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

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# Introduction

**What is in this manual?**

In this manual, you will find a brief summary of the 2021 *Divorce Act*[1] amendments. We provide an overview of family violence and coercive control, including how courts have been taking a broad and purposive approach to understanding these concepts.

We next review key evidentiary issues in family violence cases and review recent decisions addressing persistent myths and stereotypes in family court.

We then look at how judges are interpreting the family violence provisions in the four years following the amendments. To do this, we borrow from a family violence "roadmap" developed by Chappel J. in the case of *MAB v MGC*[2] as a framework for this analysis.

Lastly, we consider how findings of family violence may be impacting parenting orders and the relocation analysis. We conclude by sharing how family violence consideration may intersect in other family law matters such as support orders and interjurisdictional child removal cases.

**Please Note:**

We have anonymized most of the cases contained in this manual given the sensitive nature of the content. As such, you should check the actual cite for certainty around the reported case name.

**Why the *Divorce Act* was amended**

The *Divorce Act* underwent significant amendments in 2021. These amendments were introduced in 2018 through Bill C-78 with the stated objectives to promote children's best interests, address family violence, reduce poverty and make the family justice more accessible and efficient.[3]

The amendments saw several developments including the introduction of new duties on the courts and parties and a comprehensive list of best interests factors. In relation to family violence, a broad definition was added along with provisions considering the impact of family violence on the child. New relocation provisions were included, requiring courts to consider the impact of family violence in assessing whether a relocation is in the best interests of the child and allowing a person to apply to the court to waive or modify notice requirements in cases of family violence, possibly on an *ex parte* basis.

[1] RSC 1985, c 3 (2nd Supp) [*Divorce Act*].
[2] 2022 ONSC 7207 [*MAB v MGC*].
[3] Government of Canada, "Legislative Background: *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act* (Bill C-78 in the 42nd Parliament)" (June 2019), online: <www.justice.gc.ca/eng/rp-pr/fl-lf/famil/c78/index.html> [Legislative Background].

The *Divorce Act* was previously silent on family violence, with many groups and organizations advocating for such amendments for years.[4] Justice Dunlop explained the rationale for the requirement on family courts to consider family violence in *AJK v JPB*[5]:

> [24] This definition is evidenced based as a result of years of research relating to family violence (see C. Farid, ***Legislative Background***, 2019 CanLIIDocs 3950). This new duty on the part of judges to consider family violence represents a new attitude and awareness of the dangers inherent in family breakdowns. This increased emphasis on family violence addresses long-standing gaps in legislation and judicial responses that have, in the past, created situations where victims and children feel that they are on their own and must take drastic actions to protect themselves as this litigant has been forced to do. The new amendments recognize the danger to the safety, well-being and security of the children involved and have provided litigants and the court with tools and processes to ensure safety. While a court order cannot stop a bullet, a knife or a fist, it can give this mother and children a chance to make a safety plan to avoid the father's violence and keep them safe.

The legislative changes confirmed an exclusive focus on the best interests of the child in parenting matters with a notable primary consideration directing the courts to consider "the child's physical, emotional and psychological safety, security and well-being" at section 16(2) of the *Divorce Act.* The changes do not include a presumption of equal or shared parenting in recognition of several concerns, including the reality that shared parenting arrangements may not be safe in cases of family violence.[6]

One of the key objectives of the *Divorce Act* changes was to address family violence in response to the high rates of reported violence in Canada and the reality that separation and divorce can increase the risk of violence, including femicide.[7] Including a broad definition recognizes that all forms of family violence, including those that may not be criminal in nature, are highly relevant in the family law context due the "profound effect" that exposure to family violence can have on a child.[8] The changes explicitly mention coercive and controlling behaviour in recognition that coercive control is, "the most serious type of violence in the family law context ... because it is part of an ongoing pattern, involves more danger, and is more likely to be associated with compromised parenting."[9]

Relatedly, under the *Divorce Act*, courts now also have a duty to consider related proceedings or orders to enhance coordination between courts and reduce the potential for conflicting court orders.

**Concordance with Provincial Legislation**

Many provinces and territories made amendments to their provincial legislation to compliment the family violence definition in the *Divorce Act* and include a consideration of coercive control.[10] Indeed some jurisdictions including Ontario, Saskatchewan and New Brunswick have largely mirrored the definition of

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[4] See e.g. Luke's Place Support and Resource Centre & National Association of Women and the Law, "*BILL C-78: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*" (2018), online (pdf): <www.lukesplace.ca/wp-content/uploads/2018/11/NAWL-Lukes-Place-Brief-on-C-78-final-for-submission-2.pdf>

[5] 2022 MBQB 43 [*AJK v JPB*].

[6] Legislative Background*, supra*, note 3.

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] See Appendix A for a comparison across jurisdictions.

family violence as found in the *Divorce Act* as well as the best interests and related family violence factors.

Even where provincial statutes differ with respect to their parenting provisions, some courts are comfortable referencing cases and principles on family violence in cases decided under the *Divorce Act* when determining parenting arrangements and proceeding under provincial legislation.[11] In addition, some courts appear to be inclined to cite family violence principles stemming from other jurisdictions.[12]

For example, in Alberta, despite a narrower definition of family violence in their *Family Law Act*, the Court of King's Bench concluded that "… the more expanded definition of family violence in the *Divorce Act* can be adopted … It is informed by a body of jurisprudence that has allowed for the development of a more contextual appreciation of how family violence is perpetrated and includes the dangerous subtleties of coercive and controlling behaviour." [13]

Where jurisdictions do tend to differ most significantly in making decisions about parenting is with respect to their relocation provisions and analyses. Where jurisdictions lack a legislated framework on relocation, some relocation factors as outlined in s 16.92 of the *Divorce Act* may nevertheless be relevant to the analysis.[14]

Despite a general trend towards cohesion, courts lack consensus on how best to approach the relocation analysis, with jurisdictions seemingly developing a preference for either a blended or sequential approach when considering a relocation application in conjunction with parenting arrangements. Courts also vary in their application of the burdens, with some accepting that an "agreement" in s 16.93 may include oral or *de-facto* post-separation agreements,[15] while others have taken a different view.[16] Courts have also varied in their assessment of what it means for a parent to "substantially comply" with an order or agreement in determining the application of the burden of proof.[17] See the section in the manual on relocation for more.

While the manual focuses primarily on the changes to the *Divorce Act,* cases referenced have been decided under both the *Divorce Act* and provincial/territorial family law legislation. See *Appendix C* for a comprehensive list of cases and the primary legislation the case was decided under.

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[11] See e.g. *KKH v AAB*, 2024 ONCJ 113 citing several cases decided under the *Divorce Act* in undertaking best interests legal considerations beginning at para 29 [*KKH v AAB*]. See also cases from British Columbia including *CDFB v AGB*, 2022 BCSC 511 at para 55; *FN v RP*, 2024 BCSC 118 at para 64 which discuss the similar purposes and objectives and consistent tests in both their *Family Law Act* and *Divorce Act* in determining the best interests of the child. See also *KRW v PMM*, 2023 BCSC 981; *MW v NLMW*, 2021 BCSC 1273 at para 105 which note that due to the substantive similarities, cases decided under their provincial legislation are useful in applying the new *Divorce Act* provisions.

[12] See e.g. *L v R,* 2025 ABKB 131; *KSK v RVB*, 2024 NSSC 162 both considering several cases from Ontario on family violence.

[13] *L v R, ibid* at para 130. See also, *BL v MR*, 2025 ABKB 95 at para 27 and *ST v KT*, 2021 ABPC 167 at para 81 where the court adopted a similar approach. But see *G v G*, 2022 ABQB 273 where the court declined to adopt a broader definition of family violence than that set forth in Alberta's *Family Law Act.*

[14] See e.g. *NEW v MADM*, 2022 ABCA 255 where the Alberta Court of Appeal outlined that for matters being decided under their *Family Law Act,* the relocation factors outlined in the *Divorce Act* (s. 16.92) are still relevant.

[15] See e.g. *R-T v V*, 2023 ONSC 7159 at paras 20-30 (this case dealt with Ontario's *Children's Law Reform Act*, but its burden provisions mirror those in the *Divorce Act*) [*R-T v V*]; *T v K*, 2022 ONSC 1167 at paras 71-77; *KDH v BTH,* 2021 ABQB 548 [*KDH v BTH*]; *MJV v JR,* 2022 BCSC 1068 [*MJV v JR*].

[16] *B v C,* 2022 BCSC 2004 at para 46; *S v S,* 2022 ONSC 1906; *W v W*, 2021 PESC 12 at paras 15-16.

[17] See e.g. *KDH v BTH, ibid* at paras 32-44; contrast with approach in *F v F*, 2022 SKQB 83 at paras 101-102 [*F v F* Trial]. See discussion in "Relocation" section below for more.

***B v G*, 2022 SCC 22**

The *B v G* decision from the Supreme Court of Canada provided important commentary on many of the 2021 legislative changes to the *Divorce Act* on both family violence and relocation, affirming that family violence is an important factor, especially in relocation cases.

In its decision, the court confirmed that there is *no* presumption of shared parenting. The court clarified that the "maximum contact principle" is only significant to the extent it is in the child's best interest and is better referred to as the "parenting time factor."[18]

The Supreme Court of Canada took the opportunity to comment on the impacts of family violence on children, stating that it is "untenable" to suggest that family violence has no impact on children and is not related to parenting. The court also stated that children who are exposed to family violence "are at risk of emotional and behavioural problems throughout their lives" and that children experience harm when they are directly or indirectly exposed to family violence.[19]

In addition, *B v G* directs courts to be aware of the disclosure barriers and evidentiary issues common to domestic violence allegations. Given that family violence allegations can be very difficult to prove and that family violence often takes place privately without corroborating evidence, "proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact of support."[20]

The Supreme Court of Canada additionally remarked that it is important to appreciate the wider social and legal barriers that women face when disclosing family violence and the reality that abusive dynamics can and often do continue after separation.[21]

## Overview of *Divorce Act* Amendments on Family Violence

In April 2021 new *Divorce Act* amendments[22] 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

[18] *B v G*, 2022 SCC 22, at para 35 [*B v G*].
[19] *Ibid,* at para 143.
[20] *Ibid,* at para 144.
[21] *Ibid,* at para 183-184.
[22] *An Act to Amend the Divorce Act …* SC 2019, c 16.

## 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* 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.
- 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.[23]

## 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

## 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].

- 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.[24]

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[23] In *P v L,* 2022 NSSC 233, despite a finding of family violence, the court highlighted a lawyer's duty in the *Parenting and Support Act,* RSNS 1989, c 160, s 54C(1) to make meaningful efforts to assist the parties in resolving any disputed issues outside of Court [*P v L*]. See also *Association de médiation familiale du Québec v. Bouvier*, 2021 SCC 54 where the Supreme Court of Canada made comments about the importance of coming to agreements in family law and emphasized the benefits to parties settling matters on their own.

[24] See the decision in *R v SSM,* 2018 ONSC 4456 beginning at para 51 where the court discusses the concerns that arise in concurrent criminal and family court proceedings. At para 52 the court stated, "If criminal and family courts are dealing with the same factual issues, affecting the same family, one might expect there to be a mechanism for the sharing of information between the two sectors. Yet, there tends to be little interaction between these systems. The criminal and family courts seem to operate as separate silos, through which cases move vertically, but not horizontally, toward completion. The silo approach or "two solitudes" model does a disservice to the administration

- 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.[25]

- What can you do as counsel? Have the orders, undertakings, 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.

## What is Family Violence?

The 2021 amendments introduced a 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;
>
> (b) sexual abuse;
>
> (c) threats to kill or cause bodily harm to any person;
>
> (d) harassment, including stalking;
>
> (e) the failure to provide the necessaries 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][26]

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:

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of justice. It can lead to conflicting rulings and incomplete records. Important information and evidence can fall through the cracks. In the worst case scenario, the lack of coordination might result in the recurrence of serious violence".

[25] The Manitoba case of *AJK v JPB, supra* note 5 at para 21 discussed this duty, commenting that information may be obtained through the parties themselves or through relevant searches carried out in accordance with provincial law. The decision stated that, in Manitoba "It is anticipated that the ability of the Court will be enhanced at some point to enable it to access such information on its own. Until then, the Court must rely upon the parties themselves to provide such information".

[26] *Divorce Act*, *supra* note 1, s 2.

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 the three general headings of family violence below (violent and threatening behavior; coercive and controlling behaviour; behaviour causing fear for safety).

**Violent and Threatening**

In reviewing recent cases, there are several 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*[27]).

- Expressing frustration through screaming, yelling, cursing, hitting, slamming or throwing items and yelling at children (*CB v NI*[28]).

- Text messages including profanity-laced expletives and racist and gender-based obscenities (*P v P*[29]).

**Fear for Safety**

With respect to 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*[30]).

- 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*[31]).

- 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." (*P v P*[32]).

[27] 2022 ONSC 38 at para 8.
[28] 2022 NSSC 290.
[29] 2022 NSSC 297 [*P v P*].
[30] *KM v KMG*, 2018 NSSC 159 at para 152 [*KM v KMG*].
[31] 2022 NSSC 290 at para 227.
[32] *P v P, supra* note 29 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 explanation 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.[33] [emphasis added]

**Coercive Control: Examples from cases**

Aside from Justice Chappel's discussion of coercive control, several other cases provide definitions or examples of coercive controlling behaviour:

- Coercive control is a pattern of emotionally abusive intimidation (*AP v JK*[34])
- Coercive control can occur with or without physical violence (*MNB v JMB*[35])
- Even if a person is "sophisticated, highly educated, and professionally successful" they may still experience coercive dynamics in their relationship (*M v D*[36])
- " … Coercive control is far more subtle and may be more damaging, its effects can be long lasting as it slowly strips away confidence and self-worth. One act alone may be innocuous and forgivable, but the cumulative effect may be devastating. Courts must thoroughly review the family violence allegations … because coercive control builds overtime and is a series of actions rather than one incidence of violence". (*SC v NC*[37])
- Coercive control is a risk factor for homicide (*SC v NC*[38])

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[33] *MAB v MGC, supra* note 2 at para 183.
[34] 2018 NSFC 14.
[35] 2022 ONSC 38.
[36] 2023 ONSC 1993 [*M v D*].
[37] 2024 SKKB 170 [*SC v NC*].
[38] *Ibid* at para 22 citing an expert report an expert report commissioned by Carmen Gill & Mary Aspinall "The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty: Understanding Violence in Relationships" (June 2022) at 6.

- "Coercive control captures the reality that through tactics of isolation, manipulation, humiliation, surveillance, *micro-regulation of gender performance*, economic abuse, intimidation, and threats, abusive partners instill fear, control, and entrap their victims". (*L v R*[39]) [emphasis added – see quotes below]

The term "coercive control" was first coined by Evan Stark. The following are two helpful quotes from Stark about why there is a need to conceptualize certain forms of intimate partner violence as coercive control. The second quote provides some deeper insight into how coercive control is used in intimate partner relationships.

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*I got a more nuanced picture of abusive relationships after I finished my social work training and was asked to provide expert testimony on behalf of women who had killed their partners or committed other crimes in the context of being abused. Many of these women had suffered serious violence. But their typical experience involved frequent, but largely low-level, assaults combined with non-violent tactics that ranged from being deprived of basic necessities and being cut off from the outside world to rules about how they should dress, cook, or clean. I heard similar stories when my forensic social work practice expanded to custody disputes and child welfare. Moreover, my clients insisted that being isolated and controlled could be even more devastating than being beaten, in part because these tactics undermined their capacity for independent decision-making and inhibited effective resistance or escape. Some of my most fearful and subjugated clients had never been assaulted. I adapted the coercive control model of abuse because it captured the multi-faceted forms of oppression these women had experienced as well as the harms they described to their personhood, autonomy, dignity, and equality as well as to their physical integrity [citation omitted].*[40]

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***The technology of coercive control***

*I define coercive control as a strategic course of self-interested behavior designed to secure and expand gender-based privilege by establishing a regime of domination in personal life. This definition incorporates three facets of women's experience that are obscured by the violence model: that the oppression involved is "ongoing" rather than episodic (a "course of conduct") and resulting harms cumulative, that it is multi-faceted, and to establish and maintain "power" over a partner (such as isolation or control) and their consequence, an objective condition of subordination/ subjugation that is termed entrapment in the coercive control model. Entrapment has more in common with the predicament faced by hostages than a psychological state of dependence, for instance. The definition also highlights the gendered benefits of domination, to preserve privileges that accrue to men because of sexual inequalities*

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[39] *L v R, supra* note 12.

[40] Evan Stark, "Chapter 1: Coercive Control", in Nancy Lombard & Lesley McMillan eds, Violence Against Women: Current Theory and Practice in Domestic Abuse, Sexual Violence and Exploitation (Philadelphia: Jessica Kingsley Publishers, 2013) at 18.

*simply because they are male. The model expands on this point by emphasizing that the most common targets of control are women's default roles as mothers, home-makers and sexual partners. By routinely deploying the technology of coercive control, a significant subset of men "do" masculinity (Connell 2005) in that they represent both their individual manhood and the normative status of "men."*[41]

## Coercive Control in the Case Law

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

- A 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*[42])
- Threats to revoke sponsorship, controlling reproductive health and finances (*M v M*[43])
- 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*[44])
- Withholding passports and significantly delaying court proceedings (*G v R*[45])
- Demanding and threatening communication directed toward opposing counsel (*A v C*[46])
- Using verbal abuse, yelling, name calling and insults; engaging in a pattern of unsubstantiated allegations against the other party; making unjustified changes to parenting time orders; or regularly undermining the other parent's authority and alienating the child from that parent. (*MAB v MGC*[47])
- Threatening and harassing behaviour toward officials at the children's school re: sexual health education, threatening and harassing behaviour towards mother, verbal attacks towards and complaint filed about mother's counsel, administering unprescribed medications to children (*ES v MS*[48])
- For a thorough and non-exhaustive overview of the general type of behaviours that have been considered in case law to be coercive and controlling, both before and after separation, see Appendix B.

[41] *Ibid,* at 21.
[42] 2022 ONCJ 231.
[43] 2022 ONSC 6688.
[44] 2022 SKQB 150 [*AW v NP*].
[45] 2022 ONSC 2176.
[46] 2021 ONSC 8186 [*A v C*].
[47] *MAB v MGC, supra* note 2 at para 184 [citations omitted].
[48] 2025 NSSC 263 [*ES v MS*].

