitute a change in circumstances of the child, and cannot form the basis of an application to vary custody or access order made under the previous version of the *Divorce Act*.

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