
TRACKING FAMILY LAW CASES SINCE THE 2021 *DIVORCE ACT* AMENDMENTS



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Table of Contents

Overview of <i>Divorce Act</i> Amendments	3
New Terminology	3
Duties: Lawyer (s.7.7(2) <i>Divorce Act</i>)	3
Duties: Parties (s.7.1-7.6 <i>Divorce Act</i>)	4
Duties: Court (s.7.8 <i>Divorce Act</i>).....	4
Roadmap for Family Violence Claims.....	5
What is Family Violence?.....	6
Developing Principles Regarding Credibility	6
Coercive Control: Why it Matters.....	12
Impact of Coercive Control	13
Keira’s Law.....	13
Impact of Domestic Violence on Parenting Orders	14
Family Violence: Impact on Children.....	14
<i>Barendregt v Grebliunas</i>	15
Family Violence and Parenting Orders	16
<i>NK v RE</i>	16
<i>Pennell v Larkin</i>	16
16(4)(h) Any other relevant factor	17
Relocation	17
<i>AJK v JPB</i>	18
Cyber Protection and Emergency Protection Orders	19
<i>Candelora v Feser</i>	19
Emergency Protection Orders	20
Appendix: Cases Cited.....	22

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Overview of *Divorce Act* Amendments

In April 2021 new *Divorce Act* amendments¹ came into force. These amendments saw changes to the law in the following areas:

- New terminology: Parenting Time and Decision-Making Responsibility
- Duties
 - Lawyers
 - Court
 - Parties
- Definition of Family Violence & Factors Determining Impact
- Best Interests of the Child Factors (and Primary Consideration)
- Relocation

We describe each of these headings in brief below.

New Terminology

“**Parenting time** means the time that a child of the marriage spends in the care of a person referred to in subsection 16.1(1), whether or not the child is physically with that person during that entire time”(*Divorce Act*² s.2(1))

“**Decision-making responsibility** means the responsibility for making significant decisions about a child’s wellbeing, including in respect of (a) health; (b) education; (c) culture, language, religion and spirituality; and (d) significant extra-curricular activities” (*Divorce Act* s.2(1))

Duties: Lawyer (s.7.7(2) *Divorce Act*)

The amendments brought into force new duties on legal advisers. Now aside from the duties regarding reconciliation, lawyers have several duties with respect to family dispute resolution including:

- Encourage the use of a family dispute resolution process, when appropriate.

¹ *An Act to Amend the Divorce Act ...* SC 2019, c 16.

² RSC 1985, c 3 (2nd Supp).

- Inform client of family justice services to assist to resolve the matter or comply with an order (for example: conciliation or mediation).

Reasons for this amendment: Generally negotiated agreements last longer, offer a creative solution, help to prevent adversarial proceedings etc.

How is this duty fulfilled? Signing counsel certificate on the originating or responding court forms.

Duties: Parties (s.7.1-7.6 *Divorce Act*)

The amendments imposed new duties on the parties to the proceeding including:

- Comply with an order until no longer in effect
- Act in a manner consistent with the best interests of the child during parenting time/decision-making responsibility
- Protect children from the conflict of the proceedings
- Resolve matters through family dispute resolution where appropriate
- Provide accurate and up-to-date information

How is this fulfilled? Parties must sign a statement that they are aware of their duties. This statement is found on originating and responding court forms and affidavits for an uncontested or joint application for a divorce. (See Civil Procedure Rule 59)

Duties: Court (s.7.8 *Divorce Act*)

The Court has a duty to consider if any orders/proceedings are pending or in effect [civil protection proceeding, child protection and criminal].³

- Reasons for this amendment: Knowledge of the orders, undertakings, recognizances, agreements or measures that may conflict with a *Divorce Act* order AND the coordination of proceedings.
- What may be done? The court may make inquiries of parties or review information that is readily available through a search carried out in accordance with provincial law.

³ Note: There is no similar duty in the *Parenting and Support Act*, RSNS 1989, c 160.

- How is this duty fulfilled? New questions were added to the application and response forms for the court. Eg. Petition, Notice of Application, etc. where parties can identify “*proceedings between the parties or proceedings/circumstances affecting the wellbeing or safety of the children/parties.*”
- What can you do as counsel? Have the orders, undertakings, Emergency Protection Orders etc. available to discuss with the court and the terms and conditions in place.