## Coercive Control: Why it Matters to the Family Justice System

Justice Canada's *Divorce Act Changes Explained*[49] stressed that coercive control is the most serious type of violence in family law because, "it is part of an ongoing pattern, tends to be more dangerous and is more likely to affect parenting."[50] Parents who use coercive controlling violence in their relationship are more likely to continue to use violence after separation and are more likely to use the children to control their former partner.[51]

The Nova Scotia *Mass Casualty Commission's* Final Report further highlighted that misconceptions and misunderstandings around coercive control persist.[52] This is especially concerning given that coercive control is cited as a risk factor for intimate partner homicide, intrinsically connected to the increased risk of intimate partner violence or homicide leading up to, during, and after, the time of separation where the perpetrator's ability to assert control is threatened.[53] The risk is further complicated when there are children, who may become involved in continuation of the coercive controlling behaviour, for example, if the coercive controlling parent withholds the children or threatens to report the other parent to child protection or police.

Coercive control may also manifest as "litigation abuse" when the person who uses violence likewise uses the power of the justice system as a tool to perpetuate violence. Tactics may include prolonged or unnecessary court appearances, unnecessary or embarrassing filings, rescheduling or cancelling court appearances, bullying parties into settlement or choosing to self-represent to cross-examine or have direct access to their former partner.[54] The family justice system must therefore diligently guard against being used as a mechanism to continue to exert control or harass an ex-partner after separation.[55]

With an understanding of coercive control, a wider range of behaviours are being better understood and labelled family violence such as:

- Tech abuse[56]

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[49] Canada, Department of Justice, "Divorce Act Changes Explained" (2022), online (pdf) at 82: <www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/dace.pdf> [Divorce Act Changes Explained].
[50] Divorce Act Changes Explained, *ibid* at 99. This passage was further cited in *JL and JF v New Brunswick (Justice),* 2021 NBQB 150 and *AW v NP*, *supra* note 44.
[51] Divorce Act Changes Explained, *ibid,* at 101.
[52]The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty, Turning the Tide Together: Final Report of the Mass Casualty Commission, Volume 3: Violence at 381 (Ottawa: Privy Council Office, 2023) [MCC Volume 3: Violence].
[53] See discussion on coercive control and its connection to intimate partner homicide in MCC Volume 3: Violence, *ibid* at 383-384; See also the discussion in Chapter 4 of Desmond Ellis*, Managing Domestic Violence: A Practical Handbook for Family Lawyers* (Toronto: LexisNexis Canada, 2019).
[54] Department of Justice Canada, ''HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers" (2021) at 34, online (pdf): <www.justice.gc.ca/ eng/fl-df/help-aide/docs/help-toolkit.pdf> [Help Toolkit].
[55] Canada, Parliament, House of Commons, Committee on Justice and Human Rights, *The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships - Report of the Standing Committee on Justice and Human Rights,* 43rd Parl, 2nd Sess (April 2021) (Chair: Iqra Khalid) at 8.
[56] 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>.

- Substance use coercion[57]
- Mental health coercion
- Spiritual abuse[58]
- Litigation abuse[59]

## Impact of Coercive Control on Children

Child well-being and development can be impacted by exposure to family violence and coercive control.[60] For example, harmful parenting practices are connected to coercive controlling violence, such as manipulation and domination."[61] Further, children's exposure to family violence can lead to physical, emotional, and behavioral concerns that may be both significant and long-term. Exposure to family violence may also affect healthy brain development and lead to lasting consequences.[62]

Several resources and cases have outlined what the impact of coercive control could be on children:[63]

- "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*[64])

- Those who use coercive control are more likely to ***continue the violence*** and more likely to ***abuse children*** after separation.[65]

- Social science literature tells us that family violence and coercive control affect child well-being and development.[66]

## Keira's Law

Coercive controlling behaviour is of particular significance in family relationships. In addition to incorporating coercive control into family laws, a new federal law was introduced to expand training

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[57] 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>.
[58] Spiritual abuse includes when someone uses spiritual beliefs to manipulate, dominate or control their partner. See Government of Canada, "Fact Sheet: Intimate Partner Violence" (last modified 7 February 2022), online: <www.canada.ca/en/women-gender-equality/gender-based-violence/intimate-partner-violence.html>.
[59] See for example Robert 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>.
[60] See e.g. Learning Network, "Issue 37: Children Experience Coercive Control: What You Need To Know" (March 2022), online (newsletter): <www.gbvlearningnetwork.ca/our-work/issuebased_newsletters/issue-37/Newsletter_Issue_37.pdf> [Children Experience Coercive Control]; HELP Toolkit, *supra* note 54 at 56.
[61] Linda C Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases*, 2nd ed (2017 CanLIIDocs 2: Canadian Legal Information Institute, 2020), at 6.2.5.6, 11.1.10, online (ebook): <https://canlii.ca/t/ng>.
[62] See the table outlined in Peter Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at 12-13, online (pdf): <www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>.
[63] See also the factors relating to Family Violence found at s.16(4) of the *Divorce Act*, *supra* note 1.
[64] *AJK v JPB, supra,* note 5 at para 50.
[65] Divorce Act Changes Explained, *supra* note 49 at 101.
[66] 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>.

opportunities for judges on family violence and coercive control. This law began as Bill C-233 (Keira's Law), named after a young girl who tragically died while in the care of her father, to whom the court ordered unsupervised parenting time despite her mother, Jennifer Kagan, raising concerns about his abusive behaviour, including coercive control. Kagan advocated for Keira's Law, which provides for the establishment of seminars for, and continuing education on, intimate partner violence and coercive control to federally appointed judges. Provinces and territories would need to follow suit for such training to be available to their provincially appointed judges or Justices of the Peace. For example, Ontario has taken this step in passing a Bill to amend their provincial legislation.[67] With the passage of *Keira's Law,* the *Judges Act*[68] has been amended to:

> **60(2)(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]

## Assessing Claims of Coercive Control

A recent case from the Ontario Court of Appeal, *S v S,* 2024 ONCA, emphasized the importance of undertaking a nuanced and thorough approach to assessing claims family violence and particularly, coercive control.[69] At the original trial before the Ontario Superior Court of Justice, the trial judge rejected the mother's claims of family violence and coercive control on the part of the father. The trial judge denied the mother's relocation request and found that the mother manipulated the court's process through her allegations of family violence to gain a procedural advantage.[70]

The Ontario Court of Appeal found that the trial judge made several errors, including in failing to discuss material evidence supporting the mother's allegation of coercive control. The Court of Appeal further determined that the trial judge was unreasonable in concluding that the mother manipulated the system against the father.

In then re-trial, Sah J. the court outlined the following approach to analyze allegations of coercive control:

> 1. To the extent possible, consider the relationship from its inception, because coercive controlling behaviour builds over time.
>
> 2. Take a balanced approach and assess the alternate explanation offered in relation to each incident (for example, conflict avoidance). This is required to ensure that claims of coercive control are not used as a litigation tactic.
>
> 3. Evaluate the totality of the alleged coercive controlling behaviour relative to the best interest factors. For example, does the behaviour affect the ability of a party to care for and meet the needs of the child and/or does the behaviour affect the ability of a party to communicate and cooperate with the party on matters affecting the child?

[67] *Courts of Justice Act*, RSO 1990, c C.43, s 51.10.1(1)-(2); *Justices of the Peace Act*, RSO 1990, c J.4, s 14(4)-(5).
[68] RSC 1985, c J-1.
[69] *S v S,* 2024 ONCA 624 [*S v S* Appeal].
[70] *S v S,* 2023 ONSC 1342.

4. Identify what steps, if any, have been taken to recognize the alleged behaviour and/or correct behaviour, in order to assess the likelihood of such behaviour continuing.[71]

In the re-trail, the court undertook a detailed and thorough examination of the allegations of coercive and controlling behaviour. In its assessment of the evidence, the court found the father's actions including controlling the mother's access to a phone, controlling her diet, limiting her access to funds, and isolating her to be part of a pattern of control and dominance that continued after separation. The court determined that such behaviour impacted the mother's sense of safety, impacted the child, and would require a "highly structured" parenting arrangement to decrease exposure. Further, the father was found to lack awareness and insight into his behaviour. The mother's relocation was allowed.

### Coercive Control as a Material Change

Even if a highly structured parenting plan was not ordered at first instance, in case where coercive control or family violence occurs or continues after separation, this may constitute a material change in circumstances warranting a variation of a parenting order.

- "….[A] pattern of coercive and controlling behaviour is particularly concerning because it is **easier to inflict** in its various forms **post-separation** than other types of family violence" (*JMM v CRM*[72]).

- For example, this may include behaviours such as not complying with court orders, threatening loss of parenting time, unilateral decisions, refusing support payments, excessive contact, filing false reports [Full list of examples found in *JMM v CRM*[73] and Appendix B]

- Coercive control including evidence of a "significant sustained increase" in conflict impacted the parenting plan constituting a material change. The father's behaviour escalated post-separation to include abusive communication with the mother, "fueled by hate, misogyny and disrespect towards her, her family and the school." (*ES v MS*[74]).

## Evidentiary Issues

Below we highlight several recent cases where courts discuss evidentiary issues and considerations in cases where family violence is alleged:

- Determinations about family violence need to result from reasoned fact-finding and not a reliance on myths & stereotypes. (*KMN v SZM*[75]).

- Evidence of "pervasive domestic violence" is not required and "**proof of even one incident** may raise safety concerns". [emphasis added] (*B v G*[76], *P v L*[77]).

- "The fact that there have been criminal investigations or charges related to allegations of family violence, and the outcome of those charges, may be relevant in addressing the family violence claims in Family Law proceedings, but they will not be determinative of whether the violence

[71] *S v S,* 2025 ONSC 3210 at para 246 [*S v S* Re-Trial].
[72] 2025 ONSC 3067 at para 287 [*JMM v CRM*].
[73] *Ibid* at para 289.
[74] *ES v MS, supra,* note 48 at para 43
[75] 2024 BCCA 70 [*KMN v SZM*].
[76] *Supra,* note 18.
[77] *P v L, supra* note 23.

occurred … By the same token, the fact that criminal charges have been withdrawn is not determinative, having regard for the lower standard of proof in Family Law proceedings as compared to criminal prosecutions." (*JMM v CRM*[78]).

- Blanket denials from the alleged perpetrator of violence may be insufficient to refute claims (*JM v SM*[79], *CLT v DTT*[80], *P v P*[81], *P v L*[82]).
- Family violence is both insidious and inconspicuous as it is usually perpetrated by skilled manipulators, making it difficult to prove, because acts often take place in private. (*L v R*[83]).
- Family violence can be difficult to prove because often victims are the only witnesses. They are sometimes not believed because they are unable to support the allegations of family violence with objective third party evidence" (*IO v IG*[84]; *Volgemut v Decristoforo*[85]).
- Coercive control can be especially difficult to prove because it "can be subtle and only evident to the victim" (*W v A-Y*[86]).
- With sexual violence, corroborating evidence is neither expected nor required (*JWC v AB*[87]).
- In determining whether psychological abuse has caused psychological harm, expert evidence is helpful but is not required (*VKG v IG*[88])
- Expert evidence is not required to show that harm to a parent has a negative impact on the child (*KB v AT*[89]).
- A judge must be able to conclude that allegations of family violence are sufficiently credible to give rise to a risk to the child's safety. This requires a court to "assess the totality of the evidence with care and objectivity to determine whether the allegations should be accepted as reliable, true, or probably so, or whether they are based on speculation, conjecture, suspicion or unreliable evidence such that they should be rejected." [citations omitted] (*JB v JM*[90]).
- "… [C]ourts must remain cognizant of the reality that some allegations are in fact fabricated or exaggerated. Being closed-minded to these possibilities poses an equally serious threat to the furtherance of justice in cases where family violence claims are advanced, and the courts must therefore meticulously assess the evidence in its totality to ensure that family violence allegations are credible and are not being maliciously advanced to obtain a litigation advantage." (*JMM v CRM*[91]).

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[78] *Supra,* note 72 at para 296.
[79] 2020 NSFC 12.
[80] 2022 NBKB 239 [*CLT v DTT*].
[81] *P v P, supra* note 29.
[82] *P v L, supra* note 23.
[83] *L v R, supra* note 12.
[84] 2023 ONCJ 520 [*IO v IG*].
[85] 2021 ONSC 7382.
[86] 2021 ONCJ 201 [*W v A-Y*].
[87] 2022 BCPC 235.
[88] 2023 ONSC 6329 [*VKG v IG*].
[89] 2023 NSSC 125 referencing *B v G, supra* note 18 [*KB v AT*].
[90] 2023 SKCA 24.
[91] *Supra,* note 72 at para 295

- A lack of third-party evidence or corroborative evidence is not fatal to a claim of abuse and control. Coercive control in particular may lack objective evidence. (*M v D*[92]).
- Strict application in respect of children's hearsay statements where family violence is alleged may not be appropriate in certain cases (*SE v RE*[93]; *JAB v JAB*[94])

## Recordings

Courts often discourage parties from making recordings in family law matters, especially if the recording is made secretly without the recorded party knowing they are being recorded. In some cases, such recordings may be illegal and amount to a criminal offence. Family courts may have varying practices with respect to admissibility of such evidence.[95]

Many judges have serious concerns about these practices and may refuse to admit these recordings[96] or give them little to no weight. Especially when recordings are made secretly, there may be the potential for manipulation of the other parent or the children for example.[97] However, in some cases, judges may admit this type of evidence, especially where it captures "unprovoked abuse or threats."[98]

- Despite being submitted by agreement, the court opted not to consider the body-cam footage in order to discourage the practice. (*T v T*[99])

- "Electronic recording of parenting exchanges and interactions is a growing trend which should be strongly discouraged. It puts the child in the middle. It exacerbates tensions and creates a heightened sense of potential or imminent conflict." (para 33) The court further commented on the significant harm that such videos can cause to children, and the reality that recording will typically lead to conflict escalation and cause Courts to question parental judgement (para 34). (*D v B*[100])

- The court concluded that the mother's recordings appeared to be authentic, unaltered, relevant and had probative value. Furthermore, their prejudicial effect was outweighed by the father's knowledge that the mother was recording interactions and the need to continue to assess how family violence was impacting the child's best interests. Accordingly, most of the mother's recordings were admitted into evidence (*H v L*[101])

- In this case, a surreptitious recording of family violence found to have a high probative value as family violence often happens 'behind closed doors' (*LZ v RC*[102])

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[92] *M v D*, *supra* note 36.
[93] 2025 NBCA 78 [*SE v RE*].
[94] 2025 NBKB 259.
[95] Neilson, *supra* note 61 at 10.9.1.
[96] Nicholas Bala and Patricia Hebert, Views, Perspectives and Experiences of Children in Family Cases, 2016 CanLIIDocs 4598 at 22-24, <https://canlii.ca/t/t0tm>.
[97] *Ibid.*
[98] *Ibid.*
[99] 2022 ABQB 229.
[100] 2022 ONSC 6510 [*D v B*].
[101] 2022 SKQB 55.
[102] 2025 BCSC 1714.

- Surreptitious recording of coercive control: In this matter, the probative value was found to outweigh the prejudicial effect: (*P v P*[103])

## Addressing Myths and Stereotypes

Two important appellate level cases, *B v G* and *KMN v SZM,* have provided guidance on assessing credibility in the context of family violence claims and the importance of recognizing the myths and stereotypes which may cloud such an assessment. Appellate courts have found that it is an error to draw upon common myths and stereotypes about family violence in making determinations of credibility.[104]

In particular, "an inability to prove family violence on a balance of probabilities does not mean that it must not have occurred or, importantly, that it was falsely alleged for the specific purpose of furthering a litigation objective."[105]

In the case of *KMN v SZM*, the trial judge failed to "adequately protect against the potential for myths or stereotypes about intimate partner violence to influence his reasoning process, including a belief that women commonly raise allegations of violence post-separation and in the context of family law litigation for the specific purpose of gaining an upper hand".[106]

The Supreme Court of Canada additionally recognized in *B v G* that "[d]omestic violence allegations are notoriously difficult to prove …" as violence often occurs behind closed doors.[107]

Some of the myths and stereotypes impacting survivors of family violence which may arise in the context of family law, include:

**1. Myth: Lack of reporting or failing to leave a relationship means that violence did not occur**

There are many reasons that a survivor may never report experiences of family violence including:

- fear of not being believed
- fear that children will be removed from the home
- fear of police or child protection involvement
- racism and discrimination
- concern of repercussions or impacts of police and other justice system involvement
- economic impacts[108]

The Supreme Court of Canada commented in *B v G* that, "evidence shows that most family violence goes unreported …"[109]

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[103] 2025 NSSC 236.
[104] *KMN v SZM*, 2024 BCCA 70
[105] *Ibid,* at para 123.
[106] *Ibid,* at para 70.
[107] *B v G, supra* note 18 at para 144.
[108] Peter G Jaffe et al, "Making appropriate parenting arrangements in family violence cases: Applying the literature to identify promising practices, 2023" (February 2023) at 19, online (pdf): <www.justice.gc.ca/eng/rp-pr/jr/mapafvc-cbapcvf/docs/RSD2023_RR_MakingAppropriateParentingArrangements_EN.pdf>.
[109] *B v G, supra* note 18 at para 145.

Many of the same reasons contribute to challenges to leaving an abusive or violent relationship and can be exacerbated by the increased risk or danger for a survivor and children during separation.[110]

As explained by Judge Keyes in *JWC v AB*:

> The notion that genuine victims report abuse immediately, (and its corollary known as "recent complaint",) is based on myths that have no longer any place in the law. The highest courts of this land have long held that that a trier of fact cannot draw a negative inference from the fact that a complainant did not immediately report her complaint to authorities. The law changed because of the recognition that there is no standard way in which victims can be expected to behave. … [M]any women report domestic abuse only when they have left the relationship and are in a safe environment. Many women never report domestic abuse to the authorities. Many women report independently verifiable abuse to the authorities but nevertheless find themselves drawn back into the abusive relationship anyway.[111]

**2. Myth: Domestic violence claims are often made up or exaggerated to get an upper hand in family law litigation**

Despite the persistence of this myth, there is no data to support this happening pervasively; in fact, data instead indicates that survivors are more likely to be deterred from or reluctant to raise family violence for fear they will not be believed, or their motives questioned.[112]

In *S v S*, for example, the Ontario Court of Appeal concluded that the trial judge's analysis was informed by an unreasonable conclusion that the mother had "manipulated" the system against the father and used it in a "tactical" manner.[113]

**3. Myth: Domestic violence does not impact children**

It is now well known that children's direct or indirect exposure to family violence can lead to physical, emotional, and behavioral concerns that may be significant and long-term. Such exposure can also affect brain development from infancy and lead to lasting consequences into adulthood.[114] Indeed, the Supreme Court of Canada stated in *B v G* that "[t]he 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."[115]

**4. Myth: Domestic violence ends at separation**

*B v G* outlined that "… abusive dynamics often do not end with separation — in fact, the opposite is often true …" For women in coercive and controlling relationships in particular, violence can increase and become more severe at the time of separation.[116] Women are also at increased risk of domestic violence

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[110] Jaffe et al, *supra* note 108 at 19.
[111] 2022 BCPC 235, at paras 142-143.
[112] Neilson, *supra* note 61 at 4.5.2.
[113] *S v S* Appeal, *supra* note 69 at para 60.
[114] See the table outlined in Peter Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at 12-13, online (pdf): <www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>.
[115] *B v G,* supra note 18 at para 143.
[116] *Ibid*.

homicide in the period leading up to and following separation.[117] This means that there may be elevated risks and safety concerns for women after an abusive relationship has ended, including when they are participating in a family court process.

