



## Family court information for intimate partner abuse survivors in New Brunswick

### Common family law issues

Arrangements for the children after separation			
Applicable laws: <i>Divorce Act</i> (national), <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Parenting order</u>: a court order about parenting arrangements, including parenting time, decision-making responsibilities, and how children will communicate with a parent when not in that parent's care.</p> <p><u>Parenting time</u>: time a child is in the care of a parent. It includes periods when a child is not physically with that</p>	<p>Both statutes apply the same principles and use similar language. These terms appear in the definitions section of each statute.</p> <p><u>Parenting time</u>: Children might spend relatively equal amounts of time with each parent or they might be primarily resident with one and spend less time, often on a scheduled basis, with the other. Parenting time can be supervised if there are concerns for the children's safety or well-being in the care of a parent.</p> <p><u>Decision-making responsibility</u>: This covers significant decisions, about children primarily in four areas:</p>	<p>Both statutes require courts to consider family violence when determining the best interests of the child (BIC).</p> <p>The <i>Family Law Act</i> defines "family violence" broadly using language that is substantively identical to the <i>Divorce Act</i>. It includes "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 the other family member to feel for one's safety or for the safety of another</p>	<p>All child-related court decisions in Canada are made using the best interests of the child test, which is set out in both the <i>Divorce Act</i> (section 16) and N.B.'s <i>Family Law Act</i> (section 15). The statutory BIC factors are very similar across both statutes, with only minor differences in wording.</p> <p>N.B.'s <i>Family Law Act</i> states that, in the absence of a written agreement of court order, where a child has more than one parent, those parents have shared parenting time and shared decision-making responsibility for the child. The <i>Divorce Act</i> does not carry a comparable provision.</p> <p>In determining the best interests of the child, The <i>Family Law Act</i>, states that the court shall consider all factors related to the circumstances of the child, including</p> <ul style="list-style-type: none"> <li>the child's cultural, linguistic, religious and spiritual upbringing and heritage, including First Nations upbringing and heritage;</li> <li>the child's needs, given the child's age and stage of development, such as the child's need for stability;</li> </ul>

<p>parent. For example, when the child is at school.</p> <p><u>Decision-making responsibility:</u> Which parent makes decisions related to the children’s well being</p>	<ol style="list-style-type: none"> <li>1. health;</li> <li>2. education;</li> <li>3. culture, language, religion and spirituality,</li> <li>4. significant extra-curricular activities.</li> </ol> <p>The parents might share responsibility for making these decisions; they might each be given responsibility for specific categories of decision-making or one parent might have all of the responsibility.</p>	<p>person, and, in the case of a child, the direct or indirect exposure to such conduct, and includes:</p> <ol style="list-style-type: none"> <li>(a) physical abuse, including forced confinement but excluding the use of reasonable force to protect oneself or another person;</li> <li>(b) sexual abuse;</li> <li>(c) threats to kill or cause bodily harm to any person;</li> <li>(d) harassment, including stalking;</li> <li>(e) the failure to provide the necessities of life;</li> <li>(f) psychological abuse;</li> <li>(g) financial abuse;</li> <li>(h) threats to kill or harm an animal or to damage property; and</li> <li>(i) the killing or harming of an animal or the damaging of property.”</li> </ol>	<ul style="list-style-type: none"> <li>• the nature and strength of the child’s relationship with each parent, each of the child’s siblings and grandparents and any other person who plays an important role in the child’s life;</li> <li>• each parent’s willingness to support the development and maintenance of the child’s relationship with the other parent;</li> <li>• the history of care of the child;</li> <li>• the child’s views and preferences, by giving due weight to the child’s age and maturity, unless they cannot be ascertained;</li> <li>• any plans for the child’s care;</li> <li>• the ability and willingness of each person with respect to whom the parenting order would apply to care for and meet the needs of the child;</li> <li>• the ability and willingness of each person with respect to whom the parenting order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;</li> <li>• any family violence and its impact on, among other things:             <ol style="list-style-type: none"> <li>(i) the ability and willingness of the person who engaged in the family violence to care for and meet the needs of the child; and</li> <li>(ii) the appropriateness of making a parenting order that would require the persons with respect to whom the parenting order would apply to cooperate on issues affecting the child; and</li> <li>(iii) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child.</li> </ol> </li> </ul>
<p>For more information on the <i>Divorce Act</i> see: <a href="#">The Law and Parenting after Separation</a> from Luke’s Place</p>			