Note: Do not attach orders arising from a child protection case unless given permission by the court to share in advance.

Roadmap for Family Violence Claims

In the case of *MAB v MGC*⁴ Justice Chappel provides a general **roadmap** for analyzing family violence claims. We have paraphrased the roadmap below:

1. Assess the **credibility** of the allegations.
2. Determine whether the conduct constitutes “**family violence**” within the meaning of the legislation:
 - a. Was it conduct by one “family member” toward another “family member”?
 - b. Does the conduct fall within the examples of family violence listed in the Act?
 - c. If not, does it nonetheless qualify as “family violence” on the basis that it is:
 - i. Violent or threatening; OR
 - ii. A pattern of coercive controlling behaviour; OR
 - iii. It causes the other family member to fear for their own safety or that of another person?

⁴ 2022 ONSC 7207 at 177. Note: This case is a *Children’s Law Reform Act*, RSO 1990, c C.12. case, however, it’s provisions on family violence mirror the language found in the *Divorce Act*.

- d. If it is alleged that the child has experienced family violence, has the child been the direct victim, or have they been directly or indirectly exposed to family violence?
3. If the behaviour amounts to family violence, **determine the impact** of the family violence on:
 - a. The ability and willingness of the person who engaged in the violence to care for and meet needs of child;
 - b. The appropriateness of making an order that would require cooperation between the parties on issues affecting the child.
 4. In determining the impact of family violence, take into account all relevant considerations, and specifically, the listed factors including “any other relevant factor.” (as found in s.16(4) of the *Divorce Act*)

What is Family Violence?

Developing Principles Regarding Credibility

The first step of the roadmap suggested in *MAB v MGC* is to **assess the credibility** of the allegations of family violence. Recent cases in Nova Scotia (and beyond) point to some potential principles relating to establishing credibility:

- Evidence of “pervasive domestic violence” is not required and proof of even one incident of family violence may raise safety concerns. (*Barendregt v Grebliunas*,⁵ *Pennell v Larkin*⁶)
- Lack of reporting, charges or convictions does not mean family violence did not occur. (*SLJ v KB*,⁷ *Barendregt v Grebliunas*, *Pennell v Larkin*)
- A victim lying to police to protect the perpetrator of family violence may not lead to an adverse finding on credibility. (*BM v AC*⁸)

⁵ 2022 SCC 22.

⁶ 2022 NSSC 233.

⁷ 2019 NSSC 268.

⁸ 2019 NSSC 102.

- Staying with an abusive partner does not minimize or refute testimony regarding domestic violence. (*KM v KMG*⁹)
- Blanket denials from the alleged perpetrator of violence may be insufficient to refute claims of family violence. (*JM v SM*,¹⁰ *CLT v DTT*,¹¹ *Paulin v Pennell*,¹² *Pennell v Larkin*)

Applying a “Broad and Purposive” Interpretation of Family Violence

In *MAB v MGC* Justice Chappel notes that courts must construe family violence provisions in a broad and purposive manner:

Having regard for the damaging impacts of family violence, *the courts must construe family violence provisions in a broad and purposive manner so as to maximize the protective scope of the provisions* for children and their family members who are facing family violence in its many forms. [emphasis added]¹³

Definition of Family Violence in the *Divorce Act*

The second step of the roadmap suggested in *MAB v MGC* is to assess **whether the conduct constitutes “family violence.”** The 2021 amendments brought in a new definition of family violence:

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;

⁹ 2018 NSSC 159.

¹⁰ 2020 NSFC 12.

¹¹ 2022 NBKB 239.

¹² 2022 NSSC 297.

¹³ *Supra* note 4 at para 176 referencing *Michel v Graydon*, 2020 SCC 24.

- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property.
[emphasis added]¹⁴

Contained within this definition are a number of points of note:

1. These acts constitute family violence whether or not the conduct constitutes a criminal offence
2. Family violence is not limited to the enumerated acts within the definition
3. Family violence could be conduct which is otherwise:
 - a. Violent and threatening behaviour; or
 - b. Coercive and controlling behaviour; or
 - c. Behaviour that causes a family member to fear for their safety (or the safety of another).