**5. Myth: Presumption of Shared Parenting**

Despite the persistence of this myth, the Supreme Court of Canada affirmed in *B v G* that there is *no presumption of shared parenting*. In addition, the *Divorce Act* was amended to remove the language of "maximum contact" and clarify that a child should have as much time with each parent "as is consistent with the best interests of the child".[118]

[117] Haley Hrymak and Kim Hawkins: "Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger", Rise Women' Legal Clinic (January 2021): <https://static1.squarespace.com/static/64220f300321233050a209ec/t/65de3b22be93725ee19fa396/1709062949128/Why+can%27t+everyone+just+get+along.pdf>.
[118] *Divorce Act, supra* note 1, s.16(6)

## Roadmap for Family Violence Claims

In the case of *MAB v MGC*[119] Justice Chappel provides a general **roadmap** for analyzing family violence claims. The roadmap is reproduced 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 the conduct does not fall within the examples listed in [the Act], does it nonetheless qualify as "family violence" …on the basis that it is:
        i. Violent or threatening; or
        ii. It constitutes 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?
    d. If it is alleged that the child has experienced family violence, determine not only whether the child has been the direct victim, but also whether they have been directly or indirectly exposed to family violence.

3. If the behaviour amounts to family violence…determine the impact of the family violence on the following:

    a. The ability and willingness of the person who engaged in the violence to care for and meet the needs of the child;
    b. The appropriateness of making an order that would require cooperation on issues affecting the child; and
    c. On any other relevant consideration.

4. In determining the impact of family violence, take into account all relevant considerations, but make sure to specifically consider and weigh the factors listed [at s 16(4) of the Act]…." [120]

[119] *MAB v MGC*, *supra* note 2 at para 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*.
[120] *Ibid* at para 177.

## Step 1: Assess the Credibility of the Allegations

1. **"Assess the credibility of the allegations.**

The first step of the roadmap suggested in *MAB v MGC* is to **assess the credibility** of the allegations of family violence. Recent cases point to some potential principles relating to establishing credibility in cases where family violence is alleged:

- As indicated above, appellate courts have warned against drawing upon common myths and stereotypes about family violence in making an assessment of credibility (*KMN v SZM*[121])
- Lack of reporting, charge or conviction does not mean family violence did not occur (*SLJ v KB*
- [122]; *B v G*[123], *P v L*[124]; *H v D*[125]).
- A victim lying to police to protect perpetrator may not lead to adverse finding on credibility (*BM v AC*[126])
- Staying with an abusive partner does not minimize or refute testimony regarding domestic violence. (*KM v KMG*[127])
- Failure to speak out earlier and inconsistent evidence is common for victims of domestic violence. (*AE v AB*[128]; *NM v SM*[129])
- "Victims sometimes minimize and rationalize the abuse. The family violence can take place in private so that there are no witnesses. Control and coercion can be subtle and only evident to the victim." (*W v. A-Y*[130])

**A Trauma-Informed Approach to Credibility**

There has arguably been a shift toward a trauma-informed approach to credibility, as far as a survivor of family violence is concerned, developing in the case law. Paulson et al., outline an argument for a trauma-informed approach to evidence law in recognition that experiences of trauma can impact a witness's demeanor, consistency and recall of events. The authors point out that failing to account for trauma and its impact may undermine a credibility assessment – for example, what may appear as inconsistency in telling a story through testimony may in fact be a normal response to coping with and recalling traumatic

[121] *KMN*, supra note 75.
[122] 2019 NSSC 268 [*SLJ v KB*].
[123] *Supra,* note 18.
[124] *Supra,* note 24.
[125] 2023 NSSC 306.
[126] 2019 NSSC 102.
[127] *KM v KMG*, supra note 30.
[128] 2021 ONSC 7302.
[129] 2022 ONCJ 482 [*NM v SM*].
[130] *W v A-Y, supra* note 86.

experiences.[131] Cases have begun to grasp the importance of applying such an approach to survivors of family violence in outlining elements of a trauma-informed approach to a credibility assessment:

- "Having regard for the complex social dynamics around family violence, the courts must resist assessing a claimant's credibility against **stereotypical notions of what a victim should have done** in similar circumstances."

- " … [T]rauma can significantly affect a victim's cognitive functioning and physiology in many ways, and therefore victims of family violence **may not react or interact in ways that one may generally expect** them to." [citations omitted]

- "Victims of family violence often suffer from significant trauma associated with the abuse, which may affect their ability to provide a **detailed, consistent and accurate recollection and timeline** of the events in question." [citations omitted]

- "Furthermore, there **may not be evidence of prior consistent disclosures** of family violence to rebut claims of recent fabrication, as there are many reasons why victims of family violence may not disclose the violence." [citations omitted] (emphasis added)[132]

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

**Conduct by One Family Member Towards Another**

> **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?...**

Although this step is not often at issue, we have seen some courts take a broad approach in assessing this portion of the definition. See for example, *A v C:*

> 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] [133]

Alternatively, *RE v SJL* provides an example of a narrower, and arguably questionable interpretation, given the fact that the definition of "family violence" in the *Divorce Act,* section 2(1) includes not only damage to property, but also threats to do so:

> … [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

[131] Thor Paulson et al, Toward a Trauma-Informed Approach to Evidence Law - Witness Credibility and Reliability, 2023 101-3 *Canadian Bar Review* 496, 2023 CanLIIDocs 3050, <https://canlii.ca/t/7n885>.
[132] *JMM, supra* note 72 at paras 293-294.
[133] *Supra* note 46 at para 39.

> following an argument but while neither the mother nor [the child] 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] [134]

**Extended family:** Family violence involving extended family members may also be important for courts to consider in crafting an appropriate parenting arrangement, especially where those family members form part of a proposed parenting plan. For example, the recent case of *S v K,* considered allegations of family violence within a multi-generation family. In that case, the court found there was a serious concern of family violence and coercive control toward the mother by the father's family, and the father did not act to prevent it or protect the child from the conflict.[135] The court commented at paragraph 73 that even "where a spouse may be an observer, this still contributes to overall family violence and coercive control."

**Whether Conduct Falls Within Legislated Definition**

**2. Determine whether the conduct constitutes "family violence" within the meaning of the legislation:**

**…**

**b. Does the conduct fall within the examples of family violence listed in [the Act?**
**c. If the conduct does not fall within the examples listed in [the Act], does it nonetheless qualify as "family violence" …on the basis that it is:**
  **a. Violent or threatening; or**
  **b. It constitutes a pattern of coercive controlling behaviour; or**
  **c. It causes the other family member to fear for their own safety or that of another person?**

Conduct will be considered family violence if it falls under one of the enumerated acts listed at section 2(1) of the *Divorce Act,* or if it fits under one of the three broad categories listed above.

**Applying a "Broad and Purposive" Interpretation of Family Violence**

Referencing the Supreme Court of Canada in *Michel v Graydon*[136], Associate Justice Kamal in *N v E*[137] noted 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*

[134] 2023 PESC 1 at para 63.
[135] 2025 ONSC 4122, at para 78 [*S v K*].
[136] 2020 SCC 24.
[137] 2025 ONSC 3154 [*N v E*].

*the provisions* for children and their family members who are facing family violence in its many forms. [emphasis added][138]

**Examples of Broadening Interpretation of Family Violence**

Over the past several years, some courts have been broadly construing the family violence provisions to maximize the protective scope of the family violence provisions in the *Divorce Act*. The following are some examples:

**Psychological or Emotional Abuse:**

- Emotional or psychological abuse amounting to family violence may be constituted by demeaning remarks, communications to third parties, threats of physical force, threats to cause financial hardship, or delay and refusal to cooperate with reasonable requests for information necessary to dispose of a family business in a mutually beneficial way: (*AKP v ISP*[139])

- Unauthorized or unwarranted calls to authorities such as police and child protection services can constitute psychological abuse (*D v B*[140]; *KM v JR*[141]; *A v S*[142])

- Recording the other spouse, insults, unwarranted criticism about parenting and demanding to know whereabouts can constitute psychological abuse. (*KM v JR*[143])

- Denigrating your spouse in front of a child fits within the definition of family violence (*A v S*[144]; *M v B*[145])

**Financial Abuse**

- Failure to pay child support, failure to contribute to childcare costs, and deception re: the Canada Child Benefit constituted a "failure to provide the necessaries of life" per the definition of family violence in the *Divorce Act,* resulting in financial struggles post-separation, and thereby directly or indirectly exposed the child (*JM v PT*[146])

- Financial control by deliberately making inadequate child support payments may constitute family violence (*NM v SM*[147]; *FS v MBT*[148])

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[138] *Ibid*, at para 53.
[139] 2024 BCSC 645.
[140] *D v B, supra* note 100.
[141] 2024 ONSC 1338 [*KM v JR*].
[142] 2021 ONSC 3204 [*A v S*].
[143] *KM v JR, supra* note 141.
[144] *A v S*, *supra* note 142.
[145] 2022 ONSC 4235.
[146] 2024 ABKB 349.
[147] *NM v SM, supra* note 129.
[148] 2023 ONCJ 102 [*FS v MBT*].

- Monitoring a spouses' spending and movements amounted to coercive control, however, this coercion did not extend to controlling the spouses' ability to work and make an income (*MAJ v MEJ*[149])

- A pattern of behaviour including using car payments and repossession to threaten a spouse, was found to be financial abuse (*H v T*[150])

**Cyberbullying/Tech Abuse**

- Behaviour amounting to cyberbullying and social media postings fall or can fall within the definition of family violence (*SB v JIU*[151]*, M v B*[152])

**Spiritual/Cultural Abuse**

- Use of religion and culture to reinforce shame and control in an effort to shift the power imbalance between the two parents is a form of family violence (*SRIS v NZ*[153]). For example, "caste-based insults" by extended family members may meet the definition of family violence (*S v K*[154])

- Spiritual abuse may include using scripture to coerce, manipulate, or harass. This is distinguished from genuine discussions of religious belief (*SAH v JJGV*[155])

**Litigation Abuse & Disregarding Court Orders**

The British Columbia Court of Appeal recently took the opportunity to explore and define the concept of litigation abuse:

> [113] In the guidebook "*Family Law Handbook for Self-Represented Litigants*" at 141, the Canadian Judicial Council recognized litigation harassment as a form of abuse in family proceedings. This type of abuse occurs where one spouse uses the court's process to continue to control, intimidate, embarrass, or harass the other spouse after their relationship has ended. Unfortunately, litigation abuse can be difficult to detect, particularly at the outset of a family proceeding, because courts may not be able to determine whether the conduct is caused by malicious intent or a genuine inability to navigate the legal system without assistance …
>
> [114] Where litigation abuse is not caused by a genuine inability to navigate the legal system, but is instead perpetrated to control, intimidate, or harass the other spouse, **it clearly falls within the definition of "family violence"** under the [*Family Law Act*].[156] [citations omitted] [emphasis added]

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[149] 2025 BCSC 1046 [*MAJ v MEJ*].
[150] 2023 SKKB 146 [*H v T*].
[151] 2021 ONCJ 614.
[152] 2021 ONSC 7084.
[153] 2025 ONCA 304.
[154] *S v K, supra* note 135.
[155] 2021 BCSC 2132.
[156] *LDB v ANH*, 2023 BCCA 480 [*LDB v ANH*].

The following include examples from recent cases where courts highlighted poor litigation conduct, at times explicitly connecting it to family violence or harm:

- Financial control through making inadequate child support payments may constitute family violence: (*NM v SM*[157]; *FS v MBT*[158])

- Bringing contempt motions, the primary goal of which is to inflict financial and emotional harm constitutes litigation abuse (*PNR v MYR*[159])

- Filing inappropriate material in affidavits such as a nude "selfie" of a spouse solely for the purpose of humiliation (*B v G*[160])

- A party's overly litigious behaviour can be found to form part of a pattern of coercive control (*VSB v BLO*[161])

- Self-representation is not an excuse for poor litigation behaviour, especially if it goes beyond an isolated incident.[162]

- In a recent decision, Justice Chappel outlined several examples from case law of actions constituting post-separation coercive control.[163] Many of the examples listed overlap with behaviours that may constitute litigation abuse. See *Appendix B*.

**Direct or Indirect Exposure of the Child to Family Violence**

> **2. Determine whether the conduct constitutes "family violence" within the meaning of the legislation:**
>
> **…**
>
> **d. If it is alleged that the child has experienced family violence, determine not only whether the child has been the direct victim, but also whether they have been directly or indirectly exposed to family violence.**

[157] *NM v SM, supra* note 129.
[158] *FS v MBT, supra* note 148.
[159] 2025 ONSC 1802 [*PNR v MYR*].
[160] *B v G, supra* note 18.
[161] 2022 ONCJ 506.
[162] See for example, *LB v PE,* 2021 ONCJ 114 where the self-represented father was found to be trying to take advantage of the mother by filing court materials well beyond the permitted limit [*LB v PE*].
[163] *JMM v CRM, supra* note 72.

***B v G,* 2022 SCC 22**

In 2022, the Supreme Court of Canada in *B v G*, took the opportunity to interpret the new *Divorce Act* amendments regarding family violence. In doing so, the court addressed the impact of family violence on children:

> 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: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 *I.J.C.Y.F.S.* 493, at p. 497.[164]

Children of course can be the direct victims of family violence, but they can also be victims by way of their exposure to family violence. Children can be either directly or *indirectly* exposed to family violence:

1. They may be exposed to family violence **directly** by witnessing violence against others in the home.
2. Or **indirectly**, for example by:

    - Experiencing the aftermath (toxic stress in the home)
    - Being cared for by a parent that is traumatized
    - Being cared for by a parent who poses a risk

Appellate courts have found a trial judge in error for only addressing violence directed towards the child and not addressing the child's, "**indirect exposure** to physical and/or psychological abuse alleged to have been directed towards the mother."[165][emphasis added]

The following have been found to constitute **direct exposure and indirect exposure** respectively.

**Direct Exposure:**

- "The child may also be victimized by ***direct exposure*** to family violence towards another family member, if they observe the violence or are close by when it occurs and are able to see or hear what is happening." (*JMM v CRM*[166])

[164] *B v G, supra* note 18 at para 143.
[165] *KMN v SZM*, *supra* note 75 at para 99.
[166] *JMM v CRM, supra* note 72.

**Indirect Exposure**:

- A child may be indirectly exposed to family violence by experiencing the aftermath of the violence. They may hear about the violence after it has occurred, see changes in the victim's behaviour, or even observe physical or emotional injuries and may become, "embroiled in a police or child protection investigation relating to the violence." (*MAB v MGC*[167])

- A child raised by a person who uses family violence, "may model aggressive and controlling behaviour in his or her relationships with others." (*AV v EV*[168])

- Children are indirectly exposed to family violence when a victim then goes on to care for the children as they may experience her stress as she attempts to cope with the violence. (*HL v ZL*[169])

- Indirect exposure can have implications for a child's welfare. There may also be a risk that conflict will spill over and *directly* impact the child. (*B v G*[170])

- "[T]he child can also suffer indirect consequences of the violence if the [victimized] parent's physical, emotional and psychological well-being are compromised, since these consequences in turn often negatively impact their ability to meet the child's physical and emotional needs." (*N v E*[171]; *SVG v VG*[172])

- Even indirect exposure to spousal violence can be, "significantly detrimental to a child's well-being and development. These emotional and psychological consequences for a child can persist long after the wrongful conduct has ceased." (*F v F*[173])

[167] *MAB v MGC, supra* note 2.
[168] 2014 NSSC 204.
[169] 2018 NSFC 5.
[170] *B v G, supra* note 18.
[171] *N v E, supra* note 137.
[172] 2023 ONSC 3206.
[173] 2023 SKCA 60 at para 75 [*F v F* Appeal].

Justice Canada's *HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers*[174] 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 |
|---|---|---|---|
| ▶ infant mortality, preterm birth, and low birth weight<br>▶ adverse neonatal outcomes from mother's abuse of substances in order to cope with violence<br>▶ parent experiencing violence forms unhealthy attachment with child due to heightened state of stress/anxiety<br>▶ behavioural issues<br>▶ social difficulties including difficulty in regulating emotions<br>▶ Post-traumatic stress disorder (PTSD) symptoms<br>▶ difficulty with empathy and verbal abilities<br>▶ excessive irritability, aggression, temper tantrums, sleep disturbances, and emotional distress<br>▶ resist comfort<br>▶ adverse psychosomatic effects<br>▶ impact neurocognitive development<br>▶ filicide<br>▶ physical injuries | ▶ develop anti-social rationales for abusive behaviour<br>▶ self-blame<br>▶ internalizing behaviours (e.g., humiliation, shame, guilt, mistrust, low self-esteem)<br>▶ anxiety and fear<br>▶ difficulty with social skills<br>▶ difficulties with emotional regulation<br>▶ negative peer relations<br>▶ depression<br>▶ bullying<br>▶ academic abilities compromised<br>▶ filicide<br>▶ physical injuries | ▶ depression<br>▶ suicidal ideation<br>▶ anxiety<br>▶ aggression<br>▶ social withdrawal<br>▶ unhealthy attachments leading to difficulties forming healthy intimate relationships<br>▶ distorted views of intimate relationships<br>▶ lack of trust<br>▶ heightened risk for violent behaviours toward peers or intimate partners<br>▶ substance use<br>▶ anger issues<br>▶ long-term emotional distress<br>▶ filicide<br>▶ physical injuries<br>▶ difficulties with emotional regulation | ▶ risk of perpetrating violence in own families<br>▶ depression<br>▶ anxiety<br>▶ dissociation<br>▶ PTSD<br>▶ difficulties in emotional regulation<br>▶ decrease in parenting quality<br>▶ low educational achievement<br>▶ chronic diseases (e.g., liver disease, sexually transmitted diseases)<br>▶ sleep disorders<br>▶ substance abuse |

## Step 3: Impact of Family Violence on Parenting Arrangements

**Step 3: Determine the Impact of the Family Violence on the Ability and Willingness of the Person who Used Violence to Care for and Meet the Needs of the Child and Appropriateness of Order Requiring Cooperation and take into account the family violence factors at s 16(4).**

**3. If the behaviour amounts to family violence…determine the impact of the family violence on the following:**

**a. The ability and willingness of the person who engaged in the violence to care for and meet the needs of the child;**
**b. The appropriateness of making an order that would require cooperation on issues affecting the child; and**
**c. On any other relevant consideration.**

[174] "HELP Toolkit, *supra* note 54 at 56 citing Peter Jaffe et al., Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce (2014), online: Department of Justice Canada <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfvfreevf/rfcsfv-freevf.pdf>.

