

Family court information for intimate partner abuse survivors in Newfoundland and Labrador

Common family law issues

Arrangements for the children after separation			
Applicable laws: <i>Divorce Act</i> (federal), <i>Children's Law Act</i> (CLA) (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Custody</u>: Not explicitly defined in the <i>Children's Law Act</i> (CLA), but generally refers to having the legal right to make important decisions about a child.</p> <p><u>Access</u>: Not explicitly defined in the CLA, but generally refers to time that a child</p>	<p>A woman who is legally married and seeking a divorce can use the <i>Divorce Act</i> for parenting arrangements. Anyone who is resident in NL, regardless of marital status, can use the CLA.</p> <p>While the <i>Divorce Act</i> no longer uses the language of custody and access, NL family law still does. Custody is roughly equivalent to decision-making responsibility and parenting time is roughly equivalent to access.</p>	<p>Under section 7.3 of the <i>Divorce Act</i>, there is a legal requirement to attempt to resolve parenting arrangements outside of court first and only go to court as a last resort. This obviously poses problems for women dealing with an abusive ex-spouse.</p> <p>The <i>Divorce Act</i> best interests of the child (BIC) test specifies family</p>	<p>Under both the CLA and the federal <i>Divorce Act</i>, decisions about custody/decision-making and access/parenting time must be made in accordance with the best interests of the child (BIC). Both statutes require the court to consider all of the child's needs and circumstances and provide similar, but not identical, non-exhaustive lists of factors. The <i>Divorce Act</i> list is broader and more detailed, particularly in relation to family violence and parental cooperation.</p> <p>The CLA BIC test is as follows:</p> <p>"31(2) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, a court shall consider all the needs and circumstances of the child including</p> <p>(a) the love, affection and emotional ties between the child and,</p> <p>(i) each person entitled to or claiming custody of or access to the child,</p> <p>(ii) other members of the child's family who live with the child, and</p>

<p>spends with a non-custodial parent.</p> <p><u>Decision-making responsibility:</u> Similar to custody, this is defined in the <i>Divorce Act</i> as having the legal authority to make important decisions about a child.</p> <p><u>Parenting time:</u> Under the <i>Divorce Act</i>, this is time that a child spends in the care of a parent, regardless of whether that parent has decision-making responsibility.</p> <p><u>Custody or access order:</u> The equivalent of a parenting order under territorial law.</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/custody:</u> This covers significant decisions, about children primarily in four areas: health; education; culture, language, religion and spirituality, and significant extra-curricular activities.</p> <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>violence as a relevant factor, including its impact on the abuser’s fitness as a parent, the appropriateness of making an order that would require the survivor to be in frequent contact with the abuser, and whether it is realistic to expect the two to be able to co-parent.</p> <p>It also provides a comprehensive definition of family violence that includes non-physical forms, such as financial abuse, emotional abuse, sexual coercion, stalking, threatening to hurt an animal, damage to property, engaging in a pattern of coercive control, and exposing a child to family violence.</p> <p>Family violence is not defined in the CLA. It is somewhat covered under</p>	<p>(iii) persons involved in the care and upbringing of the child;</p> <p>(b) the views and preferences of the child, where the views and preferences can reasonably be ascertained;</p> <p>(c) the length of time the child has lived in a stable home environment;</p> <p>(d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and the special needs of the child;</p> <p>(e) the ability of each parent seeking the custody or access to act as a parent;</p> <p>(f) plans proposed for the care and upbringing of the child;</p> <p>(g) the permanence and stability of the family unit with which it is proposed that the child will live; and</p> <p>(h) the relationship by blood or through an adoption order between the child and each person who is a party to the application.</p> <p>(3) In assessing a person's ability to act as a parent, the court shall consider whether the person has ever acted in a violent manner towards</p> <p>(a) his or her spouse or child;</p> <p>(b) his or her child's parent; or</p> <p>(c) another member of the household, otherwise a person's past conduct shall only be considered if the court thinks it is relevant to the person's ability to act as a parent.”</p> <p>The BIC test in the <i>Divorce Act</i> states:</p> <p>“16 (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including</p> <p>(a) the child’s needs, given the child’s age and stage of development, such as the child’s need for stability;</p>
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		<p>the BIC test, but not in the level of detail of the <i>Divorce Act's</i> BIC test.</p>	<p>(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;</p> <p>(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;</p> <p>(d) the history of care of the child;</p> <p>(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;</p> <p>(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;</p> <p>(g) any plans for the child's care;</p> <p>(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;</p> <p style="padding-left: 40px;">(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;</p> <p>(j) any family violence and its impact on, among other things,</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(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</p> <p>(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child."</p>
<p>For more information on the <i>Divorce Act</i> see: The Law and Parenting after Separation from Luke's Place</p>			