We discuss each of these general headings of family violence below.

Violent and Threatening

In reviewing the case law, we have found some examples of “violent and threatening behaviour” including:

- Family violence also includes circumstances, whether single or series, where a person is unable or unwilling to manage conflict or anger (*MNB v JMB*¹⁵).
- Expressing frustration through screaming, yelling, cursing, hitting, slamming or throwing items and yelling at children (*CB v NI*¹⁶).

¹⁴ *Supra* note 2, s 2.

¹⁵ 2022 ONSC 38 at para 8.

¹⁶ 2022 NSSC 290.

- Text messages including profanity-laced expletives and racist and gender-based obscenities (*Paulin v Pennell*).

Fear for Safety

With respect to the heading of conduct which causes a person to fear for their own safety or that of another, the following cases may be instructive:

- The mother had a genuine fear of the father: “It is not surprising the child would be sensitive to his families’ anxiety and the reason for it. Children do not live in a vacuum. This child’s sense of security would understandably be eroded” (*KM v KMG* at para 152).
- The father often presented as a “scary person” to his children (and others) and instilled fear by shouting and throwing things. The children believed they “were unable to keep themselves physically and emotionally safe” around him (*CB v NI* at para 227).
- The father dysregulates and the children become fearful. “The children do not know how to process and react ... No child should be placed in the position of having to navigate their parent’s dysregulation.” (*Paulin v Pennell* at para 37).

Coercive Control: Defined

Finally, the third “element” of the definition of family violence contained in the *Divorce Act* provides that conduct which is otherwise **coercive and controlling** is family violence.

In *MAB v MGC*, Chappel J. offers the following definition of **coercive control**:

This type of family violence is distinct from others in that it can consist of many different types of acts occurring over time which, in isolation, do not seem abusive or significant, but when viewed in their totality paint a picture of a very abusive relationship. ... Coercive control in familial relations has many faces, and it is chameleon-like in the ways that it can evolve, transform, and ebb and flow over time. ... A general review of this caselaw

indicates that “coercive” behaviour includes conduct that is threatening, intimidating or exerts inappropriate pressure on the other person. Behaviour is broadly being considered as “controlling” if its intent or effect is to inappropriately manage, direct, restrict, interfere with, undermine or manipulate any important aspect of the other person’s life, including their important relationships and their physical, emotional, intellectual, spiritual, social and financial autonomy or wellbeing.¹⁷

Coercive Control: Examples from cases

Aside from Justice Chappel’s discussion of coercive control, we have found a number of other cases with definitions or examples of coercive controlling behaviour, highlighted below:

- Pattern of emotionally abusive intimidation (*AP v JK*¹⁸)
- Can occur with or without physical violence (*MNB v JMB*¹⁹)

Cases provide that elements or examples of coercive control may include things like:

- Combination of unwarranted calls to child protection or police, denigrating the other parent’s skills, harassing texts, financial control, and isolation from friends (*BLO v LJB*²⁰)
- Threats to revoke sponsorship, controlling reproductive health and finances (*Melek v Mansour*²¹)
- Removing necessary items from the home, changing shared passwords, removing the other parent from health documents and the family calendar, and deleting important documents (*AW v NP*²²)

¹⁷ *Supra* note 4 at para 183.

¹⁸ 2018 NSFC 14.

¹⁹ 2022 ONSC 38.

²⁰ 2022 ONCJ 231.

²¹ 2022 ONSC 6688.

²² 2022 SKQB 150.

- Withholding passports and significantly delaying court proceedings (*Geliedan v Rawdah*²³)
- Subsequent conduct in relation to infidelity/affairs (*McBennett v Danis*²⁴)

Does the Conduct Constitute Family Violence (s.2(1) *Divorce Act*)?