**4. In determining the impact of family violence, take into account all relevant considerations, but make sure to specifically consider and weigh the factors listed [at s 16(4) of the Act]**

Once credibility has been assessed, and the judge has determined whether the child has been directly or indirectly exposed to the family violence, the judge must then evaluate what parenting arrangement is in the best interests of the child, given the presence of family violence. The amendments to the *Divorce Act* address this in several important ways:

- **Primary Consideration**: The introduction of *a primary consideration* to the child's physical, emotional and psychological safety, security and well-being (s 16(2))

- **Impact of Family Violence**:
    - A requirement to consider the impact of any family violence on the perpetrator's ability to care for and meet the needs of the child, and the appropriateness of requiring cooperation (s 16(3)(j)), including the nature and seriousness of the family violence, whether there is a pattern of coercive and controlling behaviour, whether the violence is directed towards the child, and the risk of harm to the child. The court must look to any steps taken by the by the person who was violent to prevent further violence and meet the children's needs.

- **Relevant Proceedings/Orders (Criminal or Civil):** Consideration of other proceedings that may be relevant to the safety, security and well-being on the child.

- **Parenting Time Factor**: The amendments introduced a re-phrasing of the "maximum contact" principle indicating that there is no presumption of shared parenting.[175]

**Best interests of child**
16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

**Primary consideration**
(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

**Factors to be considered**
(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

…
(j) any family violence and its impact on, among other things,
(i) the ability and willingness of any person who engaged in the 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; and
(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[175] See also *B v G*, *supra* note 18 at para 134.

**Factors relating to family violence**
**16 (4)** In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

**(a)** the nature, seriousness and frequency of the family violence and when it occurred;
**(b)** whether there is a pattern of coercive and controlling behaviour in relation to a family member;
**(c)** whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
**(d)** the physical, emotional and psychological harm or risk of harm to the child;
**(e)** any compromise to the safety of the child or other family member;
**(f)** whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
**(g)** any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
**(h)** any other relevant factor.

**Parenting time consistent with best interests of child**
(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

**Primary Consideration**

**The *Divorce Act* now requires courts to prioritize and give primary consideration** to the child's physical, emotional and psychological safety, security and well-being (s 16(2)). Justice Canada's *Divorce Act Changes Explained* document cites the reason for the inclusion of this provision as a way to solve conflicts between best interests criteria by requiring the prioritization of safety, security and well-being.[176]

While some judges have held that s 16(2) adds nothing to the best interests of the child analysis,[177] others have emphasized the priority to be given to, and "overarching" nature of the primary consideration.[178]

Many jurisdictions have a similar primary consideration in their provincial family law legislation.[179]

**Impact of Family Violence and the Best Interests Analysis**

In considering the impact of family violence, the following cases may be instructive:

- [T]hese [family violence] provisions are consistent with Article 19 of the *Child Rights Convention*, which grants children the right to state protection from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." (*SS v RS*[180])

[176] Divorce Act Changes Explained, *supra* note 49 at 82.
[177] *A v A*, 2023 ONSC 1776 at para 20.
[178] *K v R*, 2024 ONSC 6270 at para 19.
[179] *Children's Law Reform Act*, RSO 1990, c C 12, s 24(2) [ON-*CLRA*]; *Family Law Act,* SNB 2020, c 23, s 50(3) [NB-*FLA*], *Children's Law Act,* RSPEI 1988, c C-6.1, s 36(2) [PEI-*CLA*]; *The Family Law Act*, CCSM c F20, s 35(2) [MB-*FLA*]. See also *Family Law Act*, SBC 2011, c 25, s 37(3) [BC-*FLA*]; *Children's Law Act*, 2020, SS 2020, c 2, s 10(2) [SK-*CLA*], which phrase this consideration slightly differently, but note that an order or agreement is not in a child's best interests unless it "protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being."
[180] 2021 ONSC 2137 at para 45.

- "... [I]t is not simply the existence of family violence, or the allegation of family violence, which determines an entitlement to parenting time. Were that so, a mere allegation could prevent any parent from engaging with their children. This is not in keeping with the search for that which is in the children's best interests. Again, the allegations of violence are not to result in a punishment of the alleged abusive parent by denying him (in this case) parenting time with the children. Rather, it is the impact of that violence on the ability of the parent to care for the children, to provide for their needs, and to cooperate on issues affecting the children. And, the result of violence allegations is to ensure everyone's safety is considered and carefully weighed by the court. Thus, to the extent possible, persons who have been in abusive relationships should not then have to continue to interact with the abuser directly through the guise of a court order." (*J v A*[181])

- After reviewing ss 16(3)(j) and 16(4) of the Act, the court must first determine whether the behaviour amounts to family violence. Then if it does, the court, "must then consider the effect of those behaviours on the best interests of the children. [The court] must also consider the effects of those behaviours on the mother and the ability of the parents to communicate as well as the appropriateness of causing such communication in the circumstances disclosed by the evidence. Finally, [the court] must consider what if any steps the father has taken both to recognize these behaviours and then to correct them. This allows for a determination of whether the children and the mother will continue to be exposed to these ongoing words and actions. While all of these considerations are part of the *Act*, it is important to consider them specific to this family and what has been occurring between these parents. … In approaching this task, … the court must look to the entirety of the behaviours. By this I mean that [the court] should refrain from keying in on isolated actions or words that do not appear to fit within the sense of the parties created by the entirety of the evidence. It is only after a complete review of the evidence that a determination in this regard can be applied to the best interests of the children." (*H v T*[182])

- "It does not have to be proven that behavior such as that exhibited by the father would cause emotional and psychological harm to his children or that it would compromise their safety and sense of security. … The broad definition of family violence includes indirect violence towards the children in this case as a result of their frequent exposure to their father's violence towards their mother. **It is a fact that such exposure can and does harm the physical, emotional and psychological well-being of children** who witness and experience such indirect violence." (*AJK v JPB*[183]) [emphasis added].

[181] 2021 SKQB 73.
[182] *H v T*, *supra* note 150
[183] *AJK v JPB, supra* note 5 at para 60.

## Family Violence and the Best Interests of the Child Analysis

Appellate courts have provided commentary as to how courts are to undertake an analysis of the best interests of the child when family violence is alleged:

- Courts must consider the existence and impact of family violence in a reasoned manner. In assessing the impact of family violence, appellate courts have held that it is an error to fail to connect the need for a specific parenting order with a consideration into the impact of the family violence on the best interests of the child. Courts need to undertake a corresponding analysis, with attention to the factors set out in s 16(4) of the Act. (*W v P*[184])

- It is an error to fail to make findings regarding the impact of indirect family violence on the child's best interests when the issue has been raised by the parent. (*KMN v SZM*[185])

- A judge is not required to detail everything they account for or take a step-by-step application of all best interests factors. However, especially when family violence allegations are central to the case, these allegations and the possible impact on the child require "close attention" and "proper consideration."[186]

- The *Divorce Act* does not, however, "mandate that every judgment must contain a detailed factual analysis of each specific allegation of family violence and make definitive and detailed findings regarding each incident" (*F v F*[187])

- Although it may be preferable to expressly address the enumerated best interests of the child, it is not fatal if a judge does not specifically do so, as long as reasons are sufficient, focused on the child's best interests and adhere to the intention and purpose of the best interests factors. (*E v L*[188])

- "The [*Family Law Act*] requires judges to assess family violence claims through the lens of their potential impact on children. The objective of the legislation is to ensure judges are alive to the effect family violence may have on the parenting of a child. Findings of fact regarding family violence that rely on traditional myths and stereotypes are considered errors of law". (*SE v RE*[189])

Pursuant to the 2021 *Divorce Act* amendments, in assessing the impact of family violence on the child's best interests for the purpose of making a parenting order, a judge **must** take into consideration the factors listed at ss 16(3)(j) and 16(4) of the Act.

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[184] 2025 NSCA 12 [*W v P*].
[185] *KMN, supra* note 75.
[186] *Ibid*.
[187] *F v F* Appeal, *supra* note 173 at para 79.
[188] 2025 NSCA 4.
[189] *SE v RE*, *supra* note 93.

**a. The ability and willingness of the person who engaged in the violence to care for and meet the needs of the child;**

- Justice Beryl MacDonald (2010) took judicial notice of the impact of family on children in *NDL v MSL*[190], and stated that, "perpetrators of domestic violence, who remain untreated and who remain in denial are not good role models for their children."

- With respect to whether or not a person who used violence was able to address these deficits, the court stated, "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. I must therefore examine the evidence to determine if, on a balance of probabilities, the father incorporated permanent lifestyle changes to ensure that violence is no longer an issue." (*NK v RE*[191])

- "This is not an appropriate case for an order for shared parenting time in light of the concerns with respect to the father's ability to provide appropriate and safe care for the children, as well as the inability of the parties to communicate and cooperate in the best interests of the children, arising out of the father's behaviours." (*KW v GW*[192]).

- The father lacked any insight into his behaviour and failed to build the skills to successfully manage and regulate his emotions, such as by attending counselling. As such, the judge ordered supervised parenting time to continue until the father completed therapy and provided a report back from the therapist that the father had met certain stipulated therapeutic goals. (*KB v AT*[193]).

- The father's position that he never put the children at risk of physical harm or intended to carry out threats was inconsequential. The court stated that "It is clear from the amendments to the [Divorce] Act that actual harm is not a prerequisite to a finding of family violence. In any event, such a notion has long been considered archaic. On the whole of the evidence, I find the children were nevertheless indirectly impacted by these incidences and they were exposed to emotional and psychological harm or risk thereof." (*JDM v SJC-M*[194]) The court concluded that at this time, the father lacked the ability to care for and meet the needs of the children, prior to completion of therapeutic recommendations.

**b. The appropriateness of making an order that would require cooperation on issues affecting the child**

- "A victim of family violence might be unable to co-parent due to the trauma they have experienced or ongoing fear of the perpetrator. In addition, co-operative arrangements may lead to opportunities for further family violence." (*B v R*[195])

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[190] 2010 NSSC 68 at para 35.
[191] 2021 NSSC 13 [*NK v RE*].
[192] 2022 NBKB 236 at para 175.
[193] *KB v AT*, *supra* note 89.
[194] 2021 NBQB 159 at para 111.
[195] 2021 ONSC 3352 [*B*].

- The parents were unable to cooperate. Given the history of domestic abuse and their inability to cooperate, joint parenting was not possible (*ST v KT*[196])

- In varying an order on an interim basis to grant the mother primary care and decision-making, the court noted that the mother felt controlled, harassed and intimidated by the father. The court was not persuaded the parents would be able to communicate or cooperate in caring for the children. (*RaA (H) v NS*[197])

- "An equal-parenting time plan requires a high level of communication and coordination between the parties, particularly when the child is very young. … This should not be ordered where the evidence indicates that implementing such a plan, given the dynamics between the parties, would be an invitation to conflict and chaos, and would be destabilizing for the child". (*LB v PE*[198])

- "Effective co-parenting cannot occur in an environment of verbal abuse or intimidation. No parent should be exposed to the bullying of a former spouse in the name of shared parenting". (*El K v N*[199])

- "To grant joint decision-making in some or all areas, there must be some evidence before the court that the parties, despite their differences, can communicate effectively as the children's best interests will not be advanced if the parties cannot make important decisions under a joint decision-making arrangement". (*MSK v SP*[200])

**c. On any other relevant consideration**

- This includes a consideration of 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" (*MAB v MGC*[201]).

- Despite finding that the father posed little risk of family violence in the future and no risk to the child, the judge ordered a continuation of supervised exchanges and placed limitations on communication and contact between the parties given the mother's ongoing fear of the father. The court remarked that, "It is also in a child's best interests when making a parenting time order that his or her caregiver be physically and emotionally safe." (*KKH v AAB*[202]).

**Lack of Insight**

Whether or not a parent who has used violence has gained insight into their behaviour and its impact and taken steps to address the violence can play a significant role in determining the appropriate parenting order. Section 16(4)(g) of the *Divorce Act* points to the importance of courts considering steps taken to prevent

[196] 2021 ABPC 167.
[197] 2021 NBQB 92.
[198] *LB v PE*, supra note 162 at para 111, referencing *B v H*, 2013 ONCJ 40; *LIO v IKA*, 2019 ONCJ 962.
[199] 2023 ONSC 1667 at para 79, referencing *C v M*, 2005 CarswellOnt 8095 (SCJ); *B v B*, 2021 ONSC 1753 (SCJ).
[200] 2025 ONSC 2163 at para 120 referencing *Kaplanis v Kaplanis,* 2005 CanLII 1625 (ONCA).
[201] *MAB v MGC, supra* note 2 citing *B v Rt,* 2021 ONSC 3352
[202] *KKH v AAB*, *supra* note 11 at para 33.

further family violence and to improve their ability to care for and meet the needs of the child. For example, in cases where there has been family violence, if the parent who used violence has shown insight into their behaviour and has undertaken and completed treatment, there may be few or no restrictions on their parenting.

In the Nova Scotia case of *NK v RE*[203], Forgeron J. commented that if a parent who used violence has insight into their behaviour and makes positive changes, they may be able to overcome their past behaviour, stating that, "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."[204]

For example, in the Ontario case of *McB v D*[205], the father's participation in services to gain insight into his behaviour and mitigate future risk factored into the court's decision to grant the parents shared parenting time and participation in decision-making.

Many recent cases point to lack of insight and failing to address violent behaviour as a reason to justify restrictions in parenting arrangements:

- For example, in the same case of *NK v RE*[206], the father's lack of insight into his behaviour was found to pose a substantial risk of physical and emotional harm to the child. There were accordingly restrictions placed on the father's parenting time including supervision by a professional program.

- In terminating the father's parenting time, the court observed in *JS v MS*[207] that the father had not accepted any responsibility nor gained insight into the impact of his behaviour on the children. The court left open the possibility that the parenting arrangement could be reassessed if the father made an effort to accept responsibility for the family violence, participated in personal counselling and gained insight on the impact of his actions. Despite playing a role in negative behaviours toward the children and her former spouse, the mother successfully demonstrated to the court that she had attended counselling, acknowledged her behaviour and learned more effective ways to engage with the children. She was granted sole parenting time and decision-making responsibility.

- The father's lack of progression in attitude or insight, and his inability to protect the children from the conflict factored in favour of a more restrictive supervised parenting time regime. Again, the court left open the possibility of re-visiting the arrangement if the father engaged in remedial steps. (*H v H*[208])

- In the case of *PNR v MYR*[209], Mandhane J. noted that the mother experienced difficulty co-parenting in part because the father had not taken responsibility for actions constituting family violence. The court concluded that the father lacked insight into his behaviour and the reason for mother's anxiety and hyper-vigilance post-separation - rather he placed blame on the mother. The court adopted a cautious approach, granting a structured increase in parenting time to the father

[203] *NK v RE, supra* note 191.
[204] *Ibid,* at para 17.
[205] 2021 ONSC 3610 [*McB v D*].
[206] *NK v RE, supra* note 191.
[207] 2023 NBKB 12 [*JS v MS*].
[208] 2024 MBKB 100.
[209] *PNR v MYR, supra* note 159.

contingent on the successful completion of therapy. The mother was granted sole decision-making in most domains.

**The Parenting Time Factor**

The *Divorce Act* amendments eliminated the language of "maximum contact" replacing it with "Parenting time consistent with best interests of child" (s 16(6)). The section states that, "In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child." The Supreme Court of Canada stated that this section is better referred to as the "Parenting Time Factor", commenting that this shift in language is more neutral and affirms the child-centric nature of the inquiry".[210]

- The principle does not *override* the best interests analysis. Rather, it is *part* of the best interests analysis (*L v Q*[211])

- Maximum contact is not presumed be in the best interests of the child.[212]

- "A child-focussed approach is required, with an important goal of achieving as much parenting time as possible with each parent, *so long as it is consistent with the child's best interests*. It may end up being equal time. It may end up being some other division of time. Each family is different, and the principle is a general guide set out to benefit children". (*L v G*[213])

- "The principle set out in section 16(6) recognizes that generous and meaningful parenting time with each parent is usually important and should be encouraged to the extent that it is consistent with the child's best interests. However, it does not create a presumption in favour of equal time or maximum time with each parent. It is subject to the overriding best interests test, and to the paramount consideration set out in section 16(2) of the child's physical, emotional and psychological safety, security and well-being. The fact that this principle is specifically addressed in the section of the legislation entitled "Best Interests of the Child" is significant and underlines the fact that it is but one consideration in carrying out the best interests determination. The courts have clearly emphasized over the years that while maximizing contact between children and parents is important, it is not an unbridled objective. If the evidence indicates that increased parenting time with a parent would not in fact support the child's best interests, it should not be ordered" [citations omitted]. (*McB v D*[214])

[210] *B v G, supra* note 18 at para 135.
[211] 2025 ONSC 585 at para 33.
[212] *B v G, supra* note 18.
[213] 2025 ONSC 2779 citing *K v K,* 2021 ONCA 305 (ON CA); *RF v JW,* 2021 ONCA 528 (ON CA); *A v U*, 2024 ONSC 6191 (Div Ct)).
[214] *McB v D, supra* note 205.