Child support			
Applicable laws: <i>Divorce Act</i> (federal), <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Child Support Guidelines:</u> set out rules and tables for calculating the base amount of child support to be paid.</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., stepparents) 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 Newfoundland and Labrador), 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 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>Family violence is not a factor the law or courts consider when determining child support.</p> <p>However, getting child support is often difficult for women who have left abusive partners.</p> <p>Some don't seek support because they are afraid of increased violence by the abuser.</p> <p>Some abusers attempt to coerce their former partner into not seeking child support. They may quit their jobs, hide income and assets and even live in poverty themselves to avoid their child support responsibilities.</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, extra-curricular activities beyond the usual, special education needs and the like.</p> <p>Where the person who has to 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 has to pay based on that.</p> <p>Both child and spousal support orders issued by the court are automatically sent to the provincial Support Enforcement Program. The Agency collects and enforces support unless the recipient files a withdrawal. The Agency can take enforcement 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>Federal Child Support Guidelines Federal Child Support Tables</p>
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Spousal support			
Applicable laws: <i>Divorce Act</i> (federal), <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Spouse:</u> 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><u>Common-law spouse:</u> Two people who are not legally married, either to each other or to another person, and have lived together in a "marriage-like" relationship for a minimum of 2 years.</p>	<p>Spousal support is normally temporary. There is an expectation that when a relationship ends, both partners will make every reasonable effort to be able to support themselves. The spouse receiving support is expected to demonstrate efforts to wean themselves off it, such as applying for jobs, going back to school, selling luxury items, or taking ESL classes.</p>	<p>Family violence is not a factor the courts consider when deciding on spousal support.</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 partner can be very expensive (e.g., moving, hiring a lawyer).</p> <p>Under section 7.3 of the <i>Divorce Act</i>, there is a legal requirement to attempt to resolve spousal support outside of court first and only go to court as a last resort. This obviously poses problems for women dealing with an abusive ex-spouse.</p>	<p>Unlike child support, which is the right of every child, there is no entitlement to spousal support.</p> <p>The factors the court uses to decide are the same regardless of whether the spouses were married or common-law. They are as follows:</p> <ul style="list-style-type: none"> • "Length of the relationship • Children of the relationship • Age of the parties • Education of both parties • Income levels of both parties • Net worth of both parties • Employment history of both parties • Financial consequences of separation • Whether one party was financially dependent on the other during the marriage or relationship"

Property division			
Applicable laws: <i>Family Law Act</i> (provincial), <i>Divorce Act</i> (federal)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Matrimonial property:</u> According to the NFL Supreme Court: “property obtained by either spouse during the marriage, such as furniture, bank accounts, work related benefits (such as pensions, RRSPs) or land used by the family.”</p> <p><u>Matrimonial home:</u> The rented or owned home that the spouses lived in as their family residence, and that is owned by one or both spouses.</p>	<p>The <i>Family Law Act</i> 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>A separation agreement can specify rules of property division for common-law spouses, including equal division if agreed to.</p> <p>Certain types of property are normally not considered matrimonial property. These include gifts to one spouse only, inheritances, business assets, “property acquired after separation,” and insurance payouts.</p>	<p>Family violence is not a factor that courts consider in issues of property division.</p> <p>Abusers like to make division of property (and everything else) as difficult as possible for women. She should be prepared to have to produce evidence of whether something is marital property.</p> <p>The gift exemption applies regardless of what third party gave the gift – for example, if a family member gave the woman an expensive necklace for her birthday, this is not matrimonial 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>Married spouses equally own all matrimonial property and have an automatic right to 50% of everything upon separation. An unequal division of property may be ordered if it can be proven that equal division would create an extremely unfair situation.</p> <p>For people in common-law relationships, there is no such legal entitlement to equal division, although a person can make a claim in court for a share of property under some circumstances.</p>

Exclusive possession of matrimonial home			
Applicable laws: <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Exclusive possession:</u> A court order that gives one spouse the right to occupy the family home and forces the other to leave.</p>	<p>Exclusive possession orders preclude the other spouse from coming onto the matrimonial property. An order can be obtained for most types of property including houses, condominiums and apartments. These orders do not decide who owns the property, or who has rights under a lease. Being excluded from the matrimonial home does not affect ownership rights.</p> <p>Exclusive possession orders are usually temporary.</p>	<p>An exclusive possession order is usually only for married spouses fleeing violence. Technically, the survivor’s name does not have to be on the deed or lease to obtain an exclusive possession order. However, if she is not legally married and her name is not on the deed or lease, this may be challenging.</p>	<p>The court must consider a number of factors when deciding whether to grant one spouse exclusive possession, including:</p> <ol style="list-style-type: none"> 1. The best interests of the children 2. Violence committed by one spouse against the other spouse or the children. 3. The financial situation of both spouses. 4. Written agreements made between the spouses. 5. Any existing court orders for child or spousal support. 6. Alternative housing options for both spouses.

