

Family court information for intimate partner abuse survivors in Nova Scotia

Common family law issues

| Arrangements for the children after separation | | | |
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| Applicable laws: <i>Divorce Act</i> (federal), <i>Parenting and Support Act</i> (PSA) (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</p> | <p>Both the <i>Parenting and Support Act</i> (PSA) and the <i>Divorce Act</i> use very similar language and principles.</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</p> | <p>Both the PSA and the <i>Divorce Act</i> define family violence. While the definitions are broadly similar and capture physical, sexual, psychological, emotional, and financial abuse, there are slight differences. The PSA emphasizes deliberate and purposeful conduct and highlights patterns of abuse, whereas the <i>Divorce Act</i> does not require intentionality or a pattern and expressly includes a child's direct or indirect exposure to such conduct.</p> <p>The PSA defines "family violence, abuse or intimidation" as follows under section 2(da):</p> <p>"deliberate and purposeful violence, abuse or intimidation perpetrated by a person against</p> | <p>All child-related court decisions in Canada are made using the best interests of the child test, which is set out in the <i>Divorce Act</i> (section 16) or the PSA (section 18(6)). The language used in both laws, including with regards to the requirement to consider the impact of family violence, is nearly identical.</p> <p>"There are no presumptions (legal starting points) in the <i>Divorce Act</i> or <i>Parenting and Support Act</i> about parenting arrangements. For example, the law does not have a presumption that parents will have an equal amount of time with their children." (Family Law Nova Scotia)</p> |

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| <p>of a parent. It includes periods when a child is not physically with that 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> | <p>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>another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes</p> <p>(i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or</p> <p>(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,</p> <ul style="list-style-type: none"> a) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property, b) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal c) autonomy, d) stalking, or e) (D) intentionally damaging property” | <p>In determining the best interests of the child under the PSA the court shall consider all relevant circumstances, including:</p> <p>(a) the child’s physical, emotional, social and educational needs, including the child’s need for stability and safety, taking into account the child’s age and stage of development;</p> <p>(b) each parent’s or guardian’s willingness to support the development and maintenance of the child’s relationship with the other parent or guardian;</p> <p>(c) the history of care for the child, having regard to the child’s physical, emotional, social and educational needs;</p> <p>(d) the plans proposed for the child’s care and upbringing, having regard to the child’s physical, emotional, social and educational needs;</p> <p>(e) the child’s cultural, linguistic, religious and spiritual upbringing and heritage, including the child’s aboriginal upbringing and heritage, if applicable;</p> <p>(f) the child’s views and preferences, if the court considers it necessary and appropriate to ascertain them given the child’s age and stage of development and if the views and preferences can reasonably be ascertained;</p> <p>(g) the nature, strength and stability of the relationship between the child and each parent or guardian;</p> |
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| | | | <p>(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;</p> <p>(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;</p> <p>(j) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child;</p> <p>(k) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on</p> <p>(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and</p> <p>(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person</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 | | | |
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| Applicable laws: <i>Divorce Act</i> (federal), <i>Parenting and Support Act</i> (PSA) (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., 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 Nova Scotia), 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 women 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>Child and spousal support are collected by the Maintenance Enforcement Program (MEP), which can also take steps when the person paying support doesn't make or falls behind with their payments. Support orders are automatically sent to MEP by the court, but enforcement only begins once the recipient completes the enrolment process.</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> |

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| | | | <p>Nova Scotia legislation also requires courts to prioritize child support when both child and spousal support are before the court. See the <i>Parenting and Support Act</i> (PSA): “3A (1) Where the court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.”</p> <p>Federal Child Support Guidelines Federal Child Support Tables</p> |
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| Spousal support | | | |
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| Applicable laws: <i>Divorce Act</i> (federal), <i>Parenting and Support Act</i> (PSA) (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, under the <i>Divorce Act</i> 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>Parenting and Support Act</i> (PSA), a spouse also includes unmarried couples who "have lived together in a conjugal relationship for two years, or have lived together and have a child together", "cohabitated in a conjugal relationship with each other and have a child together" or any or have been domestic partners under the <i>Vital Statistics Act</i>.</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>PSA</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.</p> <p>Spousal support eligibility requirements under the <i>Divorce Act</i> are relatively straightforward. Spousal support can be ordered to: (1) compensate a spouse who sacrificed income or career opportunities during the marriage; (2) compensate a spouse for the ongoing care of</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 trauma 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</p> | <p>Under the <i>Divorce Act</i>, a judge must consider several factors to determine if spousal support should be paid, including:</p> <ul style="list-style-type: none"> • The financial means, needs and circumstances of both spouses; • The length of time the spouses have lived together; • The roles of each spouse during their marriage; • The effect of those roles and the breakdown of the marriage on both spouses' current financial positions; • The ongoing responsibilities for care of the children, if any; • Any previous orders, agreements or arrangements already made about spousal support. <p>The PSA uses similar language, with additional provisions explicitly requiring the court to consider parenting arrangements, any parental obligations either spouse may have, any disability either spouse may have, the realistic ability of either spouse to obtain gainful employment, and contributions made by one</p> |