# Family Violence and Parenting Orders

## Highly-structured parenting orders

In case of family violence, and in particular post-separation violence and coercive control, it is important that parenting orders are highly structured:

> [273] This leads this court to the conclusion that the parties require a highly structured parenting arrangement with little flexibility in order to **avoid ongoing disagreement**, to **diminish patterns of power struggle**, and, most importantly, to **decrease the potential of the child's continued exposure to conflict.**[215]

## No Presumption of Shared Parenting

The Supreme Court of Canada affirmed in *B v G* that there is *no presumption of shared parenting*. Instead, parenting arrangements must be made only in the best interests of the child. While the "Maximum Contact Principle" at s 16(6) of the *Divorce Act* has often been relied on to make an argument that there is a presumption of shared parenting, the Supreme Court of Canada affirmed that maximum contact is, "*only* significant to the extent that it is in the child's best interests". The Supreme Court of Canada explained that the 2021 *Divorce Act* amendment, *"*recasts the "maximum contact principle" as "[p]arenting time consistent with best interests of child": s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, this principle is better referred to as the "parenting time factor"."[216]

- Shared parenting arrangements will often not be appropriate in families where there are ongoing concerns related to family violence (*P v L*[217])
- Mistrust, conflict, family violence and, and a fear of direct communication and/or contact with the parent who was violent may mean that equal parenting time and decision-making authority is not in a child's best interests (*CLT v DTT*[218])
- Cooperation under a shared parenting arrangement may threaten the safety and security of the child and parent who experienced violence. It requires too much contact between the parents and too many transitions for the child (*G v C*[219])
- A shared-parenting arrangement was deemed not to be appropriate, "because of the parties' high conflict relationship, which has been affected by family violence". (*AW v NP*[220])
- On the other hand, some appeal courts have declined to interfere with trial decisions ordering shared parenting or increased parenting time despite a finding of family violence.[221]

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[215] *S v S* Re-Trial, *supra* note 71.
[216] *B v G, supra* note 18 at para 135.
[217] *P v L, supra* note 23.
[218] *CLT v DTT, supra* note 80.
[219] 2023 NSSC 110.
[220] *AW v NP*, *supra* note 44.
[221] See for example *LP v BM*, 2022 NBCA 19; *MAM v JPM*, 2024 PECA 13; *AF v DS*, 2023 ABCA 332.

After considering the factors at s 16(4), courts may go on to craft a parenting order to mitigate family violence, and its impact on the child and potentially the spouse. The following are some examples of orders courts have made to address or mitigate safety concerns after making a finding of family violence:

- Denying shared parenting: ordering primary care and sole decision-making responsibility
- Terminating parenting time
- Supervised parenting time
- Long-term supervision orders
- Counselling with reporting requirement
- Supervised exchanges
- Communication restrictions
- Restrictions on travel and obtaining passports for children
- Parenting time according to child's wishes
- Limits on overnight parenting time
- Preventing access to info about child from third-party care providers
- Allowing relocation

## Denying shared parenting: ordering primary care and sole decision-making responsibility

- "Flexible arrangements may not be appropriate for parents unable or unwilling to cooperate or communicate with each other. Detailed agreements or orders specifying the arrangements for the children may make it less likely that the children will be exposed to conflict between the parents. In cases of family violence, particularly spousal violence, it is crucial that the Court consider whether a co-operative parenting arrangement is appropriate. …" (*B v R*[222])

- While joint decision-making is ordinarily preferred, where parental relationships are defined by, "mistrust, disrespect, and poor communication, and where there is no reasonable expectation that such a situation will improve, joint custody is not appropriate". (*KG v HG*[223])

- At the very least mutual trust and respect are basic elements required for shared decision-making to work effectively. (*LB v PE*[224])

- "Case law advises against compelling parents to collaborate and cooperate in order to jointly share decision-making responsibility with respect to their children in situations where there has been family violence." (*DB v ML*[225]).

- Failing to protect a child from conflict may be an important consideration in granting primary care or decision-making responsibility to the other parent (*W v. A-Y*[226]; *D v B*[227])

[222] *B v R, supra* note 195.
[223] 2021 NSSC 43 [*KG v HG*].
[224] *LB v PE, supra* note 162.
[225] 2023 NBKB 223 at para 35.
[226] *W v A-Y, supra* note 86.
[227] *D v B*, *supra* note 100

- "Domestic violence will usually impact the court's determination as to whom should be assigned primary care of a child. This is one factor, albeit a significant one, which determines the best interests of the child." (*BMcV v KD*[228])

## Terminating parenting time

- Courts are reluctant to terminate or suspend parenting time unless it is clearly in the child's best interests. Factors to consider in terminating access or ordering supervised access include long term-harassment and harmful behaviours, a history of violence that presents a risk to child safety/wellbeing, or severe denigration of the other parent (*ADD v TTW*[229]; *JS v MS*[230]; *JS v CS*[231])

- "A termination of parenting time, even temporarily, is an extreme remedy to be considered only in the exceptional circumstances and the court must carefully consider the option of supervision prior to termination." (*DB v SC*[232])

- " … [E]xceptional circumstances are required before all contact between a child and their parent should be terminated entirely." (*LP v AE*[233])

- Access may be terminated where it can be shown that it would not be in the best interests of the child. Risk of harm is not a condition precedent for limitations on access (*A v A*[234])

- A complete denial of access is limited to extreme parental conduct, where a child would be at risk of emotional or physical harm, or where contact is contrary to the child's best interests (*NK v RE*[235])

- Parenting time was terminated until the parent underwent successful therapy to acknowledge violent behaviour and the impact it has had on spouse and children. (*Droit de la famille* – 22454[236])

- Despite stay of criminal charge, family violence was found to be a factor in terminating parenting. Supervision was not deemed to be sufficient, and the child remained fearful of the father due to exposure to family violence and being a direct victim (*R v R*[237])

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[228] 2023 NBKB 102 citing *MacNeil v Playford*, 2008 NSSC 268 at para 12
[229] 2023 NBKB 97; appeal dismissed *TT-W v AD*, 2025 NBCA 27.
[230] *JS v MS*, *supra* note 207.
[231] 2022 NBKB 250.
[232] 2025 ONCJ 203.
[233] 2024 BCCA 270.
[234] 1993 CanLII 3124 (NS CA) citing *Young v Young*, 1993 CanLII 34 (SCC).
[235] *NK v RE, supra* note 191 citing *D v F,* 2014 NSCA 39.
[236] 2022 QCCS 1098 (CanLII).
[237] 2022 BCSC 110.

- Proof of clear danger to a child is not required to terminate parenting time. In terminating the father's parenting time, the court noted that the father's violence was serious and ongoing and presented a risk to the children's safety and well-being. (*ALF v CDF*[238])

## Supervised parenting time

- When making decisions about supervised parenting, courts should consider factors including, *inter ilia,* a history of violence, a history of anger management issues/aggression and whether there is a risk a child may be removed from the province/territory. (*VKG v IG*[239])

- "Supervision orders may be beneficial in attempting to protect children from risk of harm; continue or promote the parent/child relationship; direct the access parent to engage in programming, counselling or treatment to deal with issues relevant to parenting; create a bridge between no relationship and a normal parenting relationship; and, avoid or reduce the conflict between parents and thus, the impact upon children". (*S v S*[240])

- Supervised parenting may be ordered where behaviour poses a substantial risk of physical and emotional harm to a child and the parent lacks insight and remorse for past conduct and how violence negatively affects the child. (*NK v RE*[241])

- Supervised parenting ordered after attempts to implement unsupervised time were unsuccessful. "The attempt to implement unsupervised parenting time has enabled the [father] to perpetuate his history of family violence against the [mother]. It has caused a great deal of distress and disruption for [the mother], which has in turn been detrimental to [the child's overall well-being and stability." (*A v C*[242])

## Long-term supervision orders

- Appellate courts have held that long-term supervision orders may be appropriate in some circumstances where there is risk to the health and safety of a child (*AM v ET*[243])

- Although supervised parenting time is usually meant to be a temporary arrangement, when a court does not expect the risks addressed by supervision to diminish, it may be appropriate to order long-term supervision (*IO v IG*[244])

## Counselling with reporting requirement

Counselling or program requirements may be incorporated into a parenting order, including to address concerns around family violence. Some decisions have also shown a willingness to include specific therapeutic objectives and a requirement for the provider to report to the court confirming progress before parenting responsibilities may be expanded.

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[238] 2022 NBKB 177 citing *S v S* 2018 NBQB 11.
[239] *VKG v IG, supra* note 88.
[240] 2022 ONSC 557 at para 26 citing *VSJ v LJG,* 2004 CanLII 17126 (ON SC).
[241] NK v RE, supra note 191.
[242] *Supra* note 46.
[243] 2023 NBCA 26.
[244] *Supra* note 84.

- Supervised parenting may be ordered until counselling and therapeutic objectives are met (*KB v AT*[245]; *ML v JB*[246]; *SLJ v KB*[247])

## Supervised exchanges

- "It is also in a child's best interests when making a parenting time order that his or her caregiver be physically and emotionally safe." In this case, supervised exchange was ordered to continue despite the father posing little risk of ongoing family violence given the fear and trauma she had experienced. (*KKH v AAB*[248])

## Communication restrictions

- Minimizing contact was found to be important after a finding of psychological abuse. The court divided decision-making responsibilities, designated an exchange location and ordered the parents to communicate via a parenting app (*SC v NC*[249])

- The court ordered the parents to communicate following a "BIFF" format (brief, informative, friendly, firm) and directed them to a free online Parenting without Conflict training (*EH v DM*[250])

- "The mother is vulnerable and emotionally fragile. Forcing her to have direct involvement with the father, except for the purpose of exchanging necessary information about the child, could potentially destabilize her. She is the primary caregiver for the child. This would not be in the child's best interests." The Court ordered the parents to only engage in necessary and child-centred communication on a parenting app. (*KKH v AAB*[251])

- The mother was not required to communicate with the father, but could send parenting updates to a parenting supervisor via a parenting app (*KB v AT*[252])

- Communication ordered via a parenting app. If communication did not remain respectful, the mother would no longer be required to communicate with the father (*P v P*[253])

- A court may order that a parent is not required to communicate with the other parent in cases of family violence (*SLJ v KB*[254]; *NK v RE*[255])

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[245] *KB*, *supra* note 89.
[246] 2024 NSSC 272.
[247] *SLJ v KB, supra* note 122.
[248] *KKH v AAB, supra* note 11.
[249] *SC v NC, supra* note 37.
[250] 2021 PESC 44.
[251] *KKH v AAB, supra* note 11.
[252] *KB v AT, supra* note 89.
[253] *P v P, supra* note 29.
[254] *SLJ v KB, supra* note 122.
[255] *NK v RE, supra* note 191.

- Non-disparagement clauses: A court may order that communication remain child-focused and not to disparage or denigrate the other parent in front of the child (*M v H*[256]*;* 2021 ONSC 5107; *RH v ALS*[257]; *W v S*[258])

## Restrictions on travel and obtaining passports for children

- One parent may be allowed to apply for and obtain travel documents for the children without the other parent's consent (*FS v MBT*[259], *IO v IG*[260]; *SLJ v TD*[261]; *AD v ME*[262])

## Parenting time according to child's wishes

- Parenting time and contact may be ordered according to the children's wishes.

- For example, older children may be able to make this decision for themselves. In *J v M*[263] two children, aged 14 and 16 could exercise parenting time at their discretion. Similarly, in *JRD v SB*[264], a 16-year-old could see their father according to their wishes.

- In cases with younger children, the primary care parent may have some input, taking into consideration the views and preferences of the child. For example, in *FS v MBT*, 202[265], the parenting time for the father would be at the mother's discretion taking the views and wishes of the 12-year-old child into consideration.

## Limits on overnight parenting time

- Overnight parenting time was eliminated to reduce upset to the child. The father's "need to control" was impacting his ability to meet the child's needs. (*GS v AB*[266])

- Concerns with exposure to aggression paired with the child's need for stability and the significant time period since the child had seen the father factored against ordering overnight parenting. (*R v R*[267])

- Although the children were uncomfortable with overnights and initially had an interim order prohibiting overnight parenting time, the court structured an increase to one overnight per month paired with counselling to help understand the children's needs. The father was required to report to the court regading the counselling progress. *(J B-S v M M S*[268])

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[256] 2021 ONSC 5107.
[257] 2023 NSSC 171.
[258] 2024 ABKB 38 [*W v S*].
[259] *FS v MBT, supra* note *148.*
[260] *IO v IG, supra* note 84.
[261] 2023 NSSC 343.
[262] 2022 NBKB 249.
[263] 2022 ONSC 566.
[264] 2023 ONSC 46 [*JRD v SB*].
[265] *FS v MBT, supra* note *148.*
[266] 2023 NSSC 228.
[267] 2022 ONSC 7289.
[268] 2022 NBQB 18.

## Preventing access to info about the child from third-party care providers

Courts do not commonly restrict a parent's access to information from third-party service providers such as teachers, health care providers, counsellors etc., when a parent has parenting responsibilities.

The *Divorce Act*, s 16.4 states that that, "Unless the court orders otherwise, any person to whom parenting time or decision-making responsibility has been allocated is entitled to request from another person to whom parenting time or decision-making responsibility has been allocated information about the child's well-being, including in respect of their health and education, or from any other person who is likely to have such information, and to be given such information by those persons subject to any applicable laws."

However, there are some examples from case law where courts have limited or stipulated how a parent may access such information:

- Access to the children's therapeutic records was only to be released to the father at discretion of the children's counsellor/therapist (*KG v HG*[269])
- The child's counselling and personal health information not to be disclosed to the father. The father was ordered not to contact health care providers or educators without the written consent of the child. (*JRD v SB*[270])
- Where a parent has a history of engaging disrespectfully with third parties in a child's life, that parent may be prohibited from contacting those third parties directly (*W v S*[271])
- A termination of parenting time in this case also included a prohibition on accessing information from third parties about the children (*D v F*[272])
- At trial, the father was ordered to undertake counselling prior to being entitled to receive information about the child (appealed on other grounds in *W v P*[273])
- Third-party service providers were ordered not to disclose the mother's address (*C v L*[274])

# Relocation

Courts are more likely to allow a relocation where there is a finding of family violence (*JH v RD*[275]) and family violence is an important factor in relocation cases:

[269] *KG v HG, supra* note 223.
[270] *JRD v SB*, *supra,* note 264. Note: In this case, the father's parenting time was also ordered to be in accordance with the child's wishes, otherwise the father was to have no contact with the child. The child was aged 15 at the time this matter was heard.
[271] *W v S, supra* note 258.
[272] 2020 NSSC 257.
[273] *W v P, supra* note 184.
[274] 2014 ONCJ 147.
[275] 2024 NLSC 41.

> 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][276]

**Relocation: (*Divorce Act*)**

- **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))

The 2021 amendments to the *Divorce Act* maintained the best interests of the child as the heart of the relocation analysis but also introduced significant changes which have provided for greater structure and specific considerations of family violence into relocation assessments.

Judges now must consider the impact of family violence in assessing whether a relocation is in the best interests of the child.[277] Separately, mandatory notice provisions for proposed relocations specifically make an exception for family violence. While notice to other caregiving adults is typically the first step to take in order to relocate with a child, in cases of family violence, the rules on notice can be judicially modified or bypassed entirely.[278]

In addition, the *Divorce Act* now assigns burdens of proof to a subset of cases based on existing court orders and parenting time arrangements.[279] Applicants with orders or agreements providing that the child spend the "vast majority" of time in their care will benefit from a presumption in favour of relocation, while they must overcome a presumption that the move is not in the child's best interests where an order provides the child spends "substantially equal time" with both parents.[280]

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[276] *B v G, supra* note 18 at para 147.

[277] *Divorce Act*, *supra* note 1, ss 16.92(1), 16(3)(j). Similar amendments have been made in several provincial parenting statutes: see e.g. SK-*CLA*, s 15(1) (referring to s 10); MB-*FLA*, s 52(2); ON-*CLRA*, s 39.4(3); NB-*FLA*, s 62(1); PEI *CLA*, s 48(1), all *supra* note 179.

[278] *Divorce Act*, *supra* note 1, ss 16.9(3). Similar amendments have been made in several provincial parenting statutes: SK-*CLA,* s 13(3); MB-*FLA,* s 50(5); ON-*CLRA,* s 39.3(3); NB-*FLA,* s 59(4); PEI *CLA*, s 46(4), all *supra* note 179.

[279] *Divorce Act*, *supra* note 1, s 16.93. Similar amendments have been made in several provincial parenting statutes: SK-*CLA,* s 16; MB-*FLA,* s 52; ON-*CLRA,* s 39.4(5-7); NB-*FLA,* s 63; PEI-*CLA*, s 49. all *supra* note 179.

[280] *Divorce Act*, *supra* note 1, s 16.93. Similar amendments have been made in several provincial parenting statutes: SK-*CLA,* s 16; MB-*FLA,* s 52; ON-*CLRA,* s 39.4(5-7); NB-*FLA,* s 63; PEI-*CLA*, s 49. all *supra* note 179*;* For discussion of these burdens at the federal and provincial level, see: DA Rollie Thompson, "Presumptions, Burdens and Best Interests in Relocation Law" (2015) 53:1 Family Court Review 40 at 40. See also DA Rollie Thompson, "Legislating about Relocating: Bill C-78, N.S. and B.C." (2019) 38:2 CFLQ 219 [Thompson: Legislating about Relocating].

Since the amendments came into effect, courts have shown a more sophisticated understanding of family violence, its broadened definition, its negative impact on children, and its relevance to relocation.[281] This has been facilitated in part by the advocacy work undertaken by women's organizations to centre the gender dynamics at play in relocation application especially where there has been family violence.

For example, as a direct result of interventions by the National Association of Women and the Law and the Provincial Association of Transition Houses of Saskatchewan, the Saskatchewan Court of Appeal discussed case law on judicial notice. The court then concluded that:

> (1) most relocation application are made by women and that, as such, there are gendered consequences which flow from judicial approaches to relocation;
>
> (2) family violence need not cause physical injury to have a significant impact;
>
> (3) children will be affected by family violence even if they are not the direct victims of violence;
>
> (4) family violence can be harmful to a child's physical, emotional, and psychological well-being and development, and it can have many negative short-term and long-term impacts on the child; and
>
> (5) the effects of family violence can continue to be experienced by victimized parents and children long after the parents separate.[282]

Here we review some of the developing case law interpreting relocation provisions. Challenges remain around proving family violence and second, although a finding of family violence may make it more likely that a court will approve a relocation, a finding of family violence in and of itself does not necessarily mean that a relocation application will be successful.