The definition of family violence also states that it must be conduct “*by a family member towards another family member.*”

Courts may be able to interpret this broadly. See for example, *Armstrong v Coupland*:

The **communications [to counsel]** have often been inappropriately aggressive, demanding and threatening ... and have been clearly **designed to destroy a solicitor client relationship** ... In this sense, the communications amount to a pattern of threatening, coercive and controlling behaviour towards the Respondent. [emphasis added]²⁵

Alternatively, *RE v SJL* provides an example of a narrower interpretation:

... [T]he allegation of physical violence arising from the incident involving the damaged door falls short of establishing ‘family violence’ The conduct in question involves damage to a door following an argument but while neither the mother nor A. were in the room. ***The damage was not to property exclusively owned by the mother. It was at least partially owned by the father.*** The definition of ‘family violence’ requires that the conduct be of ‘a family member towards another family member’. [emphasis added]

²⁶

²³ 2022 ONSC 2176.

²⁴ 2021 ONSC 3610.

²⁵ 2021 ONSC 8186 at 39.

²⁶ 2023 PESC 1 at 63.

Coercive Control: Why it Matters

Per Justice Canada’s [Divorce Act Changes Explained](#)²⁷, “... *generally the most serious type of violence in family law is coercive and controlling* violence. This is because it is part of an **ongoing pattern**, tends to be more dangerous and is more likely to affect parenting.”

“... a serious incident of family violence **that occurred in the distant past, but which is part of an overall pattern of coercion and control, may be of greater concern** than a single less serious incident of family violence that occurred around the time of separation.” [emphasis added]²⁸

With an understanding of coercive control, we are starting to see a wider range of behaviours labelled family violence such as:

- Tech abuse²⁹
- Substance use coercion³⁰
- Mental health coercion
- Spiritual abuse
- Litigation abuse³¹

²⁷ “Divorce Act Changes Explained” (2022), online (pdf): *Department of Justice Canada* <<https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/dace.pdf>>.

²⁸ *Ibid* at 99-100.

²⁹ See for example R. Hoffart & M. Kardashevskaya, “Tech-Facilitated Violence: An Introduction,” online (pdf) 14 *Family Violence & Family Law Brief, RESOLVE (Research and Education for Solutions to Violence and Abuse* <https://fvfl-vfdf.ca/briefs/Briefs%20PDF/Family_Violence_Family_Law_Brief-14-EN.pdf>.

³⁰ See for example Resolve: University of Manitoba, “Substance Use Coercion and IPV Survivors in Family Court” (8 February 2023), online (webinar): *Youtube* <<https://www.youtube.com/watch?v=ANukaoWw26k>>.

³¹ See for example Nonomura et al, “When the Family Court Becomes the Continuation of Family Violence After Separation: Understanding Litigation Abuse”, online (pdf): 15 *Family Violence & Family Law Brief, Centre for Research & Education on Violence Against Women & Children* <https://fvfl-vfdf.ca/briefs/Briefs%20PDF/Family_Violence_Family_Law_Brief-15-EN.pdf>.

Impact of Coercive Control

Several resources have helpfully outlined what the impact of coercive control could be on children:³²

- “As a result of the past severe and escalating family violence (coercive and controlling) found in this case, it is fair to think that the *risk of future family violence is high.*” (*AJK v JPB*³³)
- Those who use coercive control are more likely to *continue the violence* and more likely to *abuse children* after separation.³⁴

Keira’s Law

Coercive controlling behaviour is of particular significance in family relationships. Bill C-233, or “Keira’s Law” would provide training for judges on intimate partner violence including coercive control. This Bill, which is currently making its way through the Senate, stems from a tragic story of domestic violence and coercive control, resulting in the death of 4-year-old Keira Kagan.³⁵ Her mother, Jennifer Kagan, has since advocated for passing this Bill to ensure judges recognize the relevance and risks of coercive control. The proposed change³⁶ to the *Judges Act*³⁷ includes to:

Paragraph 60(2)(b) of the *Judges Act* is replaced by the following:

(b) establish seminars for the continuing education of judges, including seminars on matters related to sexual assault law, intimate partner violence, **coercive control in intimate partner and family relationships** and social context, which includes systemic racism and systemic discrimination;
[emphasis added]

³² See also the factors relating to Family Violence found at s.16(4) of the *Divorce Act*

³³ 2022 MBQB 43 at 50.

³⁴ *Supra* note 27 at 101.