<b>Child support</b>			
<b>Applicable laws:</b> <i>Divorce Act</i> (national), <i>Family Law Act</i> (provincial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p><u>Child Support Guidelines</u>: set out rules and tables for calculating the base amount of child support to be paid.</p> <p>While some provinces have developed their own guidelines and tables, New Brunswick has adopted the federal guidelines and tables.</p>	<p>Both parents are required to contribute to the financial support of their children. Most commonly, the parent with whom the children spend most of their time will receive child support from the other parent.</p> <p>People who have acted in the role of a parent (e.g., step parents) may also be required to pay support for a child.</p> <p>Child support generally ends when the child reaches the age of majority (19 in New Brunswick) but it can end earlier if the child becomes independent or run longer if the child is unable to become independent because of illness, disability or other valid</p>	<p>While family violence is not a factor in Child Support Guidelines, abusive actions by one parent may impact the other parent’s ability to be economically self-sufficient requiring larger child support payments if the child resides with them.</p> <p>Child support is for the child and is not negotiable when the matter is in court.</p> <p>However, abusers may quit their jobs, hide income and assets and even live in poverty themselves to avoid their child support responsibilities.</p> <p>When a judge orders child support, it is registered with the Office of Support Enforcement. The Office of Support Enforcement can only enforce support outlined in a court</p>	<p>Child support is the right of the child. This means that it will be ordered if the matter is in court.</p> <p>The amount of child support is calculated based on the income of the person paying support and the number of children. The income/financial situation of the person receiving the support is not relevant.</p> <p>Where there are child-related expenses that go beyond those intended to be covered by the base level of child support, the court can order the parents to share those expenses in a way that is proportional to their respective incomes. These items, often called “extraordinary expenses”, can include the cost of health care or medical treatment not otherwise covered, childcare expenses so a parent can work or go to school, educational activities and extra-curricular activities beyond the usual. These expenses are addressed in s. 7 of the Child Support Guidelines. Decisions about what expenses should be shared are made on a case-by-case basis by the judge.</p> <p>Where the person who must pay support hides income, provides false information or unnecessarily delays proceedings, the court can proceed without his documents and/or can impute income to him. This means the court assigns him income based on the employment he could have, given his work history, and then calculates how much child support he pays based on that.</p>