**Relocation and Notice Requirements**

The *Divorce Act* and several provincial counterparts contain detailed notice provisions that structure relocation applications.[283] These rules set out the form, timing, and parties entitled to notice when one person who exercises parenting time or decision-making responsibility with a child intends to relocate.[284] As a general rule, failing to follow notice provisions is ill-advised – judges tend to be highly critical of unilateral relocations.[285]

However, notice provisions can be modified or bypassed entirely in cases of family violence. Some courts have, when faced with credible claims of family violence, demonstrated a willingness to permit relocations *ex parte*, or to retroactively cure a failure to provide adequate notice.

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[281] See e.g.: *J v Da S*, 2023 ONSC 2710*,* at paras 11-14, 27 [*J v DaS*]; *CLT v DTT, supra* note 80; *KMN v SZM, supra* note 75.
[282] *F v F Appeal, supra* note 173 at paras 37-39.
[283] *Divorce Act*, *supra* note 1, s 16.9; BC-*FLA,* s 66; SK-*CLA,* s 12; MB-*FLA,* s 50; ON-*CLRA,* s 39.1; NB-*FLA,* s 60; PEI-*CLA,* s 46, all *supra* note 179; *Parenting and Support Act*, RSNS 1989, c 160, s 18E-F, [NS-*PSA*].
[284] *Divorce Act*, *supra* note 1, s 16.9.
[285] Compliance with notice provisions is an enumerated factor in conducting the best interests of the child analysis for relocations: *Divorce Act*, *ibid,* s 16.92(1)(d). See also: Thompson: Legislating about Relocating, *supra* note 280 at 225, 247. For examples of negative fallout from unilateral relocations, see: *McCluskey v Tobin*, 2023 NSSC 404 at paras 186-189, 216; *XD v SZ*, 2022 NSSC 202 [*XD v SZ*]; *Bhadauria v Cote*, 2022 ONSC 3088 at paras 52, 64-68; *EDW v DL(B) W*, 2023 NBKB 18 [*EDW v DL(B)W*]; *MP v PP*, 2022 BCSC 1511 [*MP v PP*].

- *AJK v JPB*[286] is a recent example from Manitoba is a where a relocation **without notice** was allowed by the court. The father exhibited a pattern of escalating "separation-instigated violence" and there was no evidence that his behaviour had abated. The mother was permitted to relocate without notice to the father, given the history of family violence and its impact on the family and the children's best interests. Given the very real fear that the father may act improperly upon notice of the mother's intention to relocate, the court allowed the hearing without notice.

- "The mother's obligation is to protect her children. She was advised that there was a risk to their personal safety and for that reason she moved away. I find that the mother has made a prima facie case that the notice provisions contained in the *Children's Law Reform Act* do not apply as the threats to the mother and children's personal safety were sufficient grounds for her to move the children without notice to the father and without a court order. While the court does not condone self-help remedies, the circumstances of this case are extraordinary". (*McI v T*[287])

- At a case conference, it was determined that the mother's relocation did not require formal notice due to a risk of family violence (per s.60(6) of the *Family Law Act*). The decision to relocate was based on a reasonable belief that the mother was acting in the child's best interest. (*CLT v DTT*[288])

- The mother did not provide notice of the proposed relocation in the approved form and some required details were missing. The Court determined that the notice requirements could be waived in the circumstances, in part because the father had a full opportunity to respond and due to the family violence on the part of the father. (*NF v JF*[289])

- Family violence may make providing notice unsafe, impractical or risky (*MP v PP*[290])

- Nevertheless, many decisions remain critical of a parent's failure to abide by statutory notice requirements and unilateral decisions to move with the child, even in the context of family violence allegations.[291]

- Some provinces such as Alberta and Newfoundland and Labrador do not have a specific relocation framework outlined in their legislation. Cases from Alberta have commented on the procedural notice requirements in the *Divorce Act,* specifically whether they ought to be considered in cases proceeding under the *Family Law Act*, SA 2003, c F-4.5 in the context of the best interests analysis and factors outlined in s 16.92 of the *Divorce Act*[292]

[286] *AJK v JPB, supra* note 5.
[287] 2022 ONSC 5958 at para 34.
[288] *CLT v DTT, supra* note 80.
[289] 2024 NSSC 29 [*NF v JF*].
[290] *MP v PP, supra* note 285.
[291] See e.g. *KRAR v CEG*, 2025 PESC 35; *DC v LN*, 2022 NLSC 138.
[292] See e.g. *CR v PS*, 2022 ABQB 410, *Lemay v Lemay*, 2023 ABKB 303, *L v R*, supra note 12.

**Reason for the Relocation**

The *Divorce Act* and most provincial counterparts now specifically require courts to consider the applicant's reasons for relocation.[293]

- A desire to relocate to escape violence and avoid conflict can be in keeping with a child's best interests.[294]

- For example, the British Columbia Supreme Court recently approved a mother's relocation to Germany to heal from family violence, and to insulate the children from its continued effects.[295]

- Family violence does not, however, need to be the driving factor for the relocation in order for it to be relevant. *B v G* recognized the synergistic relationship between a caregiver's well-being and a child's best interests.[296] While the mother's relocation requestion was made in part due to family violence, it was also driven by the emotional supports available from her parents in her hometown. The Supreme Court of Canada stated at paragraph 169 that, "A move that can improve a parent's emotional and psychological state can enrich a parent's ability to cultivate a healthy, supportive, and positive environment for their child. Courts have frequently recognized that **a child's best interests are furthered by a well-functioning and happy parent** …" [citations omitted].

- "The Applicant has been the victim of family violence and her mental health has suffered. She will be a better functioning parent for the child if she is permitted to move to Ireland. **A forward-looking order is required to address the child's best interests**."[297]

**Family Violence and Relocation**

While trends demonstrate that relocations are often approved against a backdrop of proven family violence,[298] even proven and documented allegations of physical violence do not invariably lead to a successful relocation.

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[293] *Divorce Act*, *supra* note 1 at 16.92(1)(a); BC-*FLA,* s 69(6)(a); SK-*CLA,* s 15(1)(a); MB-*FLA,* s 52(2)(a); ON-*CLRA,* s 39.4(3)(a); NB-*FLA,* s 62(1)(a); PEI *CLA,* s 48(1)(a), all *supra* note 179; NS *PSA,* s 18H(4)(b), *supra* note 283.
[294] See, e.g.: *CLT v DTT, supra* note 80 at para 100; *J v DaS*, *supra* note 281 at paras 8, 31; *TF v JF*, 2023 BCSC 2226 at paras 131-132 [*TF v JF*].
[295] *KSP v JTP,* 2023 BCSC 1188 at paras 414-427 [*KSP v JTP*]; application for a stay denied *JTP v KS*, 2023 BCCA 303.
[296] *B v G*, *supra* note 18 at paras 124-130.
[297] *S v S* Re-Trial, *supra* note 71 at para 401.
[298] *J v DaS*, *supra* note 281 (temporary relocation permitted); *K v K*, 2023 ONSC 6397 (temporary relocation permitted); *CLT v DTT, supra* note 80; *KSP v JTP, supra* note 295; *TF v JF, supra* note 294.

The Saskatchewan Court of Appeal's decision *F v F* is demonstrative in this regard. There, despite several documented incidents and criminal charges related to family violence pre- and post-separation, the mother's proposed relocation was not successful. The trial judge found that, while the aftermath of violence still impacted the mother, it did not necessarily continue to impact the child.[299]

**Burdens:**

The relocation amendments to the *Divorce Act* set out specific burdens that apply in relocation applications:

- 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 <u>not</u> 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))

The *Divorce Act*'s burden provisions are only triggered by the existence of a "court order, arbitral award or agreement." While a history of care is always relevant to a child's best interests, the burdens are not operative based on pre-separation parenting arrangements.[300] Here, the *Divorce Act* has taken a different approach than some provincial counterparts.[301]

Several courts have accepted that "agreements" include oral or *de-facto* post-separation agreements.[302] Other courts have, however, taken a different view.[303]

Further, the application of burdens is negated by a lack of substantial compliance with an existing order or agreement. The function of this "substantial compliance" rule has caused some confusion in the case law.

- In *KDH v BTH*,[304] Lema J. provided a child-centred analysis which focuses on a child's "lived reality".[305] Under this view, the focus is on how the child is spending their days: if their lived reality generally reflects the allocation of parenting time in the agreement, the burdens flowing from that agreement ought to remain intact. [306] If the child's lived reality is not reflective of the terms of that agreement, then the burdens flowing from it should not apply. The purpose of the substantial compliance rule is not to punish a non-compliant parent, it is to allocate burdens in a

[299] *F v F Appeal, supra* note 173 at para 83, citing paras 82-88 of the trial decision.
[300] *Divorce Act*, *supra* note 1, s 16(3)(d).
[301] See e.g.: BC-*FLA*, s 69, *supra* note 179; NS-*PSA*, s 18H, *supra* note 283.
[302] See e.g.: *R-T v V,* at paras 20-30 (this case dealt with Ontario's provincial parenting legislation, but its burden provisions mirror those in the *Divorce Act*); *T v K,* at paras 71-77; *KDH v BTH*; *MJV v JR;* all *supra* note 15.
[303] *B v C,* at para 46; *S v S*; *W v W,* at paras 15-16, all *supra* note 16.
[304] *KDH v BTH*, *supra* note 15 at paras 32-44.
[305] *Ibid* at paras 37.
[306] *Ibid* at paras 33.

way that reflect the actual disruption a relocation would, or would not, have on a child in light of the existing parenting arrangements.[307]

- *F v F,* by contrast, exemplifies a different approach in which the substantial compliance rule is used to punish inflexible, non-compliant or ungenerous parents. There, the parties signed a parenting agreement in the wake of several instances of family violence in which the father was given specified parenting time plus additional time, "as the parties can agree on."[308] The mother's unwillingness to provide any additional parenting time was found to constitute lack of compliance on her part, which negated the burden which otherwise would have operated in her favour.[309] Where parenting orders give discretion to allow more parenting time ''as the parties can agree on," the exercise of that discretion ought to be contextualized to the existence of family violence.

Alberta does not have a relocation framework in its provincial legislation. Courts have noted that, "there is some doubt in the jurisprudence as to whether the burdens of proof in the *Divorce Act* apply in *Family Law Act* mobility cases, even though it is otherwise clear that the mobility factors in the *Divorce Act* are relevant considerations".[310] Despite this, the Alberta Court of Appeal has held that the burden of proof will be placed on the party bringing the application to relocate (*S v S*[311]), an approach that has been followed in at least one subsequent case.[312]

Similarly, Newfoundland and Labrador's *Children's Law Act* was not amended to include relocation burdens. In the case of *KK v SH*[313], Fitzpatrick J. remarked that the burdens do not explicitly apply. Despite this the court noted that, "In *B v G* however, the Court noted that the history of caregiving is relevant to all mobility applications, and that history will sometimes warrant a burden of proof in favour of one parent."

**Relocation Analysis: Blended vs. Sequential**

Some jurisdictions have taken the view that if a proposed relocation is brought at first instance, the application should be determined alongside the larger conversation around the appropriate parenting arrangement (a "blended" analysis).[314]

By contrast, other courts take the stance that one of the parenting and/or relocation ought to be determined first, with the remaining issue determined after the initial inquiry is completed (a "sequential" analysis).[315] The Nova Scotia Court of Appeal, has seemingly rejected advocating for a single approach, opining instead that "[t]he order of the analysis will be driven by the circumstances of the particular case".[316]

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[307] *Ibid* at paras 34. A parent cannot, however, withhold children contrary to a shared parenting agreement and then use their lack of compliance to argue they do not need to meet the "substantially equal time" burden (*W v P*, 2022 NSSC 156).
[308] *F v F* Trial, *supra* note 17 at para 13.
[309] *F v F* Appeal, *supra* note 173 at paras 101-102. See also: *XD v SZ, supra* note 285.
[310] *C v G,* 2023 ABKB 217 at para 12.
[311] 2024 ABCA 171.
[312] *L v R, supra* note 12.
[313] 2022 NLSC 90.
[314] See e.g. *F v F Appeal*, *supra* note 173 at para 87; *Chapman v Somerville,* 2022 SKCA 88.
[315] See e.g. *NF v JF, supra* note 289 at paras 7 and 8.
[316] *T v K*, 2022 NSCA 35 at paras 25-27.

At present, the blended analysis seems to have garnered more favour with several Canadian jurisdictions and women's advocacy groups. Aside from comments in *B v G* which have been construed as supporting this view,[317] appeal Courts in Western Canada have favoured the blended analysis on the basis that it permits a more holistic consideration of the child's best interests, and narrows the range of possible parenting scenarios in a way that better navigates the "double bind" issue (i.e. the scenario relocating parties face when asked if they will relocate without their child).[318]

In recognition of the prejudice it may cause to make such an inquiry, the *Divorce Act* prohibits judges from considering the relocating parent's future plans if the relocation is denied. The sequential analysis has been accused of being more problematic when navigating this legislative restriction because, in considering what parenting arrangement is in the best interests of the child first, the preference for maintaining the *status quo* tends to be placed front and centre. A blended analysis can (it is argued) avoid this discussion entirely and ensure that the tacit preference for the *status quo* does not "inadvertently infect the analysis".[319]

Because this restriction limits the information judges have when making decisions, this has increased the use of conditional orders. Conditional orders can state, for example, that after a proposed relocation with a child is refused, one parenting arrangement is put into place, while another kicks in if (and only if) the relocating parent proceeds with the relocation.[320]

## Family Violence Considerations in Other Family Law Matters

Although family violence is primarily considered in the context of making a parenting order and considering the best interests of the child, it may also be considered in other family law matters. Below are some case examples where family violence may impact other areas of family law or aspects of a decision:

**Variation Application (spousal support)**

- Litigation abuse may amount to a material change in circumstances for the purpose of an application to reinstate spousal support. (*LDB v ANH*[321])

**Paying Spousal Support to a Survivor**

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[317] *B v G*, *supra* note 18 at para 112.
[318] *F v F* Appeal, *supra* note 173 at paras 86-93; *CC v SPR*, 2023 BCCA 422 at paras 20-21; *KW v LH,* 2018 BCCA 204 at paras 108 to 110; *SKG v BSG*, 2024 BCSC 455 at para 76. *L v Lj* 2022 BCCA 341 at para 7; *B v B*, 2024 BCSC 39 at paras 44-59. See also: *JRD v AKMD*, 2023 ABKB 685 at paras 6-9; *M v W*, 2021 ABCA 76; *S v MacL,* 2020 ABCA 173; *Nurmi v Nurmi*, 2023 ABCA 123 (which does not explicitly comment on the blended vs sequential debate, but accepts the two-scenario logic and overturns the trial judge's decision based on improperly considering a third option). Courts in Ontario appear to be applying the blended approach: *G v H*, 2022 ONSC 7396 at paras 30-31; *S v S,* 2023 ONSC 6579; *T v S*, 2023 ONSC 6689 at para 9; *Patel v Patel*, 2023 ONSC 6307 at para 53; *LaB v G*, 2023 ONSC 2767 at para 47.
[319] *F v F* Appeal, *ibid* at para 93.
[320] *F v F* Appeal*, ibid* at paras 94-98. See also: *XD v SZ, supra* note 285 at para 87.
[321] *LDB v ANH, supra* note 156.

- The impact of family violence should be considered in determining whether to impute income to a former spouse who experienced family violence. (*K v T*[322])

- Although spousal misconduct is not to be considered, the emotional *consequences* of spousal misconduct may be considered (*Leskun v Leskun*[323])

- The emotional consequences of family violence may justify increased spousal support (*AC v KC*[324])

- The inability to work and function at a former level due to psychological abuse may warrant a spousal support order (*SC v NC*[325])

- However, family violence is not in and of itself a basis for support and it is important to provide reliable and objective evidence about how the impacts of family violence connect to an economic need (*BSD v SKD*[326])

- Family violence may factor in favour of a lump sum spousal award (*MAJ v MEJ*[327]; *D v C*[328])

**Requiring a Survivor to Pay Spousal Support to an Abuser**

- It may be contrary to public policy to require a survivor of family violence to pay spousal support to their abuser (*G v A B*[329]):

> Surely an order compelling a survivor to financially support her abuser would perpetuate financial abuse and would make the law "an ass," to quote Dickens. … I am not suggesting that all situations of family violence should automatically trigger a denial of spousal support to the alleged perpetrator; each case must turn on its own facts. I am simply concluding that, as with the impact of violence on a survivor's self-sufficiency, it must be open to the court to consider the public policy principle that, at its core, militates against requiring a survivor of abuse to support his or her abuser financially.[330]

**Costs**

- When litigation is being used to delay, harass, intimidate or control, costs options include: interim cost, security for costs, seeking payment of outstanding costs before new motions/appeals.[331]

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[322] 2025 ONCA 200.
[323] 2006 SCC 25.
[324] 2023 ONSC 6017.
[325] *SC v NC, supra* note 37.
[326] 2021 BCSC 2327.
[327] *MAJ v MEJ, supra* note 149.
[328] 2011 ONCA 294.
[329] 2025 ONSC 3671.
[330] *Ibid* at para 45.
[331] Neilson, *supra* note 61 at 7.4.1.1.

- "Costs can be used to sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious. In short, it has become a routine matter for courts to employ the power to order costs as a tool in the furtherance of the efficient and orderly administration of justice". (*B v W*[332])

- Courts may require a person to pay security for costs before bringing new motions if unpaid costs are accumulating. (*D v F*[333])

- Costs may be awarded due to poor conduct during litigation. (*SDF v JGW*[334])

- Extreme bad faith in litigation process or misusing legal process to further abuse may lead to a costs award. Test to appeal a costs order is stringent. (*KK v MM*[335])

- Unreasonable litigation behaviour may be taken into account in a higher costs award (*S v S*[336]) as well as denying abusing behaviour or unnecessarily lengthening litigation (*BLC v JJDC*[337])

- Pre-litigation conduct including coercive control may be considered in a costs award in addition to abusive conduct during litigation (*L v R*[338])

- Self-reps are not exempt – hostile conduct may factor into costs decision (*S v B C*[339])

**Vexatious Litigant Designation**

- The father's conduct in litigation constituted intimidation, harassment and family violence. The father was declared a "vexatious litigant" and prohibited from instituting legal proceedings or appeals without first obtaining leave and from seeking to vary or discharge an order. "It is not in the interests of justice for this Court to allow its processes to be used as a vehicle for perpetrating family violence of this nature". *(ANH v LDG*[340])

**Family Dispute Resolution**

- Withdrawal from a collaborative law process may be reasonable where there is family violence (*AB v MB*[341])

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[332] 2025 ONCJ 19 referencing *British Columbia (Minister of Forests) v. Okanagan Indian Band,* 2003 SCC 71 (CanLII),
[333] 2015 NSSC 310.
[334] 2024 NBKB 115.
[335] 2025 ONCA 446.
[336] 2014 ONCA 370.
[337] 2019 ABQB 129.
[338] *L v R, supra* note 12.
[339] 2019 ONSC 1778.
[340] 2022 BCCA 155 at para 49.
[341] 2023 NSSC 92.