³⁵ Farrah Merali, “Keira Kagan’s legacy lives on in bill to expand education for judges on domestic violence”, *CBC News* (12 February 2022), online <<https://www.cbc.ca/news/canada/toronto/keiras-law-introduced-in-house-of-commons-1.6348729>>.

³⁶ Bill C-233, *An Act to amend the Criminal Code and the Judges Act (violence against an intimate partner)*, 1st Sess, 44th Parl, 2021-2022 (as passed by the House of Commons 1 June 2022).

³⁷ RSC 1985, c J-1.

Coercive Control: Impact on Children

Social science literature tells us that family violence and coercive control affect child well-being and development.³⁸ Justice Canada’s *HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers*³⁹ provides a useful chart showing the impacts of family violence for children at various developmental stages:

Some of the impacts of family violence for children at different developmental stages include the following.⁴²

Infants, toddlers, and preschoolers (ages 0-3)	School-age children (ages 4-12)	Adolescents (ages 13-19)	Into adulthood
<ul style="list-style-type: none"> ▶ infant mortality, preterm birth, and low birth weight ▶ adverse neonatal outcomes from mother’s abuse of substances in order to cope with violence ▶ parent experiencing violence forms unhealthy attachment with child due to heightened state of stress/anxiety ▶ behavioural issues ▶ social difficulties including difficulty in regulating emotions ▶ Post-traumatic stress disorder (PTSD) symptoms ▶ difficulty with empathy and verbal abilities ▶ excessive irritability, aggression, temper tantrums, sleep disturbances, and emotional distress ▶ resist comfort ▶ adverse psychosomatic effects ▶ impact neurocognitive development ▶ filicide ▶ physical injuries 	<ul style="list-style-type: none"> ▶ develop anti-social rationales for abusive behaviour ▶ self-blame ▶ internalizing behaviours (e.g., humiliation, shame, guilt, mistrust, low self-esteem) ▶ anxiety and fear ▶ difficulty with social skills ▶ difficulties with emotional regulation ▶ negative peer relations ▶ depression ▶ bullying ▶ academic abilities compromised ▶ filicide ▶ physical injuries 	<ul style="list-style-type: none"> ▶ depression ▶ suicidal ideation ▶ anxiety ▶ aggression ▶ social withdrawal ▶ unhealthy attachments leading to difficulties forming healthy intimate relationships ▶ distorted views of intimate relationships ▶ lack of trust ▶ heightened risk for violent behaviours toward peers or intimate partners ▶ substance use ▶ anger issues ▶ long-term emotional distress ▶ filicide ▶ physical injuries ▶ difficulties with emotional regulation 	<ul style="list-style-type: none"> ▶ risk of perpetrating violence in own families ▶ depression ▶ anxiety ▶ dissociation ▶ PTSD ▶ difficulties in emotional regulation ▶ decrease in parenting quality ▶ low educational achievement ▶ chronic diseases (e.g., liver disease, sexually transmitted diseases) ▶ sleep disorders ▶ substance abuse

Impact of Domestic Violence on Parenting Orders

Family Violence: Impact on Children

Nova Scotia’s courts have for some time recognized the negative impact of family violence on children, even where there was no evidence that the person who uses

³⁸ See for example “Issue 37: Children Experience Coercive Control: What You Need To Know” (March 2022) online (newsletter), Learning Network <https://www.vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-37/Newsletter_Issue_37.pdf>.

³⁹ “HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers” (2021) at 56, online (pdf): *Department of Justice Canada* <<https://www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>>.

violence has actually harmed the child. In 2010, Justice Beryl MacDonald in *NDL v MSL* took judicial notice of the impact of family on children:

“Children are **harmed emotionally and psychologically** when living in a home where there is domestic violence whether they directly witness the violence or not. Exposure to domestic violence is not in the best interests of children and those who are the perpetrators of domestic violence, who remain untreated and who remain in denial are **not good role models** for their children. The fact that there is **no evidence the perpetrator has actually harmed the child** is an insufficient reason to conclude the perpetrator presents no risk to his or her child.” [emphasis added]⁴⁰

Barendregt v Grebliunas

In 2022, the Supreme Court of Canada in *Barendregt v Grebliunas*, affirmed that family violence is a significant factor that impacts children:

- “family violence is a **significant factor** impacting the best interests of the child.”⁴¹
- “The suggestion that **domestic abuse** or family violence **has no impact on the children** and has nothing to do with the perpetrator’s parenting ability is **untenable**. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives.”⁴²
- The notion that there is a presumption of shared parenting is incorrect. The “maximum contact principle” is “only significant to the extent that it is in the child’s best interest.” The “maximum contact principle” is better referred to as the “parenting time factor”.⁴³

⁴⁰ 2010 NSSC 68 at 35.

