

Family court information for intimate partner abuse survivors in the Northwest Territories

Common family law issues

Arrangements for the children after separation			
Applicable laws: <i>Divorce Act</i> (federal), <i>Children's Law Act</i> (CLA) (territorial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Parenting order:</u> Under the <i>Divorce Act</i>, this is 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> 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>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 NWT, 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, NWT family law still does. Custody is roughly equivalent to decision-making responsibility and parenting time is roughly equivalent to access.</p>	<p>The <i>Divorce Act</i> best interests of the child (BIC) test specifies family 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</p>	<p>The best interests of the child (BIC) is the only thing the courts consider when determining parenting arrangements. The CLA's BIC test (section 17), the court must consider all of the child's needs and circumstances, including:</p> <ul style="list-style-type: none"> • The child's bond with each parent, as well as other relatives and any other person involved in the child's upbringing • The child's views and preferences • The child's cultural, linguistic, and spiritual/religious ties and identity • Each parent's ability and willingness to provide for the child's needs (includes more

<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>Custody:</u> Under the <i>Children’s Law Act (CLA)</i>, this is roughly equivalent to decision-making responsibility; may also refer to which parent the child primarily resides with.</p> <p><u>Access:</u> Under the CLA, this is roughly equivalent to parenting time; usually refers to time a child spends with a parent who does not have custody.</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>to hurt an animal, damage to property, engaging in a pattern of coercive control, and exposing a child to family violence.</p> <p>The CLA BIC test does not list family violence among the non-exhaustive factors the court must consider. However, s17(3) expressly requires the court to consider any evidence that a person seeking custody or access has committed an act of violence “against their spouse, former spouse, child, child’s parent or any other member of the person’s household or family” and to assess the effect that such conduct has had, is having, or may have on the child. should be considered in terms of how it may have affected the child directly or be likely to do so in the future. No definition of “violence” is provided.</p>	<p>than just material needs, and must account for any special needs)</p> <ul style="list-style-type: none"> • Each parent’s fitness as a parent • Who has historically been the primary caregiver (e.g., who goes to parent-teacher interviews, helps with homework, arranges play dates, drives the child to the dentist and doctor?) • The child’s need for stability, including the effect of moving residences • Proposed future plans for raising the child • The willingness of each parent to facilitate access with the other parent <p>The <i>Divorce Act</i> BIC is broadly similar but includes a more detailed list. For example, it expressly identifies family violence, its impact on parenting capacity and cooperation, and indigeneity as relevant factors.</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>Children’s Law Act</i> (territorial)			
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 NWT), 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>Parents have child support obligations regardless of whether they spend time with their child. Parenting time or access cannot be withheld on the grounds of failure to pay child support.</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 parent who has to pay support hides income, provides false information or unnecessarily delays proceedings, the court can proceed without that parent’s documents and/or can impute income to them. This means the court assigns them income based on the employment they could have, given their work history, and then calculates how much child support they have to pay based on that.</p> <p>Child and spousal support are collected by the territorial Maintenance Enforcement Program, which can also take steps when the person paying support doesn’t make or falls behind with their payments. 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>

Spousal support			
Applicable laws: <i>Divorce Act</i> (federal), <i>Family Law Act</i> (FLA) (territorial)			
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>The <i>Family Law Act</i> (FLA) defines spouses more broadly, to include people who are married, have lived together in a marriage-like relationship for 2 years, or share a natural or adopted child and have lived together "in a</p>	<p>If the woman is married and seeking a divorce, she will apply through the federal <i>Divorce Act</i>.</p> <p>If the woman was not married or she is not seeking a divorce, she will need to use the territorial FLA.</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. Under the <i>Divorce Act</i>, 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 the children that goes beyond child support; or (3) help a spouse who is in financial need because of the breakdown of the marriage.</p> <p>Under the FLA, spouses have 2 years from the date of separation to apply for spousal support.</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 of leaving an abusive</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 FLA's factors are similar, though they also explicitly mention additional facts such as spending patterns and the impact of parenting responsibilities on a spouse's financial independence capabilities.</p>

relationship of some permanence.”	There is an expectation that both spouses be able to support themselves after separation and that a spouse who is not make efforts to become financially independent.	partner can be very expensive (e.g., moving, hiring a lawyer).	
-----------------------------------	---	--	--

Property division			
Applicable laws: <i>Family Law Act</i> (FLA) (territorial),			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Spouses</u>: For property division purposes under the <i>Family Law Act</i> (FLA), a spouse includes people who are married or have lived together in a marriage-like relationship for at least 2 continuous years.</p> <p><u>Family property</u>: Shared property between spouses. This includes money, debt, real estate, appliances, art, vehicles, and more.</p>	<p>If a voluntary agreement cannot be reached, the deadline to file a court application for property division is 2 years from the date of separation. This could get complicated if the spouses cannot agree on what date the relationship was over. In rare circumstances, the court may grant an extension (Family Law Guide).</p> <p>Two types of property are generally excluded under the FLA: damages for injuries, and property specified in a pre-nuptial as not being intended to become family property. Gifts, payouts and inheritances are not excluded but have conditions – generally, if that property has increased in value since it was acquired, the difference will be split (Family Law Guide).</p>	<p>Family violence is not a factor the courts consider in 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 restriction on gifts applies regardless of who gave the gift – for example, if the abuser gave the woman an expensive necklace for her birthday, this is not a household good. 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>Equal division of property is the default rule, whether the spouses were married or common-law. The court may make an exception if a 50/50 division would create an unfair situation, but this is very unusual.</p> <p>The following are some of the factors to be considered:</p> <ul style="list-style-type: none"> • Either spouse’s malicious or negligent conduct regarding the matter – e.g., depleting assets or failing to disclose debts • The financial situation of each spouse • Each spouse’s contributions to the family/relationship/marriage