- Meditation should not be mandatory when safety cannot be ensured (*VB v SVB*[342])

- Although exemptions to mandatory mediation shouldn't be readily granted, it is important to provide adequate protection, especially when there is evidence of violence beyond a mere suspicion. (*SLL v DBL*[343])

- Interpersonal violence does not in and of itself exempt parties from mandatory mediation – counsel are required in the *Divorce Act* to point parties towards resolution services unless "clearly inappropriate." Courts should consider all circumstances including power imbalances and the nature, timing and impact of family violence (*Anaquod v Mclean*[344])

- Using a parenting coordinator to resolve disputes may help a perpetrator acknowledge harm and take action to repair harm (after completion of programs/counselling) (*PNR v MYR*[345])

**Separation Agreements**

- The court vacated a "kitchen table agreement" finding that the circumstances produced extreme vulnerability and a palpable power imbalance" that were not mitigated by independent legal advice (*S v S*[346])

- The mother requested to set aside a cohabitation agreement based on undue influence, duress and inadequate disclosure. The father's movement for summary judgement dismissed. The court noted that a lack of corroborative evidence is not fatal - parties presenting as "sophisticated, highly educated, and professionally successful" are not immune from unhealthy or coercive dynamics (*M v D*[347])

**Exclusive Possession**

All Canadian jurisdictions have legislation allowing courts to make an order for exclusive occupation or possession of the family home via their family, property, or civil protection order laws. Jurisdictions vary with respect to who may qualify for the relief. When the family home is on Reserve, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* or Band enacted laws may apply. The *Family Homes on Reserves and Matrimonial Interests or Rights* sets out family violence as a specific factor to be considered[348], as do other jurisdictions.[349]
Not all jurisdictions include violence as a specific factor, but most do include some consideration of the needs or interests of the children.

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[342] 2023 SKKB 206. Saskatchewan's *The Queen's Bench Act,* 1998, SS 1998, c Q-1.01, s 44.01(3)(a) requires that parties to a family law proceeding participate in family dispute resolution. S 44.01(6) provides for exemptions to mandatory participation including where there "is a history of interpersonal violence between the parties".
[343] 2022 SKKB 277.
[344] 2022 SKQB 134.
[345] *PNR v MYR, supra* note 159.
[346] 2023 NSSC 107.
[347] *M v D, supra* note 36.
[348] *Family Homes on Reserves and Matrimonial Interests or Rights Act*, SC 2013, c 20, s 20(3)(h).
[349] See e.g. *Family Law Act,* RSO 1990, c F.3, s 24(3)(f); *Family Law Act,* RSPEI 1988, c F-2.1, s 25(4)(f); *Family Law Act*, SNWT 1997, c 18, s 55(3)(f); *Family Law Act,* CSNu, c F-30, s 55(3)(f).

- In British Columbia, although "family violence" is not listed as determining factor in granting an order for exclusive occupation, cased have held that if family violence is present, courts are obliged to consider it and give it weight and significance in such applications given the emphasis on family violence in the *Family Law Act*[350]. Nevertheless, family violence is not necessary to make an exclusive occupation order.[351]

- Exclusive occupation of family residence and surrounding property (farm) granted to the wife given "real and legitimate" fears of ongoing family violence. The husband was allowed to take possession of certain pieces of farm equipment to conduct his farm business on other properties. (*S v S*[352])

- An order for exclusive possession or occupation may include a consideration of the best interests of the child in determining whether to make an order, as it does for example, in Ontario. In granting an order for exclusive possession in *T v C*[353] Kraft J. stated that, "In terms of the alleged family violence, the amendments to the *Divorce Act* in March 2021, introduced a statutory obligation for the courts to take family violence and its impact into account when considering a child's best interests."

**Property Division**

- Risk of violence may be reduced by achieving finality in financial arrangements, including property division (*MAJ v MEJ*[354])

- Family home unequally divided based on significant unfairness from husband's failure to disclose all property, history of family violence and burdens on wife and children if required to leave family home (*NK v MH*[355])

**Case Anonymization/Initialization**

- Courts can order "a complete or partial sealing order, temporary or permanent publication ban, initialization, redaction of identifying information, anonymization, or some combination thereof." (*Kirby v Woods*[356]) In this decision, the Ontario Court of Appeal opted to anonymize the decision through an "online random last name generator".

- Case was initialized despite no request from either party due to potential for emotional harm to parties and children. This decision discussed the highly sensitive nature of the parties' conduct and child's medical information (*KM v GC*[357])

- Initialization is a "minimal intrusion" on open court principle (*VR v SR*[358])

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[350] BC-*FLA, supra* note 179.
[351] See discussion in *MME v SBT*, 2024 BCSC 1567 at para 32 citing *J.R.E. v. 07-----8 B.C. Ltd.*, 2013 BCSC 2038.
[352] 2021 BCSC 932.
[353] 2022 ONSC 6465.
[354] *MAJ v MEJ, supra* note 149.
[355] 2020 BCCA 121. See also *Loss v Walters*, 2024 BCSC 1012 and *He v Guo*, 2022 BCCA 355 at paras 34-35 which discuss considerations of family violence in the context of property decisions.
[356] 2025 ONCA 437 at para 22.
[357] 2025 ONSC 4507.
[358] 2024 ONCJ 262.

**Civil Actions**

- In one decision, the mother was awarded nearly $800,000 in a civil proceeding for injuries suffered. Certain factual findings from the civil litigation were binding on the parties for the purpose of the family proceedings including the impact of violence on mother and child (*KSP v JTP*[359])

- Successful civil claim for assault and battery – general, aggravated and punitive damages awarded by way of transfer of father's remaining interest in family properties (~$200,000) (*JKP v LSB*[360])

- $35,000 in damages for coercive controlling behaviour and assault causing injuries and emotional distress (*G v J*[361])

- At the time of writing, the Supreme Court of Canada's decision about whether to recognize a new tort of family violence was pending.[362]

**Interjurisdictional Child Removal and Retention**

Cases of family violence become increasingly complex where parenting arrangements are impacted by interjurisdictional factors. This is especially so when there are allegations that a child was wrongfully removed from or retained in a place, and parents commence competing court processes about jurisdiction.

This may include cases where children are moved to other provinces or territories, or even where they are removed to or from another country. These cases may involve applications under the Hague Convention as well as non-Hague Convention cases, including inter-provincial cases.

The Supreme Court of Canada recently touched on this issue in relation children not subject to the Hague Convention in its decision, *Dunmore v Mehralian*[363]. Specifically, the court considered the definition of "reside" at s 22(2) of Ontario's *Children's Law Reform Act*[364], holding that where a child resides means considering where a child is "at home". While the "hybrid approach" to the definition of "habitual residence" in the Hague Convention is not directly applicable to determining whether the child "resided" in the jurisdiction in a non-Hague Convention application, similar considerations may nevertheless inform the analysis.

Importantly, the Court held that the "shared parental intention" approach must be rejected in favour of a more contextual approach that considers the child's life and circumstances to determine where they are "at home".

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[359] *KSP v JTP, supra* note 295.
[360] 2025 BCSC 1494,
[361] 2025 ONSC 3108.
[362] See *A v A,* 2023 ONCA 476, leave to appeal to SCC granted, 41061 (16 May 2024). On appeal, the Ontario Court of Appeal overturned the trial judge's decision recognizing a new tort of family violence.
[363] 2025 SCC 20.
[364] ON-*CLRA*, *supra* note 179.

Such a contextual approach requires a consideration of "all relevant links and circumstances" including factual connections to the place, circumstances of movement to and from the place, as well as other factors like the use of social services in the jurisdiction, linguistic, cultural, educational and social ties, family presence, and the length of time and reasons for being there.

The court noted that in looking to the child's life and circumstances to determine where they "reside", evidence must be assessed in light of "the dynamics of the particular family, "being especially alert to gender dynamics and the presence of family violence".

## Appendix: Jurisdiction Scan of Family Violence and Coercive Control Provisions

| **Jurisdiction** | **Family Violence defined?** | **Coercive Control included in definition of family violence or analogous term?** | **Coercive control included in family violence "factors" or elsewhere?** |
|---|---|---|---|
| Canada – *Divorce Act,* RSC 1985, c 3 (2nd Supp). | Yes (s.2(1)) | Yes – "a pattern of coercive and controlling behaviour" (s.2(1)) | Yes – "In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account: … (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member" (s.16(4)(6)) |
| Ontario – *Children's Law Reform Act,* RSO 1990, c C.12. | Yes – essentially a reproduction of the *Divorce Act* definition (s.18(1)-(2)) | Yes – "a pattern of coercive and controlling behaviour" (s.18(1)) | Yes– same as the *Divorce Act* (s.24(4)(b)) |
| Nova Scotia – *Parenting and Support Act*, RSNS 1989, c 160. | Yes – "family violence, abuse or intimidation" (s.2(da)) | Yes – "causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour" (s.2(da)(ii)) | No |
| British Columbia – *Family Law Act*, SBC 2011, c 25. | Yes (s.1) | Yes – "psychological or emotional abuse of a family member, including<br>(i) intimidation, harassment, coercion or threats, including threats respecting other persons, | Yes - "whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member" (s.38(d)) |

| | | | |
|---|---|---|---|
| | | pets or property" (s.1(d)(i)) | |
| Alberta – *Family Law Act*, SA 2003, c F-4.5. | Yes (s.18(3)) | No | No |
| Saskatchewan – *Children's Law Act*, 2020, SS 2020, c 2. | Yes - same as the *Divorce Act* definition (s.2(1)) | Yes – "a pattern of coercive and controlling behaviour" (s.2(1)) | Yes - same as the *Divorce Act* (s.10(4)(b)) |
| Manitoba – *The Family Law Act,* CCSM c F20. | Yes - same as the *Divorce Act* definition (s.1) | Yes – "a pattern of coercive and controlling behaviour" (s.1) | Yes - same as the *Divorce Act* (s.35(4)) |
| *Quebec* - Civil Code of Québec, CQLR c CCQ-1991 | No | No | No |
| New Brunswick – *Family Law Act,* SNB 2020, c 23. | Yes - same as the *Divorce Act* definition (s.1) | Yes – "a pattern of coercive and controlling behaviour" (s.1) | Yes - same as the *Divorce Act* (s.50(4)(b)) |
| Newfoundland – *Children's Law Act*, RSNL 1990, c C-13. | No – in assessing parenting capabilities, the court must consider past violence (s.31(3)) | No | No |
| Prince Edward Island – *Children's Law Act*, RSPEI 1988, c C-6.1. | Yes– uses definition from PEI's *Victims of Family Violence Act* (s.1(p)) | No | Yes - same as the *Divorce Act* (s.33(2)(b)) |
| Nunavut – *Children's Law Act,* CSNu, c C-70. | No – "violence" is to be considered under the best interests test (s.17(3)) | No | No |
| Yukon – *Children's Law Act*, RSY 2002, c 31. | No – no mention of violence in the Act | No | No |
| Northwest Territories, | No – "violence" is to be considered under | No | No |

| | | | |
|---|---|---|---|
| *Children's Law Act,* SNWT 1997, c 14. | the best interests test (s.17(3)) | | |

# Appendix B: Examples of Coercive Control from Case Law

Justice Chappel's recent decision in *JMM v CRM*[365] provides a thorough and non-exhaustive overview of the general type of behaviours that have been considered in case law to be coercive and controlling, both before and after separation, reproduced here:

> [288] The determination of whether behaviour constitutes a pattern of coercive and controlling behaviour will obviously turn on the unique facts of each case (*G v. F,* 2024 ONSC 2427 (S.C.J.). However, in considering the issue, it is helpful to consider the general types of behaviour that that have been considered in the caselaw as being coercive and controlling. These include, without limitation, the following:
>
> 1. Isolating the person from friends and family;
> 2. Depriving the person of basic needs, such as food;
> 3. Monitoring the person's time;
> 4. Monitoring the person via online communication tools or spyware;
> 5. Taking control over aspects of the person's everyday life, such as where they can go, who they can see, what they can wear and when they can sleep;
> 6. Controlling aspects of the person's health and body;
> 7. Depriving the person of access to support services, such as medical services;
> 8. Humiliating, degrading or dehumanising the person;
> 9. Repeatedly making jealous accusations;
> 10. Regulating the sexual relationship;
> 11. Inappropriately controlling the person's finances, limiting access to financial support or controlling how they spend money;
> 12. Making threats or intimidating the person;
> 13. Threatening to harm children, other people or pets;
> 14. Threatening to publicize sensitive information about them;
> 15. Threatening to report them to police or other authorities without justification;
> 16. Damaging property;
> 17. Pressuring them to participate in activities against their will;

[365] *JMM v CRM*, *supra* note 72.

18. Setting inappropriate rules and regulations for the person;

19. Inappropriately blaming the person for issues;

20. Repeatedly treating the person with disrespect in private and in front of others;

21. Stalking the person;

22. Inflicting physical, sexual, verbal or financial abuse;

23. Gaslighting the person, by using various tactics including denial, misdirection, contradiction, withholding and hiding information, discounting information and lying to make them question their own memory, perception, emotional stability and sanity;

24. Not allowing the person to go to work or school;

25. Threatening to take actions that could threaten their employment;

26. Taking the person's electronic devices and changing passwords;

27. Repeatedly reinforcing traditional gender roles; and

28. Turning children against the person, ie. alienation.

[289] Following separation or divorce, a party may use different means of asserting control over their former partner, either directly or through the children. Examples of post-separation coercive and controlling behaviour as accepted in the caselaw are:

1. Refusing to comply with court orders;

2. Regularly threatening a former partner with the loss of parenting time with a child;

3. Constantly making unilateral decisions about children without legal authority to do so;

4. Encouraging the children to disrespect the other parent, or otherwise undermining the other party's parenting;

5. Picking up or dropping off children late;

6. Refusing to make support payments on time or at all;

7. Sharing inappropriate information with children, or regularly involving them in adult issues;

8. Excessively e-mailing, phoning or texting the former partner;

9. Stalking, harassing, or threatening to hurt someone;

10. Filing false reports with the police or a child protection agency;

11. Inappropriately undermining the person's relationship with their children,; and/or

12. Engaging in frivolous or abusive tactics in relation to the legal process

## Appendix C: Cases Cited

| *CASE* | *PRIMARY ACT* | *JUDGE* |
|---|---|---|
| *AE v AB,* 2021 ONSC 7302 | *Divorce Act* | Justice Jarvis |
| *AB v MB,* 2023 NSSC 92 | *Divorce Act* | Justice Jollimore |
| *AC v KC*, 2023 ONSC 6017 | *Divorce Act*<br>*Children's Law Reform Act* | Justice Mandhane |
| *AD v ME,* 2022 NBKB 249 | *Family Law Act* | Justice Danie Roy |
| *ADD v TTW*, 2023 NBKB 97; appeal dismissed *TT-W v AD*, 2025 NBCA 27. | *Family Law Act* | Chief Justice DeWare |
| *AF v DS*, 2023 ABCA 332 | *Family Law Act* | Khullar C.J.A., Slatter and Kirker JJ.A. |
| *AJK v JPB*, 2022 MBQB 43 | *Divorce Act* | Justice Dunlop |
| *AKP v ISP,* 2024 BCSC 645 | *Family Law Act* | Justice Gomery |
| *ALF v CDF*, 2022 NBKB 177 | *Family Law Act* | Justice Hackett |
| *AM v ET,* 2023 NBCA 26 | *Family Law Act* | Baird, Green & French JJ.A. |
| *ANH v LDG, 2022 BCCA 155* | *Family Law Act* | Bennett, Fisher and Marchand JJ.A |
| *AP v JK,* 2018 NSFC 14 | *Parenting and Support Act* | Judge Daley |
| *AV v EV,* 2014 NSSC 204 | *Divorce Act* | Justice MacDonald |
| *AW v NP*, 2022 SKQB 150 | *Divorce Act* | Justice McCreary |
| *A v A,* 2023 ONSC 1776 | *Divorce Act* | Justice Breithaupt Smith |
| *A v A*, 1993 CanLII 3124 (NS CA) | *Family Maintenance Act* | Jones, Freeman and Pugsley, JJ.A. |
| *A v A,* 2023 ONCA 476 | *Divorce Act* | Benotto, Trotter and Zarnett JJ.A. |
| *A v S*, 2021 ONSC 3204 | *Children's Law Reform Act* | Justice Kraft |
| *A v McL*, 2022 SKQB 134 | *Divorce Act*<br>*The Queen's Bench Act* | Justice Haaf |
| *A v C*, 2021 ONSC 8186 | *Children's Law Reform Act* | Justice Chappel |