Restraining orders			
Applicable laws: (all provincial) <i>Family Violence Protection Act</i> (FVPA), Provincial Court Family Violence Protection Rules, <i>Children's Law Act</i> (CLA), <i>Family Law Act</i> (FLA)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Emergency Protection Order (EPO)</u>: A short-term order (maximum 90 days) issued in emergency situations to ensure the safety of a victim of family violence, as defined under the <i>Family Violence Protection Act</i> (FVPA).</p> <p><u>Family violence</u>: Defined under the FVPA as: "3. (1) (a) an assault that consists of the intentional application of force that causes the applicant to fear for his or her safety but does not include an act committed in self-defence; (b) an intentional, reckless or threatened act or omission that causes bodily harm or damage to property; (c) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property; (d) forcible physical confinement without lawful authority; (e) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation; (f) conduct that causes the applicant to reasonably fear for his or her safety, including following, contacting, communicating with, observing or recording a person; (f.1) conduct that causes psychological or emotional harm or a reasonable fear of that harm, including a pattern of behaviour the purpose of which is to undermine the psychological or emotional well-being of the applicant or a child;</p>	<p>To be eligible for an EPO, an applicant must be a victim of family violence who has either married the respondent (abuser), had a child with the respondent, or lived with the respondent in a romantic relationship. There is no minimum period of time for which they must have lived together.</p> <p>An EPO, which is temporary, can have the abuser removed from the family home, impose a temporary parenting order, have the police present while the partner retrieves their belongings, seize firearms, prohibit the abuser from contacting the survivor or her children, and/or require the abuser to pay their share of utilities. This is not an exhaustive list.</p> <p>The woman can either apply for an EPO herself or do so with the help of a Designated Person (police officers, lawyers, Victim Services, and women's shelter staff). In most cases, the application is made by a police officer. If the woman is making the application herself, she can obtain the forms from a Provincial Court.</p> <p>A restraining order under the CLA can only be applied for in family court where there are</p>	<p>An EPO is not a criminal record and does not require the respondent to have committed or been convicted of a <i>Criminal Code</i> offence.</p> <p>However, breaking it is a criminal offence.</p> <p>The CLA and FLA do not define family violence for the purposes of a restraining order.</p> <p>Breaching the restraining order under the CLA is a summary offence.</p>	<p>To grant an EPO, the court must believe, on a balance of probabilities, that: "family violence has taken place and the matter is urgent, requiring an immediate Court Order to stop further harm to a person, their family, or property" (The Journey Project)</p> <p>Like all orders under the CLA, the court will consider the best interests of the child. The court will also consider the nature of the specific conduct at issue and the extent to which a restraining order limiting communication would frustrate a parenting order.</p>

<p>(f.2) conduct that controls, exploits or limits the applicant's access to financial resources for the purpose of ensuring the applicant's financial dependency; and (g) the deprivation of food, clothing, medical attention, shelter, transportation or other necessities of life.”</p> <p><u>Restraining order:</u> A temporary or final court order under s. 42 of the <i>Children's Law Act</i> (CLA) restraining someone from molesting, annoying or harassing the person applying for the order or the children or communicating with them. The person subjected to the order may have to enter into the recognizance or post a bond with the court. A violation of this restraining order is a summary offence that could result in a fine or a period of imprisonment.</p> <p>A similar provision exists in the <i>Family Law Act</i> (FLA) to restrain a person from molesting, annoying or harassing the application or children.</p>	<p>children involved in a case. These orders can be temporary or permanent. A restraining order under the FLA can only be temporary. Both provide for protection to the applicant as well as the children.</p> <p>A restraining order under the CLA can be issued as part of a custody or access order. It is not available to women who do not have children with their abusive ex-partner. Its main purpose is to stop co-parents from “annoying or harassing” each other and their children, with potential exceptions to allow for some communication for co-parenting purposes. Other conditions may be issued if deemed necessary by the court.</p> <p>In practice, the restraining order provisions of both the CLA and FLA are not commonly used, with survivors mainly seeking protection orders under the Provincial Court Family Violence Protection Rules.</p>		
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Family court related services

Family Court Process

- Families Change <https://nl.familieschange.ca/en>
- Public Legal Information Association of Newfoundland and Labrador (PLIAN) <https://publiclegalinfo.com/>

Family Law Legal Aid

- Legal Aid NL <https://www.legalaid.nl.ca/>
- Getting Legal Assistance <https://www.court.nl.ca/supreme/info-parties/getting-legal-assistance/>

Family Law Mediation and ADR

- Family Justice Services Division: Dispute Resolution <https://www.gov.nl.ca/jps/departement/branches/division/division-family-justice-services-2/>

Child Protection

- Child Protection and Youth Services <https://www.gov.nl.ca/cssd/childprotection/>
- Newfoundland and Labrador's Child Welfare System https://cwrp.ca/sites/default/files/publications/en/NL_final_infosheet_0.pdf
- Intro to Child Protection in NL <https://publiclegalinfo.com/wp-content/uploads/2021/04/PLIAN-Child-Protection-Publication-2020-Final.pdf>

Family Law Information Centre (FLIC)

- Family Justice Services <https://www.gov.nl.ca/jps/legalassist/familyjustice/>

Family Court Support for IPV Survivors

- Cara Transition House <http://carahouse.com/>
- The Journey Project <https://journeyproject.ca/>

Government site that shows the family court system and who the main officers/players are

- Department of Justice and Public Safety <https://www.gov.nl.ca/jps/>