Exclusive possession of matrimonial home			
Applicable laws: <i>Family Law Act</i> (territorial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Exclusive possession:</u> An order that gives one spouse the right to occupy the family home “or use family assets” (NWT Family Law Guide p. 121) and requires the other to stay away.</p> <p><u>Spouses:</u> Two people who are married to each other, have lived together in a marriage-like relationship for 2 years, or have lived together in a relationship “of some permanence” and have a child together.</p>	<p>Exclusive possession can be ordered regardless of who owns or rents the home. However, it does not permanently change those things – if the abuser owns the home, they still do, even if they temporarily aren’t allowed to be in it.</p> <p>If the family home is rented in the abuser’s name and not the survivor’s, it is possible to still get exclusive possession for a maximum of 90 days without the consent of the landlord. For exclusive possession to last longer than that, the landlord must consent.</p>	<p>Exclusive possession may be issued as part of a protection order, including an Emergency protection order (EPO).</p> <p>Exclusive possession can be obtained without going to court if both spouses voluntarily agree to it as part of a separation agreement. However, most abusers are not likely to do so.</p> <p>While violence towards either spouse or the children is required to be considered under the <i>Family Law Act</i>, the legislation is notably lacking in a definition of violence and does not include any abuse towards pets or towards other people who are commonly targeted, such as the survivor’s family, roommates, or past partners of the abuser. The vagueness could also mean a risk of having the abuser use the woman’s self-defence against her.</p>	<p>Exclusive possession is normally only ordered in cases of family violence.</p> <p>Under section 55(3), this is the criteria for an exclusive possession order:</p> <ul style="list-style-type: none"> • The best interests of any children who may be affected • Existing orders, including ones for child or spousal support • Each spouse’s financial situation • The existence of any written agreements • Availability and suitability of alternative housing (e.g., if the only other option is for the survivor to take the children to a shelter, which may not be ideal if it is not wheelchair accessible, has a long waitlist, does not allow boys over a certain age, would require the child’s pet to be rehomed, is hostile to trans women...) • Violence directed by one spouse at the other or the children

Restraining orders			
Applicable laws: <i>Protection Against Family Violence Act (PAFVA)</i> (territorial), <i>Children’s Law Act (CLA)</i> (territorial), <i>Family Law Act (FLA)</i> (territorial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Emergency protection order (EPO)</u>: A temporary order under the <i>Protection Against Family Violence Act (PAFVA)</i> to protect victims of family violence for a set period. The maximum duration of an EPO is 90 days.</p> <p><u>Restraining order</u>: An order under the <i>Children’s Law Act (CLA)</i> that can restrict or prohibit the abuser from harassing or contacting the survivor and her children, along with any other conditions deemed necessary by the court. A similar type of order is available under the <i>Family Law Act (FLA)</i>.</p> <p><u>Protection order</u>: Equivalent to a restraining order. A less urgent version of an EPO, but the advantage is that there is</p>	<p>An EPO will typically include exclusive possession. This means that the abuser has to move out of the family home and is required to stay away from it for the duration of the order.</p> <p>Both a protection order and an EPO can include many conditions, such as:</p> <ul style="list-style-type: none"> • Having the police accompany the abuser to retrieve their belongings from the family home • Prohibiting the abuser from contacting the survivor, with possible exceptions (e.g., by email between the hours of 1pm and 6pm for the purposes of co-parenting) • Seizing the abuser’s firearms and any associated licenses or paraphernalia • Ordering the abuser to cease behaviour that is intimidating or harassing to the survivor <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>A restraining order issued under the FLA can be issued against a spouse, former spouse, the parent or person claiming to be the parent of a child in their lawful custody. The order can prevent one person from</p>	<p>The PAFVA can only issue protection orders and EPOs if the abuser is the survivor’s parent, grandparent, child, grandchild, or a spouse or former spouse, or a person the applicant has a child with.</p> <p>All 3 types of orders are enforceable by the police. Violating them can subject the abuser to fines or imprisonment.</p> <p>These orders 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>For a protection order or EPO to be ordered under the PAFVA, the court must be satisfied on a balance of probabilities that family violence has occurred. In the case of an EPO, the court must also be satisfied that the situation is urgent and there is a serious and ongoing danger to the victim. The court will consider:</p> <ul style="list-style-type: none"> • the nature and history of family violence; • the existence of immediate danger; and • the best interests of the applicant and any child. <p>Like all CLA orders, restraining orders are decided based on the child’s best interests.</p> <p>Under both the CLA and FLA, the court will consider family violence.</p>

no hard limit on what duration the court may order.	molesting, annoying or harassing the applicant or the children, or from communicating with the applicant or the children. Typically, these orders are temporary.		
---	--	--	--

Family court related services

Family court system and process

- Courts of the NWT <https://www.nwtcourts.ca/en/>
- Families Change NWT <https://nt.familieschange.ca/en>
- Family Law in the NWT <https://www.justice.gov.nt.ca/en/files/family-law-guide/Family%20Law%20Guide%20-%20March%202021.pdf>

Family Law Legal Aid

- Legal Aid – Government of NWT <https://www.justice.gov.nt.ca/en/legal-aid/>

Family Law Mediation and ADR

- NWT Family Law Mediation Program <https://www.justice.gov.nt.ca/en/family-law-mediation-program/>

Child Protection

- Child and Family Services Standards and Procedures Manual <https://www.hss.gov.nt.ca/en/services/child-and-family-services-standards-and-procedures-manual>

Family Law Information Centre (FLIC)

- Legal Information – The Law Society of the NWT <https://lawsociety.nt.ca/for-the-public/legal-information/>