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| | the children that goes beyond child support; or (3) help a spouse who is in financial need because of the breakdown of the marriage. | of leaving an abusive partner can be very expensive (e.g., moving, hiring a lawyer). | spouse to the other's "education or career potential" - for example, if the woman is a university student and the abuser has been paying for her tuition. |
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| Property division | | | |
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| Applicable laws: <i>Matrimonial Property Act</i> (MPA) (provincial) | | | |
| Important terms | Summary, general principles | Family violence | How the court decides |
| <p><u>Matrimonial assets</u>: The matrimonial home (or homes) and all other real and personal property acquired by either or both spouses before or during the marriage, with some exceptions.</p> | <p>The <i>Matrimonial Property Act</i> (MPA) “only applies to married couples, or couples who are in a registered domestic partnership. This act does not apply to common law couples.” (Family Law Nova Scotia)</p> <p>“Matrimonial property includes many things, not just physical property like land or houses. It also includes things like the contents of the home, like furniture and appliances, vehicles that the couple owned while married, and sometimes other things as well. It may include work pensions that either spouse may have, and also certain debts that the parties have.” (Family Law Nova Scotia)</p> <p>Similar to equivalent laws in other provinces, some types of property are exempt. This</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 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>Section 13 of the MPA lays out that the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where an equal division would be unfair or unconscionable taking into account the following factors:</p> <ul style="list-style-type: none"> “(a) the unreasonable impoverishment by either spouse of the matrimonial assets; (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred; (c) a marriage contract or separation agreement between the spouses; (d) the length of time that the spouses have cohabited with each other during their marriage; (e) the date and manner of acquisition of the assets; (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset; (g) the contribution by one spouse to the education or career potential of the other spouse; (h) the needs of a child who has not attained the age of majority; (i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent; (j) whether the value of the assets substantially appreciated during the marriage; (k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse; |

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| | includes but is not limited to gifts, business assets, insurance payouts, and property acquired while a divorce is pending. | | (l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring; (m) all taxation consequences of the division of matrimonial assets.” |
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| Exclusive possession of matrimonial home | | | |
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| Applicable laws: <i>Parenting and Support Act (PSA)</i> (provincial), <i>Matrimonial Property Act (MPA)</i> (provincial), <i>Domestic Violence Intervention Act (DVIA)</i> (provincial) | | | |
| Important terms | Summary, general principles | Family violence | How the court decides |
| <p><u>Exclusive possession:</u> “[U]sually a temporary right given to a person to live in the property until something else happens in the future - for example, until the house is sold, or some specified future event happens.” (Family Law Nova Scotia)</p> <p><u>Use of family residence:</u> The <i>Parenting and Support Act (PSA)</i> allows for an order to be made granting one parent use of a family residence for a period of time where it would be in the best interests of a child.</p> <p><u>Emergency protection order (EPO):</u> Exclusive possession can be included as a term of an</p> | <p>Exclusive possession means that the applicant is given the sole right to occupy the family home and the respondent is not allowed to be there. This is normally temporary and made until all issues are dealt with in family court.</p> <p>This can be granted through an application to the court or can be agreed upon as part of a separation agreement.</p> <p>Under the PSA, the legislation uses language of “use of the family residence”, with “family residence” defined as the ordinary residence that is owned or leased by at least one parent or guardian or a child or at least one spouse and in which the child residence with a parent or guardian, or a spouse resides without the children. The order can be made for a set period of time, or until such time as the lease is terminated or permanent use of the residence can be determined.</p> <p>Under the DVIA, exclusive occupation of the family residence can be included as a term of an EPO. This order can be made for a defined period of time and does not impact legal rights of possession or ownership. EPO applications are heard by a Justice of the Peace and, if granted, the order must be served on the other person in order to take effect. The order is then reviewed by a judge within 7 business days, at which time it can be confirmed or varied. EPOs can remain in place for a period up to 30 days. After the EPO expires, the survivor would need to secure another form of exclusive possession order</p> | <p>“Granting exclusive occupation does not affect either person’s interest in the home, residence, or rental unit”; for instance, it does not mean the abuser no longer owns the family home (Family Law Nova Scotia).</p> <p>Women leaving abusive partners can expect to have to go to court to ask for this. Because most abusers are driven by a need for power and control and a sense of entitlement over their partner (i.e., they feel that they own her and have a right to control her), it is probably unlikely that exclusive occupation would be agreed to as part of a separation agreement.</p> <p>Under the DVIA, family violence, which is referred to as “domestic violence” is defined broadly to include both physical and non-physical forms of violence, including acts that</p> | <p>Different rules may apply if the family home is located on a First Nations reserve, depending on which reserve it is. It is highly recommended to seek some form of legal advice if this is the case.</p> <p>The court may be more likely to grant exclusive occupation, and/or to grant it for a longer period, if there are children involved and the survivor can demonstrate that it is in their best interests. The court will consider the best interests of the children if any, and the availability of other adequate housing options.</p> <p>The DVIA specifically lists a number of factors to be considered before the granting of an EPO, including the nature and history of domestic</p> |