	<p>reason such as being a full-time student.</p> <p>Parenting time does not affect the obligation to pay child support. Parents have child support obligations regardless of whether they spend time with their child.</p>	<p>order or agreement that has been filed with the court. People can agree to opt out of support enforcement by signing a waiver.</p> <p>Some abusers attempt to coerce their former partner into opting out of the Office of Support Enforcement or, when there is a separation agreement, coerce them into agreeing that no child support or a lesser amount of child support than set out in the <i>Guidelines</i> will be payable.</p>	<p>Child support is collected by the provincial Office of Support Enforcement, which can also take steps when the person paying support doesn't make or falls behind with their payments.</p> <p>Courts can vary child support order if the circumstances of the family change; for example, a child leaves home or the person paying the support loses their job.</p> <p><a href="#">Federal Child Support Guidelines</a>  <a href="#">Federal Child Support Tables</a></p>
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<b>Spousal support</b>			
<b>Applicable laws:</b> <i>Divorce Act</i> (national), <i>Family Law Act</i> (provincial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p>The <i>Divorce Act</i> applies only to people who were legally married. For support purposes, the term 'spouse' also includes former spouses, so you can apply for or change spousal support even after the divorce is finalized.</p> <p>Under the <i>Family Law Act</i>, both married spouses and common-law partners can apply for spousal support. A person is considered a common-law partner if they have either 1) lived together for at least three years and one party was "substantially dependent" on the other partner during that time; OR 2) lived together in a relationship of "some permanence" and</p>	<p>If the woman is married and seeking a divorce, she will apply through the federal <i>Divorce Act</i>. If the relationship was common-law or she is not seeking a divorce, she will need to use the provincial <i>Family Law Act</i>.</p> <p>While child support is the right of every child, there is no right to spousal support (also known as alimony) under either statute. Spousal support is at the judge's discretion and</p> <p>Spousal support eligibility requirements under the <i>Divorce Act</i> are relatively straightforward.</p> <p>Under the <i>Family Law Act</i>, a common-law partner is eligible to apply for spousal support if they have either 1) lived together for at least three years and one party was</p>	<p>Abusers tend to be reluctant to pay spousal support and may withhold it. Many women avoid pursuing spousal support for fear of making the abuser angry, having to be in contact with them, or having them use it against her.</p> <p>The gendered realities of families and abuse mean that it is usually the woman seeking spousal support. However, some abusers may try to force the woman to pay spousal support, often by misrepresenting the facts (e.g., underreporting income or falsely claiming to have been a stay-at-home parent).</p> <p>Abuse is likely to leave the woman in a worse financial position and thus more likely to have to seek spousal support, for numerous reasons. She may have difficulty keeping a job/be unable to work due to Post-Traumatic Stress Disorder (PTSD) or other health issues resulting from the abuse. The abuser may have engaged in financial abuse tactics, such as making the woman surrender her savings, sabotaging her career, or opening credit cards in her name. The process of leaving an abusive</p>	<p>Under the <i>Divorce Act</i>, judge must consider several factors to determine if spousal support should be paid, including:</p> <ul style="list-style-type: none"> <li>• The financial means, needs and circumstances of both spouses;</li> <li>• The length of time the spouses have lived together;</li> <li>• The roles of each spouse during their marriage;</li> <li>• The effect of those roles and the breakdown of the marriage on both spouses' current financial positions;</li> <li>• The ongoing responsibilities for care of the children, if any</li> </ul> <p>Under New Brunswick law, there is no provincial legislation currently in force that sets out spousal support factors. Courts generally consider similar circumstances to those applied under the <i>Divorce Act</i>.</p> <p>Spousal support is collected by the provincial Office of Support Enforcement, which can also</p>