⁴¹ *Supra* note 5 at para 9.

⁴² *Ibid* at para 143.

⁴³ *Ibid* at paras 134-135.

Family Violence and Parenting Orders

Below are two examples of cases where family violence was a factor that impacted the resulting parenting order and restricted parenting time for the parent who used abuse.

*NK v RE*⁴⁴

- Family Violence: “The father was consistently physically, emotionally, and verbally abusive to and harassing of the mother. He hit her. He pushed her. He confined her. He yelled, cursed, and called her vulgar and humiliating names. He destroyed the mother’s property. He harassed and stalked her.”⁴⁵
- Commentary: **Past violence, though relevant, does not necessarily determine current status.** Most people have the capacity to effect positive and permanent lifestyle changes, even in the face of significant historical deficits.
- Outcome: The finding of family violence was critical in placing restrictions on the father’s parenting time. **His behaviour posed a substantial risk of physical and emotional harm to the child. It was clear that the father lacked insight** and remorse for his past conduct demonstrating his inability to appreciate how violence negatively affects his child.

*Pennell v Larkin*⁴⁶

- Family Violence: There were five incidences of physical assault with one after separation (which resulted in criminal charges). The father denied physical violence, said it was not pervasive and insisted the mother was ‘playing the victim.’
- Impact: “Family violence is a critical consideration in the Best Interests Analysis”...and it does not have to be pervasive...“especially in light of Mr. Larkin’s recent guilty plea for assaulting Ms. Pennell, I have ongoing concerns about the impact of family violence, abuse and intimidation in this

⁴⁴ 2021 NSSC 13.

⁴⁵ *Ibid* at para 15.

⁴⁶ *Supra* note 6.

case which, in my view, factor against a 50/50 parenting arrangement during the school year”...⁴⁷

- **Outcome:** The father’s request for shared parenting was denied. The mother was granted final decision-making authority for non-medical decisions and primary care during the school year.

16(4)(h) Any other relevant factor

In determining the impact of family violence, in *MAB v MGC*, Justice Chappel offers commentary on the factors relating to family violence, in particular, the catchall provision of “any other relevant factor” (s.16(4)(h) of the *Divorce Act* or s.24(4) of the *Children’s Law Reform Act*):

Additional factors to consider pursuant to that section are the effects of the violence on the victim and the stage they are at in their healing journey, since the trauma from the violence may linger even if the perpetrator has made significant progress in addressing their behaviour.⁴⁸

Relocation

Because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, *this is an important factor in mobility cases*. [emphasis added]⁴⁹ (*Barendregt v Grebliunas*)

Relocation: (Divorce Act)

Note: The *Parenting and Support Act* includes similar provisions relating to relocation. Below is an overview of some of the changes to the *Divorce Act* around relocated. For a full overview of the changes see the *Divorce Act* or Justice Canada’s Fact Sheet⁵⁰ on moves after separation or divorce:

⁴⁷ *Ibid* at para 119.

⁴⁸ at 177 citing *Bell v Reinhardt*, 2021 ONSC 3352 at 15.

⁴⁹ *Supra* note 5 at 147.

⁵⁰ “Moving after separation or divorce?”, online (pdf): *Department of Justice Canada* <<https://www.justice.gc.ca/eng/fl-df/pdf/fact5-fiches5.pdf>>.