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| *Association de médiation familiale du Québec v. Bouvier*, 2021 SCC 54 | *Code of Civil Procedure* | Justice Kasirer for court |
| *BL v MR*, 2025 ABKB 95 | *Family Law Act* | Justice Yungwirth |
| *BLC v JJDC*, 2019 ABQB 129 | *Family Law Act* | Justice Anderson |
| *BLO v LJB,* 2022 ONCJ 231 | *Children's Law Reform Act* | Justice O'Connell |
| *BM v AC*, 2019 NSSC 102 | *Parenting and Support Act* | Justice MacLeod-Archer |
| *BMcV v KD,* 2023 NBKB 102 | *Family Law Act* | Justice Daigle |
| *BSD v SKD*, 2021 BCSC 2327 | *Divorce Act* | Justice Schultes |
| *B v G*, 2022 SCC 22 | *Divorce Act* | Justice Karakatsanis for court |
| *B v R,* 2021 ONSC 3352 | *Divorce Act* | Justice Gibson |
| *B v C*, 2022 ONSC 3088 | *Children's Law Reform Act* | Justice Shelston |
| *B v B*, 2024 BCSC 39 | *Divorce Act* | Justice Brongers |
| *B v W,* 2025 ONCJ 19 | *Family Law Rules* | Justice Sherr |
| *B v C,* 2022 BCSC 2004 | *Divorce Act* | Justice Branch |
| *CB v NI*, 2022 NSSC 290 | *Parenting and Support Act* | Justice Cormier |
| *CC v SPR*, 2023 BCCA 422 | *Divorce Act* | Fenlon, Hunter, & Butler JJ.A |
| *CDFB v AGB*, 2022 BCSC 511 | *Divorce Act* | Justice Douglas |
| *CLT v DTT*, 2022 NBKB 239 | *Family Law Act* | Justice Delaquis |
| *CR v PS*, 2022 ABQB 410 | *Divorce Act* | Justice Graesser |
| *C v G,* 2023 ABKB 217 | *Divorce Act* | Justice Grosse |
| *C v S,* 2022 SKCA 88 | *Children's Law Act* | Richards C.J.S., Tholl and McCreary JJ.A. |
| *C v L,* 2014 ONCJ 147 | *Children's Law Reform Act* | Justice McSorley |
| *DB v ML,* 2023 NBKB 223 | *Family Law Act* | Justice Boudreau-Dumas |
| *DB v SC*, 2025 ONCJ 203 | *Children's Law Reform Act* | Justice Neill |
| *DC v LN*, 2022 NLSC 138 | *Children's Law Act* | Justice O'Flaherty |
| *D v B*, 2022 ONSC 6510 | *Children's Law Reform Act* | Justice Pazaratz |
| *D v C,* 2011 ONCA 294 | *Divorce Act*<br>*Family Law Act* | Goudge, Simmons, Cronk, R.P. Armstrong and Lang JJ.A. |

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| *D v F,* 2015 NSSC 310 | *Family Law Rules* | Justice Campbell |
| *D v F,* 2020 NSSC 257 | *Divorce Act* | Justice Norton |
| *Droit de la famille* - 22454, 2022 QCCS 1098 (CanLII) | *Divorce Act* | Justice Armstrong |
| *D v M,* 2025 SCC 20 | *Children's Law Reform Act* | Justice Martin for majority |
| *EDW v DL(B)W*, 2023 NBKB 18 | *Divorce Act* | Justice Delaquis |
| *EH v DM*, 2021 PESC 44 | *Children's Law Act* | Justice Clements |
| *ES v MS,* 2025 NSSC 263 | *Divorce Act* | Justice Cromwell |
| *El K v N*, 2023 ONSC 1667 | *Divorce Act* | Justice Kraft |
| *E v L*, 2025 NSCA 4 | *Parenting and Support Act* | Justice Derrick |
| *FN v RP*, 2024 BCSC 118 | *Divorce Act*<br>*Family Law Act* | Justice Francis |
| *FS v MBT,* 2023 ONCJ 102 | *Children's Law Reform Act* | Justice Sherr |
| *F v F*, 2022 SKQB 83 | *Divorce Act* | Justice Megaw |
| *F v F,* 2023 SKCA 60 | *Divorce Act* | Richards C.J.S., Tholl and Kalmakoff JJ.A. |
| *GS v AB*, 2023 NSSC 228 | *Parenting and Support Act* | Justice Forgeron |
| *G v R*, 2022 ONSC 2176 | *Children's Law Reform Act* | Justice Papageorgiou |
| *Gong v Jin,* 2025 ONSC 3108 | *Divorce Act* | Justice Henderson |
| *G v A B*, 2025 ONSC 3671 | *Divorce Act*<br>*Family Law Act*<br>*Children's Law Reform Act* | Justice Smith |
| *G v C,* 2023 NSSC 110 | *Parenting and Support Act* | Justice MacLeod-Archer |
| *G v G*, 2022 ABQB 273 | *Family Law Act* | Justice Gates |
| *G v H*, 2022 ONSC 7396 | *Children's Law Reform Act* | Justice Minnema |
| *H v G*, 2022 BCCA 355 | *Family Law Act* | Saunders, Bennett & Butler JJ.A |
| *HL v ZL*, 2018 NSFC 5 | *Parenting and Support Act* | Judge Daley |
| *H v D,* 2023 NSSC 306 | *Parenting and Support Act* | Justice Marche |
| *H v L,* 2022 SKQB 55 | *Divorce Act*<br>*Children's Law Act* | Justice Turcotte |
| *H v H*, 2024 MBKB 100 | *Divorce Act*<br>*Family Law Act* | Justice Thomson |

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| *H v T*, 2023 SKKB 146 | *Divorce Act* | Justice Megaw |
| *IO v IG,* 2023 ONCJ 520 | *Children's Law Reform Act* | Justice Sherr |
| *J B-S v M M S*, 2022 NBQB 18 | *Divorce Act* | Justice Bélanger-Richard |
| *JAB v JAB,* 2025 NBKB 259 | *Divorce Act*<br>*Family Law Act* | Justice Delaquis |
| *JB v JM,* 2023 SKCA 24 | *Children's Law Act* | Caldwell, Tholl and Kalmakoff JJ.A. |
| *JDM v SJC-M,* 2021 NBQB 159 | *Divorce Act* | Justice Robichaud |
| *JH v RD,* 2024 NLSC 41 | *Divorce Act* | Justice O'Flaherty |
| *JKP v LSB, 2025 BCSC 1494* | | Justice Milman |
| *JM v PT,* 2024 ABKB 349 | *Divorce Act* | Justice Thompson |
| *JM v SM*, 2020 NSFC 12 | *Parenting and Support Act* | Judge Daley |
| *JMM v CRM,* 2025 ONSC 3067 | *Divorce Act* | Justice Chappel |
| *JRD v AKMD*, 2023 ABKB 685 | *Divorce Act* | Justice Silver |
| *JRD v SB*, 2023 ONSC 46 | *Children's Law Reform Act* | Justice MacPherson |
| *JS v CS,* 2022 NBKB 250 | *Divorce Act* | Justice Bélanger-Richard |
| *JS v MS*, 2023 NBKB 12 | *Family Law Act* | Justice Boudreau-Dumas |
| *JWC v AB,* 2022 BCPC 235 | *Family Law Act* | Judge Keyes |
| *J v Da S*, 2023 ONSC 2710 | *Divorce Act* | Justice Jain |
| *J v M*, 2022 ONSC 566 | *Children's Law Reform Act* | Justice Blishen |
| *J v A*, 2021 SKQB 73 | *Children's Law Act* | Justice Megaw |
| *KB v AT,* 2023 NSSC 125 | *Parenting and Support Act* | Justice Forgeron |
| *KDH v BTH,* 2021 ABQB 548 | *Divorce Act* | Justice Lema |
| *KG v HG,* 2021 NSSC 43 | *Divorce Act* | Justice Forgeron |
| *KK v MM*, 2025 ONCA 446 | *Courts of Justice Act*<br>*Family Law Rules* | MacPherson, Huscroft and Coroza JJ.A. |
| *KK v SH,* 2022 NLSC 90 | *Children's Law Act* | Justice Fitzpatrick |
| *KKH v AAB*, 2024 ONCJ 113 | *Family Law Act*<br>*Children's Law Reform Act* | Justice Sherr |
| *KM v GC, 2025 ONSC 4507* | *Children's Law Reform Act* | Justice Standryk |

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| *KM v KMG*, 2018 NSSC 159 | *Parenting and Support Act* | Justice Beryl MacDonald |
| *KM v JR,* 2024 ONSC 1338 | *Divorce Act* | Justice Pazaratz |
| *KMN v SZM,* 2024 BCCA 70 | *Divorce Act*<br>*Family Law Act* | Dickson, DeWitt-Van Oosten & Horsman JJ.A. |
| *KRAR v CEG*, 2025 PESC 35 | *Children's Law Act* | Justice Coady |
| *KRW v PMM*, 2023 BCSC 981 | *Divorce Act* | Justice Majawa |
| *KSP v JTP,* 2023 BCSC 1188 | *Divorce Act* | Justice MacNaughton |
| *KW v GW,* 2022 NBKB 236 | *Divorce Act* | Justice Hackett |
| *KW v LH,* 2018 BCCA 204 | *Family Law Act* | Goepel, Fitch & Griffin JJ.A |
| *K v K*, 2023 ONSC 6397 | *Divorce Act* | Justice Doi |
| *K v R*, 2024 ONSC 6270 | *Divorce Act* | Justice Kraft |
| *Kirby v Woods,* 2025 ONCA 437 | *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 | Madsen J.A. for court |
| *K v T*, 2025 ONCA 200 | *Divorce Act*<br>*Child Support Guidelines* | Simmons, Coroza and Sossin JJ.A. |
| *LB v PE,* 2021 ONCJ 114 | *Children's Law Reform Act* | Justice Sherr |
| *LDB v ANH*, 2023 BCCA 480 | *Family Law Act* | Fenlon, Hunter & Butler JJ.A |
| *LP v AE,* 2024 BCCA 270 | *Family Law Act* | Marchand C.J.A, Dickson & Voith JJ.A |
| *LP v BM*, 2022 NBCA 19 | *Family Law Act* | Quigg, Baird & LeBlond JJ.A |
| *LZ v RC,* 2025 BCSC 1714 | *Family Law Act* | Justice Francis |
| *LaB v G*, 2023 ONSC 2767 | *Children's Law Reform Act* | Justice Tranquilli |
| *L v Q*, 2025 ONSC 585 | *Children's Law Reform Act* | Justice Pazaratz |
| *L v R,* 2025 ABKB 131 | *Family Law Act* | Justice Loparco |
| *L v L* 2023 ABKB 303 | *Divorce Act* | Justice Marion |
| *Leskun v Leskun*, 2006 SCC 25 | *Divorce Act* | Justice Binnie |
| *L v L,* 2022 BCCA 341 | *Divorce Act* | Stromberg-Stein, Wilcock & Fenlon JJ.A |
| *L v W*, 2024 BCSC 1012 | *Family Law Act* | Justice Walkem |
| *L v G*, 2025 ONSC 2779 | *Divorce Act* | Associate Justice Kamal |

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| *MAB v MGC,* 2022 ONSC 7207 | *Children's Law Reform Act* | Justice Chappel |
| *MAJ v MEJ,* 2025 BCSC 1046 | *Divorce Act*<br>*Family Law Act* | Justice Marzari |
| *MAM v JPM*, 2024 PECA 13 | *Children's Law Act* | Justice Cann |
| *MJV v JR,* 2022 BCSC 1068 | *Divorce Act* | Justice Gomery |
| *ML v JB,* 2024 NSSC 272 | *Parenting and Support Act* | Justice Marche |
| *MME v SBT*, 2024 BCSC 1567 | *Family Law Act* | Justice Wolfe |
| *MNB v JMB*, 2022 ONSC 38 | *Divorce Act* | Justice Tobin |
| *MP v PP,* 2022 BCSC 1511 | *Divorce Act* | Justice Gomery |
| *MSK v SP*, 2025 ONSC 2163 | *Divorce Act* | Justice Doi |
| *MW v NLMW*, 2021 BCSC 1273 | *Divorce Act*<br>*Family Law Act* | Justice Veenstra |
| *M v D,* 2023 ONSC 1993 | *Family Law Act* | Justice Shaw |
| *McBe v D,* 2021 ONSC 3610 | *Divorce Act* | Justice Chappel |
| *McC v T*, 2023 NSSC 404 | *Parenting and Support Act* | Justice Cormier |
| *M v B*, 2021 ONSC 7084 | *Children's Law Reform Act* | Justice Tellier |
| *M v B,* 2022 ONSC 4235 | *Children's Law Reform Act* | Justice Byrne |
| *McI v T,* 2022 ONSC 5958 | *Divorce Act*<br>*Children's Law Reform Act* | Justice Chozik |
| *M v W*, 2021 ABCA 76 | *Family Law Act* | Justice Greckol |
| *M v H*, 2021 ONSC 5107 | *Children's Law Reform Act* | Justice Raikes |
| *NEW v MADM*, 2022 ABCA 255 | *Family Law Act* | Justice Nation |
| *NDL v MSL*, 2010 NSSC 68 | *Divorce Act* | Justice MacDonald |
| *NF v JF*, 2024 NSSC 29 | *Divorce Act* | Justice MacLeod-Archer |
| *NK v MH,* 2020 BCCA 121 | *Family Law Act*<br>*Divorce Act* | Newbury, Abrioux & Grauer JJ.A |
| *NK v RE,* 2021 NSSC 13 | *Parenting and Support Act* | Justice Forgeron |
| *NM v SM*, 2022 ONCJ 482 | *Children's Law Reform Act* | Justice Sherr |
| *N v E,* 2025 ONSC 3154 | *Children's Law Reform Act* | Associate Justice Kamal |
| *N v N*, 2023 ABCA 123 | *Divorce Act* | Khullar C.J.A, Martin & Rowbotham JJ.A. |

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| *PNR v MYR,* 2025 ONSC 1802 | *Divorce Act*<br>*Children's Law Reform Act* | Justice Mandhane |
| *P v P*, 2023 ONSC 6307 | *Divorce Act* | Justice Emery |
| *P v P*, 2022 NSSC 29 | *Divorce Act* | Justice Forgeron |
| *P v L*, 2022 NSSC 233 | *Parenting and Support Act* | Justice Jesudason |
| *P v P, 2025 NSSC 236* | *Divorce Act* | Justice Ingersoll |
| *R v SSM,* 2018 ONSC 4456 | *Criminal Code* | Justice Pomerance |
| *RaA (H) v NS,* 2021 NBQB 92 | *Family Law Act* | Justice M. d'Entremont |
| *R v R*, 2022 BCSC 110 | *Family Law Act* | Justice Fitzpatrick |
| *RE v SJL,* 2023 PESC 1 | *Divorce Act* | Justice Cann |
| *RH v ALS*, 2023 NSSC 171 | *Parenting and Support Act* | Justice Moreau |
| *R-T v V*, 2023 ONSC 7159 | *Children's Law Reform Act* | Justice Lemon |
| *R v R,* 2022 ONSC 7289 | *Divorce Act* | Justice Brownstone |
| *SAH v JJGV*, 2021 BCSC 2132 | *Family Law Act* | Justice Douglas |
| *SB v JIU,* 2021 ONCJ 614 | *Children's Law Reform Act* | Justice Sherr |
| *SC v NC,* 2024 SKKB 170 | *Divorce Act* | Justice Richmond |
| *SDF v JGW*, 2024 NBKB 115 | *Family Law Act* | Justice R.X. Delaquis |
| *SE v RE,* 2025 NBCA 78 | *Family Law Act* | Baird, Green & Quigg JJ.A |
| *SKG v BSG*, 2024 BCSC 455 | *Divorce Act* | Justice Morellato |
| *SLJ v KB*, 2019 NSSC 268 | *Divorce Act* | Justice Forgeron |
| *SLJ v TD*, 2023 NSSC 343 | *Parenting and Support Act* | Justice Moreau |
| *SLL v DBL*, 2022 SKKB 277 | *Divorce Act*<br>*Family Maintenance Act* | Justice Brown |
| *SRIS v NZ,* 2025 ONCA 304 | *Divorce Act* | Lauwers, Nordheimer and Wilson JJ.A. |
| *SS v RS,* 2021 ONSC 2137 | *Divorce Act* | Justice Mandhane |
| *ST v KT*, 2021 ABPC 167 | *Family Law Act* | Judge Ho |
| *SVG v VG*, 2023 ONSC 3206 | *Divorce Act* | Justice Chappel |
| *S v S, 2023 NSSC 107* | *Divorce Act*<br>*Matrimonial Property Act* | Justice Forgeron |
| *S v S*, 2021 BCSC 932 | *Family Law Act* | Justice Murray |

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| *S v MacL,* 2020 ABCA 173 | *Divorce Act* | Paperny, Wakeling & Khullar JJ.A |
| *S v S*, 2022 ONSC 557 | *Children's Law Reform Act* | Justice Fraser |
| *S v S,* 2023 ONSC 1342 | *Divorce Act* | Justice Akazaki |
| *S v S,* 2024 ONCA 624 | *Divorce Act* | Roberts, Coroza and Gomery JJ.A |
| *S v S,* 2025 ONSC 3210 | *Divorce Act* | Justice Sah |
| *S v S,* 2023 ONSC 6579 | *Divorce Act* | Justice Newton |
| *S v K,* 2025 ONSC 4122 | *Children's Law Reform Act* | Associate Justice Kamal |
| *S v S,* 2022 ONSC 1906 | *Divorce Act* | Justice Smith |
| *S v BC*, 2019 ONSC 1778 | *Family Law Rules* | Justice Gibson |
| *S v S*, 2014 ONCA 370 | *Family Law Rules* | Juriansz, Tulloch and Strathy JJ.A. |
| *S v S,* 2024 ABCA 171 | *Family Law Act*<br>*Divorce Act* | Justice Ho |
| *TF v JF*, 2023 BCSC 2226 | *Divorce Act* | Justice Kent |
| *T v K*, 2022 ONSC 1167 | *Divorce Act* | Justice Ricchetti |
| *T v T,* 2022 ABQB 229 | *Divorce Act* | Justice Harris |
| *T v S*, 2023 ONSC 6689 | *Children's Law Reform Act* | Justice McDermot |
| *T v C,* 2022 ONSC 6465 | *Divorce Act* | Justice Kraft |
| *VB v SVB,* 2023 SKKB 206 | *King's Bench Act* | Justice Richmond |
| *VKG v IG,* 2023 ONSC 6329 | *Divorce Act* | Justce Chappel |
| *VR v SR,* 2024 ONCJ 262 | *Children's Law Reform Act* | Justice Beasley |
| *VSB v BLO*, 2022 ONCJ 506 | *Children's Law Reform Act* | Justice W Kapurura |
| *V v D,* 2021 ONSC 7382 | *Children's Law Reform Act* | Justice Audet |
| *W v A-Y,* 2021 ONCJ 201 | *Children's Law Reform Act* | Justice Sherr |
| *W v W*, 2021 PESC 12 | *Divorce Act* | Justice Campbell |
| *W v S*, 2024 ABKB 38 | *Family Law Act* | Justice Angotti |
| *W v P,* 2025 NSCA 12 | *Divorce Act* | Justice Bourgeois |
| *W v P*, 2022 NSSC 156 | *Parenting and Support Act* | Justice Chiasson |
| *XD v SZ*, 2022 NSSC 202 | *Parenting and Support Act* | Justice MacLeod-Archer |