

## Family court information for intimate partner abuse survivors in Nunavut

### 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 Nunavut, 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, Nunavut family law still does. Custody is roughly equivalent to decision-making responsibility and parenting time is roughly equivalent to access.</p> <p><u>Parenting time</u>: Children might spend relatively equal amounts of</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. 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>The best interests of the child (BIC) is the only thing the courts consider when determining parenting arrangements. The <i>Children's Law Act</i>'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"> <li>• The child's bond with each parent, as well as other relatives and any other person involved in the child's upbringing</li> <li>• The child's views and preferences</li> <li>• The child's cultural, linguistic, and spiritual/religious ties and identity</li> <li>• Each parent's ability and willingness to provide for the child's needs (includes more than just material needs, and must account for any special needs)</li> <li>• Each parent's fitness as a parent</li> <li>• Who has historically been the primary caregiver (e.g., who goes to parent-teacher interviews, helps with</li> </ul>

<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</i> (CLA), this means having legal authority over a child, including the right to make decisions and access information about important areas of their life (e.g., health and education); 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>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>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>homework, arranges play dates, drives the child to the dentist and doctor?)</p> <ul style="list-style-type: none"> <li>• The child’s need for stability, including the effect of moving residences</li> <li>• Proposed future plans for raising the child</li> <li>• The willingness of each parent to facilitate access with the other parent</li> </ul> <p>The <i>Divorce Act</i> version of the 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: <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> (federal), <i>Children’s Law Act</i> (territorial)			
<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>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 Nunavut), 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</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 can be collected by the Nunavut Family Support Enforcement Program, which can also take steps when the person paying support doesn’t make or falls behind with their payments. If the parties do not enroll in the program, child or spousal support is paid directly between the parties (e-transfer, cheque, etc.)</p>

	of whether they spend time with their child.		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.  <a href="#">Federal Child Support Guidelines</a> <a href="#">Federal Child Support Tables</a>
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<b>Spousal support</b>			
<b>Applicable laws:</b> <i>Divorce Act</i> (federal), <i>Family Law Act</i> (territorial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p><u>Spouse:</u></p> <p>The <i>Divorce Act</i> applies only to people who were legally married. For support purposes under this act, 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> 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 relationship of some permanence."</p>	<p>If the woman is married and seeking a divorce, she will apply through the federal <i>Divorce Act</i>. If the woman was not married or she is not seeking a divorce, she will need to use the territorial <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 or maintenance) under either statute. Spousal support is at the judge's discretion.</p> <p>Spousal support eligibility requirements under both pieces of legislation are relatively straightforward. Under the <i>Divorce Act</i>, spousal support can be ordered to: (1) compensate</p>	<p>Family violence is not a factor the courts consider when deciding on spousal support. "However, the court may take into account "conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship" in determining the amount of spousal support (s 16(10)). Conduct that affects a victim's ability to be self-sufficient (such as injuries or trauma from family violence) may also be relevant to the amount of spousal support that is ordered." (Koshan, Mosher and Wiegles 2020)</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</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"> <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> <li>• Any previous orders, agreements or arrangements already made about spousal support</li> </ul> <p>The factors set out in the <i>Family Law Act</i> are similar, additional explicit requirements such as to consider the desirability of either spouse acting as a stay-at-home parent to a child of the marriage or relationship, and the age and physical and mental health of each spouse.</p>