- **Relocation:** A move that is “is likely to have a significant impact on the child’s relationship” with someone with parenting time or contact time (s.2(1))
- **Notice requirements:** at least 60 days notice and specific details required (including when, new address, contact info) (s.16.9(1), s.16.9(2))
 - note: a person with parenting responsibilities can object within 30 days of receiving notice if they do not agree to the relocation
- **Exception:** A person can apply to the court to *waive or modify* the notice requirements (including where there is a risk of family violence) (s.16.9(3))
- **Additional Best Interest of the Child Factors** to consider such as the reasons for the relocation and its impact (s.16.92(1))

Burdens:

- If both parents have *substantially equal parenting time*, the parent wanting to move has the burden of proving it is in the child’s best interests (s.16.93(1))
- If the person planning to move has *the vast majority of the parenting time*, the other parent must prove that the move is not in the child’s best interest (s.16.93(2))
- In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child. (s.16.93(3))

AJK v JPB⁵¹

This case from Manitoba is a recent example where a relocation **without notice** was allowed by the court:

- **Family Violence:** The father exhibited a pattern of escalating “separation-instigated violence”. There was physical abuse (forced confinement), threats

⁵¹ 2022 MBQB 43.

including threats to kill, harassment, stalking, psychological, and financial abuse.

- Impact: It did not need to be proven that the father's behaviour caused harm to the children or that it would compromise their safety or sense of security since as noted in *McBennett v Danis*, 2021 ONSC 3610, the effects of family violence on children can be direct and indirect. Additionally, there was no evidence that the father's behaviour had abated.
- Outcome: The mother was allowed to change residence and relocate without notice, given the history of family violence, the impact the violence had on the family, and that it would be in the children's best interests. Given the very real fear that the father may act improperly or even irrevocably upon notice of the mother's intention to relocate, the Court allowed the hearing without notice.

Cyber Protection and Emergency Protection Orders

Under the *Intimate Images and Cyber-Protection Act*⁵², survivors of domestic violence may be able to obtain a Cyber-Protection Order if they have experienced cyberbullying or non-consensual sharing of intimate images.

In one case under this act, *Candelora v Feser*⁵³ the applicant was successful in establishing that the respondent (her former partner) had cyber-bullied her.

Candelora v Feser

- The parties were involved in a family law dispute (parenting time/child support).
- The respondent and his new partner launched a social media campaign against the applicant.
- The Facebook posts were found to meet the definition of cyber-bullying: offensive, designed to harass, intimidate & humiliate, posted prolifically and harmed the applicant, including psychological and emotionally.

⁵² SNS 2017, c 7.

⁵³ 2019 NSSC 370.

- The respondents were ordered to remove offending communications and restrained from further posting or communicating with the applicant.
- The court awarded damages of \$85,000 (see *Candelora v Feser*, 2020 NSSC 177).

Emergency Protection Orders

An **Emergency Protection Order** (EPO) under the *Domestic Violence Intervention Act* may be another option for survivors of domestic violence who require immediate protection.

An EPO is granted only if a designated Justice of the Peace is satisfied that domestic violence has happened and that the situation is **serious and urgent**.

Serious and Urgent: *MCS v RAS*⁵⁴

For example, in *MCS v RAS*, a judge of the Supreme Court of Nova Scotia found that an EPO should not have been granted by a Justice of the Peace since there was no urgency:

- The last incident of domestic violence happened over a year ago; and
- The victim acknowledged during her call with the Justice of the Peace when requesting an EPO that communications with the respondent have been civil since the domestic violence incident occurred a year ago.
- “The emergency protection regime as prescribed by the *Domestic Violence Intervention Act* is designed for true emergencies.”⁵⁵

Cautionary Tail: Example of the Court revoking an emergency protection order

In *TLT v RT*⁵⁶ the court found that the EPO should be revoked and the wife’s application to extend the EPO denied holding:

⁵⁴ 2004 NSSC 60.

⁵⁵ *Ibid* at 18.

⁵⁶ 2003 NSSC 251.

- [An EPO] ”is intended to provide a zone of safety for abused spouses in those cases where there is a realistic threat of immediate harm to the spouse or child.”⁵⁷
- The parties had been separated for three months when the EPO was granted; the wife was living with her mother in her summer home and the husband did not even know where this was located.
- No evidence that the husband made any threats to harm the wife during the separation.
- It was the wife who attempted to contact the husband post-separation.
- “Indeed, even after the Emergency Protection Order was granted, the wife contacted the husband and suggested that they, along with their child, “get together” to celebrate the child’s birthday. Under those circumstances I cannot find a rational basis for the wife’s immediate fear of harm from the husband.”⁵⁸

⁵⁷ *Ibid* at 34.