<p>the couple have a child together (length of time is not considered).</p>	<p>“substantially dependent” on the other partner during that time; OR 2) lived together in a relationship of “some permanence” and the couple have a child together (length of time is not considered). Usually, spousal support is not meant to be long-term and the spouse receiving support is expected to make efforts to become more financially independent (e.g., seeking education or a job).</p>	<p>partner can be very expensive (e.g., moving, hiring a lawyer).</p> <p>When a judge orders spousal support, it is registered with the Office of Support Enforcement. The Office of Support Enforcement can only enforce support outlined in a court order or agreement that has been filed with the court. People can agree to opt out of support enforcement by signing a waiver.</p> <p>Some abusers attempt to coerce their former partner into opting out of the Office of Support Enforcement or, when there is a separation agreement, coerce them into not filing for support.</p>	<p>take steps when the person paying support doesn’t make or falls behind with their payments.</p>
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<b>Property division</b>			
<b>Applicable laws:</b> <i>Marital Property Act</i> (MPA) (provincial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p><u>Marital property:</u> Family assets, and most property acquired by either spouse while they lived together or in contemplation of marriage, and most property acquired after separation “through the disposition of property that would have been marital property had the disposition not occurred.” There are exceptions to what will be considered marital property.</p> <p><u>Disposition:</u> Any action that transfers,</p>	<p>The <i>Marital Property Act</i> (MPA) only applies to people who are or were married. By default, married spouses are normally entitled to 50% of all shared assets after separation. There can be exceptions in some cases, such as if there was a prenuptial agreement.</p> <p>Marital property explicitly does not include things that were gifts to one spouse only or any income resulting from that gift.</p>	<p>Exclusive possession can be granted under the MPA.</p> <p>Abusers like to make division of property (and everything else) as difficult as possible for women. She will need to show the value of the assets on the date of separation, for example, by providing bank statements as evidence.</p> <p>The gift exemption applies regardless of who gave the gift – for example, if the abuser gave the woman an expensive necklace for her birthday, this is not marital property. The abuser would have no legal claim to the necklace, nor to any income the woman may get if she chooses to sell it. However, the abuser may well try to convince the court otherwise.</p>	<p>According to these sections of the MPA:</p> <p>7. Despite sections 2, 3 and 4, the Court may make a division of marital property resulting in shares that are not equal if the Court is of the opinion that a division of the marital property in equal shares would be inequitable, having regard to</p> <ul style="list-style-type: none"> <li>(a) any agreement other than a domestic contract,</li> <li>(b) the duration of the period of cohabitation under the marriage,</li> <li>(c) the duration of the period during which the spouses have lived separate and apart,</li> <li>(d) the date when the property was acquired,</li> <li>(e) the extent to which property was acquired by one spouse by inheritance or by gift, or</li> <li>(f) any other circumstances relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of marital property to be in equal shares.</li> </ul> <p>8. In determining any application for a division of marital property, the Court may make a division of any property of either spouse that is not marital property if</p> <ul style="list-style-type: none"> <li>(a) a spouse has, through transfer, indebtedness, mismanagement or other means, unreasonably impoverished the marital property, or</li> </ul>

<p>sells, gives away, or otherwise gets rid of an interest in property, including an attempted or partial transfer. A disposition includes any transaction that conveys or is intended to convey an interest in property.</p>			<p>(b) the result of the division of marital property would be inequitable in the circumstances having regard to</p> <ul style="list-style-type: none"> <li>(i) the considerations set out in paragraphs 7(a) to (f), and</li> <li>(ii) the effect of the assumption by one spouse of any of the responsibilities set out in section 2 on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not marital property.</li> </ul> <p>9. In an application under section 3 or 4, the Court, in dividing property, shall effect a fair and equitable division of marital debts and shall take into account any tax consequences that might arise from the division of property by Court order.</p> <p>22. On the application of a spouse, or of a person having an interest in property, the Court may, by order,</p> <ul style="list-style-type: none"> <li>(a) determine whether or not the property is or includes a marital home and, if so, the extent of the marital home;</li> <li>(b) subject to such terms and conditions including provision of other comparable accommodation or payment in its place as the Court considers appropriate, authorize a disposition of any interest in the marital home if the Court finds that the spouse whose consent is required <ul style="list-style-type: none"> <li>(i) cannot be found or is not available,</li> <li>(ii) is not capable of giving or withholding consent, or</li> <li>(iii) is unreasonably withholding consent"</li> </ul> </li> <li>(c) dispense with any notice required to be given under section 21;</li> <li>(d) direct the setting aside of any disposition of an interest in the marital home contrary to subsection 19(1) and the reversioning of the</li> </ul>
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			<p>interest or any part of the interest on such terms and subject to such conditions as the Court considers appropriate; and (e) if a false affidavit is given under subsection 19(3), direct the person who swore the false affidavit, or any person who knew at the time it was sworn that the affidavit was false and who subsequently conveyed the property, to substitute other property for the marital home or direct the person to set aside money or security in its place subject to such terms and conditions as the Court considers appropriate.</p>
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## Legal resources and services in New Brunswick

### Family court process

- Families Change New Brunswick <https://nb.familieschange.ca/>
- Going to Court [https://www.familylawnb.ca/english/going\\_to\\_court](https://www.familylawnb.ca/english/going_to_court)
- Ask an Expert Videos [https://www.familylawnb.ca/english/ask\\_an\\_expert\\_videos](https://www.familylawnb.ca/english/ask_an_expert_videos)
- Doing Your Own Divorce in New Brunswick [https://www.legal-info-legele.nb.ca/en/uploads/file/pdfs/Doing\\_Your\\_Own\\_Divorce\\_09\\_EN.pdf](https://www.legal-info-legele.nb.ca/en/uploads/file/pdfs/Doing_Your_Own_Divorce_09_EN.pdf)