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| EPO under the <i>Domestic Violence Intervention Act</i> (DVIA). | under family law legislation is she wants to remain in the home to the exclusion of the abuser. | collectively cause a victim to fear for her safety. | violence and the existence of immediate danger to persons or property. |
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| Protection orders | | | |
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| Applicable laws: <i>Domestic Violence Intervention Act</i> (DVIA) (provincial) | | | |
| Important terms | Summary, general principles | Family violence | How the court decides |
| <p><u>Emergency Protection Order (EPO)</u>: A short-term, temporary order to help protect a victim of domestic violence.</p> <p><u>Domestic violence</u>: Behaviour towards a current or former intimate partner or co-parent that includes physical violence, sexual violence, damage to property, threats of violence or property damage, forcible confinement, and/or stalking.</p> <p><u>Victim</u>: “[A] person who is at least sixteen years of age and has been subjected to domestic violence” <i>Domestic Violence Intervention Act</i> (DVIA) by a current or former intimate partner whom they have married or lived with, OR a person with whom they share a child.</p> | <p>Nova Scotia family law does not use the term “restraining order.”</p> <p>“A victim or person acting on behalf of a victim with the approval of a Justice of the Peace, or a designated person, can also apply for an EPO.</p> <p>Designated persons are:</p> <ul style="list-style-type: none"> • peace officers, such as the police • victim services workers employed by the Nova Scotia Department of Justice, the police, or the RCMP; • designated employees of a transition house that is a member of the Transition House Association of Nova Scotia. <p>Applications for an Emergency Protection Order are done over the phone. You do not have to complete any paperwork to apply for an EPO.”</p> <p style="text-align: right;">(Family Law Nova Scotia)</p> <p>An EPO lasts for a maximum of 30 days. Nova Scotia family law does not have a more permanent version, but women who feel they require one can apply for a peace bond.</p> | <p>Many women fear that seeking an EPO will make things worse. There are often good reasons to feel this way. The abuser may become angry and decide to retaliate. It requires the abuser to know where the woman lives and works, as well as the address of any other place they may be required to stay away from (e.g., her brother’s home, her new partner’s workplace, the children’s school or daycare).</p> <p>EPOs may not be very helpful when dealing with abusers who demonstrate high-risk attitudes or behaviours, such as emotional volatility, a strong sense of entitlement over the woman, or a failure to accept that the relationship is over. Whether it is worth it to pursue one is ultimately the woman’s decision.</p> <p>The abuser will not know that the woman is applying for an EPO. Only if it is granted will the abuser be notified.</p> | <p>“An Emergency Protection Order is granted only if a designated Justice of the Peace is satisfied that:</p> <ul style="list-style-type: none"> • domestic violence has happened; • the situation is serious and urgent. <p>The Justice of the Peace must look at the:</p> <ul style="list-style-type: none"> • nature and history of the domestic violence; • existence of immediate danger. • best interests of the victim or any child or other person in the victim’s care.” <p style="text-align: right;">(Family Law Nova Scotia)</p> |

Family court related services

Family Court Process

- Families Change Nova Scotia <https://ns.familieschange.ca/>
- Nova Scotia Family Law Court Processes <https://www.nsfamilylaw.ca/court-processes>

Family Law Legal Aid

- Nova Scotia Legal Aid <https://www.nslegalaid.ca/>
- Dalhousie University Legal Aid Service <https://www.dal.ca/faculty/law/dlas.html>

Family Law Mediation and ADR

- Nova Scotia Family Law Mediation <https://www.nsfamilylaw.ca/programs-services/mediation>
- I need a mediator <https://www.legalinfo.org/lawyers-legal-help/mediator-referral>

Child Protection

- Nova Scotia Family Law Child Protection <https://www.nsfamilylaw.ca/child-protection>
- Child Protection FAQ <https://www.nsfamilylaw.ca/child-protection/child-protection-faqs>
- Mi'kmaq Child and Family Services/First Nations Child and Family Caring Society <https://fncaringsociety.com/welcome>
- Legal Aid Nova Scotia Child Protection Information Videos <https://www.nslegalaid.ca/legal-information/child-protection-videos/>
 - Booklet available in English, French, and Mi'kmaq ("What you need to know when Child Protection takes your children into care")

Family Law Information Centre (FLIC)

- Family Law Information Program (FLIP) Centres <https://www.nsfamilylaw.ca/programs-services/family-law-information-program>

Family Court Support for IPV Survivors

- Transition House Foundation <https://transitionhousefoundation.com/>

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

- Nova Scotia Courts <https://courts.ns.ca/courts/supreme-court>