	<p>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>Spousal support orders can be enforced by the Nunavut Family Support Enforcement Program.</p>	<p>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 partner can be very expensive (e.g., moving, hiring a lawyer).</p>	
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<b>Property division</b>			
<b>Applicable laws:</b> <i>Family Law Act</i> (territorial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p><u>Spouses:</u> Two people who are married to each other OR have lived together as a couple for 2 years OR share a child and have lived together in a relationship “of some permanence.”</p> <p><u>Property:</u> Any interest a spouse has in real or personal property at the time of separation. This includes property a spouse owns fully or partly, property they control, and property they have a future or contingent interest in. Family property can include things like the family home, vehicles, bank accounts, art, appliances, pensions, and pets, unless specifically excluded under the Act.</p>	<p>When determining whether a couple meets the “relationship of some permanence” requirement “of some permanence” is not clearly defined, nor are the factors a court must consider when determining whether a relationship meets that criterion. Some things that may be considered good evidence of a relationship’s “permanence” include joint bank accounts, going on vacation together, attending family gatherings as a couple, documentation of future plans (e.g., text messages in which the couple discussed getting engaged), or adopting a pet together.</p> <p>Polygamous marriages are only recognized as valid if performed in a country where polygamy is legal.</p> <p>There is a presumption that both partners have an equal interest in the family home (YWCA 2014, p 45).</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 partner can be very expensive (e.g., moving, hiring a lawyer).</p>	<p>An action for division of family property by a spouse must be brought after the earliest of:</p> <ul style="list-style-type: none"> <li>• two years after a divorce;</li> <li>• two years after a separation where there is no reasonable prospect of resumed cohabitation; or</li> <li>• six months after official recognition of the estate of a deceased spouse (s 38(3)).</li> </ul> <p>If these deadlines are missed, there may be other legal remedies available such as a claim of unjust enrichment.</p> <p>Property is normally divided equally. However, there may be an exception if equal division would create a very unfair situation or jeopardize the best interests of a child.</p>

<p><u>Excluded property:</u> Property that is not included in the net family property calculation. This includes gifts, inheritances, and settlements/payouts, provided they were intended for only one spouse/partner.</p>			
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<b>Exclusive possession of matrimonial home</b>			
<b>Applicable laws:</b> <i>Family Abuse Intervention Act</i> (territorial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p><u>Exclusive occupation:</u> A court order that gives a survivor the right to occupy the family home and requires the abuser to stay away, even if it is their home too.</p> <p><u>Family home:</u> The home that the couple lived in when they were together, regardless of whether they rent or own.</p>	<p>The court can order exclusive occupation as part of an emergency protection order (EPO).</p> <p>Exclusive occupation can be granted for a maximum of 90 days.</p> <p>Exclusive occupation does not alter legal residence or ownership. If the abuser’s name is on the deed or lease of the family home, this remains the case.</p>	<p>Exclusive occupation can only be ordered if the justice of the peace is satisfied that, if permitted to remain in the family home, the abuser would pose a danger to the survivor and/or other individuals named in the order (e.g., the survivor’s children or other family members).</p> <p>Because there is no permanent exclusive occupation in Nunavut, its main advantage is that it buys time for the survivor to find shelter while maintaining some stability for the children. It may also make it easier to do things like change the family home’s locks or security system.</p> <p>An exclusive occupation order can help keep the abuser out of the family home but is not foolproof. The survivor might consider keeping a copy of the order in the window or sharing it with local locksmiths, in case the abuser calls them and pretends to have simply forgotten their keys. That is a common tactic and most people would not think to check beyond the address on the ID matching.</p>	<p>All circumstances of the situation must be considered, including the wellbeing of the abuser and “any other person residing in the family home,” per section 7(8).</p> <p>Factors to be considered: 35. In determining whether to grant an order under this Act, and what provisions should be included in the order, the designated justice of the peace or judge shall consider, but is not limited to considering, the following factors:</p> <ul style="list-style-type: none"> <li>(a) the nature of the family abuse;</li> <li>(b) the history of family abuse by the respondent towards the applicant or any other person;</li> <li>(c) the existence of immediate danger to persons or property;</li> <li>(d) the best interests of the applicant and any child that may be affected by the order.</li> </ul>