### Family law legal aid

- New Brunswick Legal Aid Services Commission <http://www.legalaid-aidejuridique-nb.ca/>  
(English and French)
  - Family Legal Aid <http://www.legalaid-aidejuridique-nb.ca/family-law-services/family-legal-aid/>
  - Legal Aid in New Brunswick booklet [https://www.legal-info-legele.nb.ca/en/index.php?page=Legal\\_aid\\_in\\_new\\_brunswick](https://www.legal-info-legele.nb.ca/en/index.php?page=Legal_aid_in_new_brunswick)
- University of New Brunswick Legal Clinic <https://www.unb.ca/fredericton/law/clinic/index.html>

### Family law mediation and ADR

- Family Law Fact Sheet – Mediation [https://www.legal-info-legele.nb.ca/en/uploads/file/pdfs/Family\\_Law\\_Fact\\_Sheets/Mediation\\_EN.pdf](https://www.legal-info-legele.nb.ca/en/uploads/file/pdfs/Family_Law_Fact_Sheets/Mediation_EN.pdf)
- Family Law Services in New Brunswick [https://www.legal-info-legele.nb.ca/en/uploads/file/pdfs/Family\\_Law\\_Services\\_Fact\\_Sheet\\_EN.pdf](https://www.legal-info-legele.nb.ca/en/uploads/file/pdfs/Family_Law_Services_Fact_Sheet_EN.pdf)
- Family Mediation Canada <https://fmc.ca/>
- New Brunswick Association of Social Workers <https://www.nbasw-atsnb.ca/?lang=en>

### Child protection

- Government of New Brunswick – Child Protection (Social Development) [https://www2.gnb.ca/content/gnb/en/services/services\\_renderer.9355.Child\\_Protection.html](https://www2.gnb.ca/content/gnb/en/services/services_renderer.9355.Child_Protection.html)
  - “Provides protection to any child under age 19, whose care at home is deemed to place the child's security and development in danger, in accordance with the *Family Services Act*.” (Other sources indicate this only applies to children under 16 and disabled children under 19)
- *Family Services Act* <https://www.canlii.org/en/nb/laws/stat/snb-1980-c-f-2.2/latest/snb-1980-c-f-2.2.html>
- What Parents Should Know About Child Protection [https://www.legal-info-legele.nb.ca/en/parents\\_child\\_protection](https://www.legal-info-legele.nb.ca/en/parents_child_protection)
  - Department of Community and Family Services (AKA “the Department”)/Child Protection Branch of the Department of Social Development

- Mi'gmaq Child and Family Services of New Brunswick <https://www.mcfnsb.ca/>
- Social Supports NB Child Protection Program  
[https://socialsupportsnb.ca/en/simple\\_page/child-protection-program](https://socialsupportsnb.ca/en/simple_page/child-protection-program)

### **Family Law Information Centres (FLIC)**

- FLIC – Moncton Law Courts
  - By appointment
  - (506) 856-3131
  - Moncton Law Courts (145 Assumption Blvd, First Floor, Moncton, NB E1C 0R2)
  - Open weekdays 8:30 AM-4:30 PM
- FLIC – St. John Law Courts
  - By appointment
  - (506) 658-2261
  - Saint John Law Courts, 10 Peel Plaza, Level 2 Floor
  - Open weekdays 8:30 AM-4:30 PM
- Family Law NB (Online FLIC) <https://www.familylawnb.ca/english/>
  - Family Law Information Line at 1-888-236-2444 (“staff cannot provide legal advice or comment on your specific situation”)

### **Family court system and main players**

Family Division <https://www.courtsnb-coursnb.ca/content/cour/en/kings-bench/content/family-division.html>

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