⁵⁸ *Ibid* at 35.

Appendix: Cases Cited

CASE	ACT	JUDGE	MANUAL REFERENCE
<i>AJK v JPB</i>, 2022 MBQB 43	<i>Divorce Act</i>	Justice Dunlop	Example of Coercive Controlling Behaviour Relocation without notice case
<i>Armstrong v Coupland</i>, 2021 ONSC 8186	<i>Children’s Law Reform Act</i>	Justice Chappel	Threatening correspondence to counsel found to amount to coercive and controlling behaviour towards respondent
<i>AW v NP</i>, 2022 SKQB 150	<i>Divorce Act</i>	Justice McCreary	Finding of coercive control
<i>Barendregt v Grebliunas</i>, 2022 SCC 22	<i>Divorce Act</i>	Justice Karakatsanis	Relocation Case Commentary on Family Violence and Impact of Family Violence (proof of even one incident may raise safety concerns, barriers to reporting)
<i>BLO v LJB</i>, 2022 ONCJ 231	<i>Children’s Law Reform Act</i>	Justice O’Connell	Finding of coercive control
<i>BM v AC</i>, 2019 NSSC 102	<i>Parenting and Support Act</i>	Justice MacLeod-Archer	Developing principles of proving family violence (a victim lying to police to protect perpetrator may not lead to adverse inference on credibility)
<i>Candelora v Feser</i>, 2019 NSSC 370	<i>Intimate Images and Cyber Protection Act</i>	Justice Arnold	Cyber Protection Order case
<i>CB v NI</i>, 2022 NSSC 290	<i>Parenting and Support Act</i>	Justice Cormier	Example of Family Violence: “Fear for Safety” and “Violent or Threatening” behaviour

<i>CLT v DTT, 2022 NBKB 239</i>	<i>Family Law Act</i>	Justice Delaquis	Relocation Case Developing principles of proving family violence: (Denials from alleged perpetrator may be insufficient to refute claims of family violence)
<i>JM v SM, 2020 NSFC 12</i>	<i>Parenting and Support Act</i>	Judge Daley	Developing principles of proving family violence (Denials from alleged perpetrator may be insufficient to refute claims of family violence)
<i>KM v KMG, 2018 NSSC 159</i>	<i>Parenting and Support Act</i>	Justice Beryl MacDonald	Developing principles of family violence (staying with an abusive partner does not minimize or refute testimony)
<i>MAB v MGC, 2022 ONSC 7207</i>	<i>Children's Law Reform Act</i>	Justice Chappel	Explores concept and definition of coercive control
<i>Melek v Mansour, 2022 ONSC 6688</i>	<i>Divorce Act</i> <i>Children's Law Reform Act</i>	Justice Chozik	Example of coercive controlling behaviour
<i>MNB v JMB, 2022 ONSC 38</i>	<i>Divorce Act</i>	Justice Tobin	Explores concept of coercive control Family violence includes circumstances where a person is unwilling or unable to manage conflict or anger
<i>NDL v MSL, 2010 NSSC 68</i>	<i>Divorce Act</i>	Justice Beryl MacDonald	Explores concept of coercive control Judicial notice of impact of family violence on children

<i>NK v RE, 2021 NSSC 13</i>	<i>Parenting and Support Act</i>	Justice Forgeron	Impact of domestic violence on parenting time
<i>Paulin v Pennell, 2022 NSSC 297</i>	<i>Divorce Act</i>	Justice Forgeron	Developing principles of proving family violence (Denials from alleged perpetrator may be insufficient to refute family violence claims) Finding of family violence impacting parenting time
<i>Pennell v Larkin, 2022 NSSC 233</i>	<i>Parenting and Support Act</i>	Justice Jesudason	Developing principles of proving family violence (evidence of “pervasive domestic violence” is not required, denials from alleged perpetrator may be insufficient to refute claims of family violence) Finding of family violence impacting parenting time
<i>SLJ v KB, 2019 NSSC 268</i>	<i>Divorce Act</i>	Justice Forgeron	Developing principles of proving family violence (Lack of reporting, charge or conviction does not mean family violence did not occur)