<b>Restraining orders</b>			
<b>Applicable laws:</b> <i>Family Abuse Intervention Act</i> (territorial), <i>Family Law Act</i> (territorial), <i>Children’s Law Act</i> (territorial)			
<b>Important terms</b>	<b>Summary, general principles</b>	<b>Family violence</b>	<b>How the court decides</b>
<p><u>Emergency protection order (EPO):</u> A protection order that may be granted by a justice of the peace on an ex parte basis where there is evidence of family abuse or stalking, the family abuse or stalking is an ongoing concern, and the victim is in imminent danger.</p> <p><u>Community intervention order:</u> A restorative justice-informed order that requires the abuser to refrain from further abuse and seek traditional Inuit counselling. Available only to victims of family abuse.</p> <p><u>Assistance order:</u> Very similar to an EPO. Available to victims of either family abuse or stalking.</p> <p><u>Compensation order:</u> An order requiring the abuser to pay money to offset any expenses or financial hardship resulting from family abuse.</p>	<p>An EPO can include many provisions, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Prohibiting the abuser from contacting the survivor or people close to her, like her family or her new partner</li> <li>• Banning the abuser from going near the survivor/any other person named in the order’s home or other frequented locations (e.g., workplace, school, daycare, place of worship)</li> <li>• RCMP accompaniment to retrieve belongings from the family home</li> <li>• Temporary custody of the children</li> <li>• Recommending therapy for the abuser, the children, and/or the couple</li> <li>• Seizing any firearms the abuser may have</li> </ul> <p>EPOs are not permanent. The maximum amount of time one can last is 1 year.</p> <p>The provisions that an assistance order can include are very similar to an EPO.</p> <p>Under the CLA, a restraining order can be ordered against a person who has cohabitated or is currently cohabitating with the applicant, a</p>	<p>Section 3 of the <i>Family Abuse Intervention Act</i> defines the following as “family abuse:”</p> <ul style="list-style-type: none"> <li>• Actual or threatened physical injury or damage to property</li> <li>• Sexual abuse</li> <li>• Forcible confinement</li> <li>• Emotional abuse</li> <li>• Neglect or failure to provide necessities</li> <li>• Financial abuse</li> <li>• Encouraging or soliciting a third party to commit any of the above (e.g., when abusers use their friends or family members as “flying monkeys”)</li> </ul> <p>Section 21 defines “stalking” as when someone:</p> <ul style="list-style-type: none"> <li>• Repeatedly engages in behaviour that gives another person reason to fear for their own safety, without lawful authority or excuse (e.g., driving past someone’s house over and over might be considered stalking under normal circumstances, but not in the context of a police investigation)</li> <li>• Knows or ought to know that the behaviour is unwelcome</li> </ul>	<p>Factors to be considered under FAIA:</p> <p>35. In determining whether to grant an order under this Act, and what provisions should be included in the order, the designated justice of the peace or judge shall consider, but is not limited to considering, the following factors:</p> <p>(a) the nature of the family abuse;</p> <p>(b) the history of family abuse by the respondent towards the applicant or any other person;</p> <p>(c) the existence of immediate danger to persons or property;</p> <p>(d) the best interests of the applicant and any child that may be affected by the order.</p> <p>Under both the CLA and FLA, the court will consider family violence.</p>

<p><u>Restraining order</u>: An order restricting a person from molesting, annoying, or harassing the applicant and/or children, or communicating with the applicant or children is available under both the FLA and CLA.</p>	<p>parent or person claiming to be a parent of the children in the applicant’s lawful custody. A breach of the order is a summary offence punishable by a fine and/or period of imprisonment.</p> <p>Under the FLA, a restraining order can be ordered against a spouse, former spouse, parent, or person who claims to be the parent of children in the applicant’s lawful custody. A breach of the order is a summary offence punishable by a fine and/or period of imprisonment.</p>		
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## Family court related services

### Family Court Process

- Families Change Nunavut <https://nu.familieschange.ca/>

### Family Law Legal Aid

- Nunavut Legal Aid <https://nulas.ca/>

### Family Law Mediation and ADR

- Mediation Program – Government of Nunavut  
<https://www.gov.nu.ca/justice/programs-services/mediation-program>

### Child Protection

- Child Protection – Government of Nunavut <https://gov.nu.ca/family-services/information/child-protection>
- Family abuse fact sheet – Law Society of Nunavut  
[https://www.lawsociety.nu.ca/sites/default/files/Family%20Violence/LSN\\_FAIA\\_Fact\\_Sheet\\_EN\\_WEB.pdf](https://www.lawsociety.nu.ca/sites/default/files/Family%20Violence/LSN_FAIA_Fact_Sheet_EN_WEB.pdf)

### Family Law Information Centre (FLIC)

- Family Law Information Centres / Family Resource Centres / Family Justice Centres (Nunavut) <https://www.justice.gc.ca/eng/fl-df/fjs-sjf/view-affic.aspx?SearchID=285>

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

- Nunavut Courts <https://www.nunavutcourts.ca/>