



Government of  
Northwest Territories

# Family Law in the NWT.

Rights. Responsibilities. Answers. Information.



Begin a better ending

March 2021



Une version française de ce document est disponible.



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Northwest Territories

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# How to Use This Guide

“Knowing what to do when you decide to separate from your spouse or get a divorce can be confusing. This Guide is designed to reduce that confusion and help you find out if you have a family law problem and what you can do about that problem.”

**This overview of family law and the legal system in the Northwest Territories is for anyone who wants information about family law in**

**the Northwest Territories as of March 2021.**

Knowing what to do when you decide to separate from your spouse or get a divorce can be confusing. Sometimes it is because of the words used in the laws, and by lawyers and judges. Sometimes it is hard to know what steps to take to get a judge to help you and what you must do once you are in court. This Guide is designed to reduce that confusion and help you find out if you have a family law problem and what you can do about that problem.

We have included some definitions in a glossary at the end of the guide at page 117, to help with words that have specific legal meanings.

**This guide provides general information only. How the laws affect you will depend on your specific situation. If you have a legal problem or need specific legal advice, it is best to talk to a lawyer who practices family law.**

Family law changes from time to time when the laws are changed and when courts make decisions that interpret those laws in new ways. For example, starting on March 1, 2021 there were changes made to the federal Divorce Act. The changes included new language to describe what used to be called “custody” and “access”. Other changes are described in this Guide. This change in language means the *Divorce Act* now refers to “decision making responsibility” and “parenting time”. The NWT *Children’s Law Act* and other family laws still use “custody” and “access”. Although these and other differences between federal and territorial family laws exist, the general approach remains very similar for parents that get divorced and parents that never married and are separating. In all cases, parents are encouraged to reach major decisions about their families together and if they can’t reach agreement on how to live separately, they can ask for help from a mediator, a lawyer, and if necessary, a judge.

This guide provides general information only. How the laws affect you will depend on your specific situation. If you have a legal problem or need specific legal advice, it is best to talk to a lawyer who practices family law.

To find a lawyer, you can look in the phone book, call Legal Aid, or use the “Find a Lawyer” service through the Law Society of the NWT website. If you need a lawyer and can’t afford one, Legal Aid may be able to provide one at minimal or no cost to you. Some free legal advice is also available at the Outreach Clinic, regardless of your income. See the “Community Resources” section in the Guide at page 103, for contact information for all these services. You will find other community supports and resources included in that part of the guide.



**For extra information on family law topics, go to the Government of NWT’s website: [www.justice.gov.nt.ca](http://www.justice.gov.nt.ca) and on the Government of Canada’s website: <https://www.justice.gc.ca/eng/fl-df/index.html> (in English) and <https://www.justice.gc.ca/fra/df-fl/index.html> (in French).**

“If you need help finding a lawyer, a shelter, or other assistance, go to the Community Resources section, found at page 103.”



# 1 Family Law in the NWT

## What is Family Law?

**Family law is a general term. It refers to any of the laws that affect family relationships. This can include rules about how to marry, who can get married, how to separate or get divorced, how to get financial support for yourself or your children after separation, how to adopt a child, how to get protection from family violence and how to protect children who are at risk in their family homes.**

Family law includes federal and territorial legislation, sometimes called “statutes”, “acts” and “regulations”. An act and a statute are the same thing. Regulations set out in detail how things under an act will work.

## Section 1: Family Law in the NWT

### *What is Family Law?*

**You should contact a lawyer for advice specific to your situation.**

Family law also includes decisions made by judges about family relationships and the rights and responsibilities people have during and after their relationships. Sometimes this includes judges' applying existing laws and sometimes it requires them to interpret an act or regulation before applying it to a specific case. In their work, judges regularly refer to the decisions of other judges. Altogether, judicial decisions are sometimes called the "common law". Each case a judge deals with might be a little different because of its unique facts, but the interpretation of the laws that apply to the facts should be consistent and clear. As much as possible, similar legal problems are decided similarly.

In our system the lower courts follow higher court decisions. The highest level of court in Canada is the Supreme Court of Canada. The next highest in the NWT is the Territorial Court of Appeal, then the Supreme Court of the Northwest Territories, then the Territorial Court and finally Justice of the Peace Court. All courts must follow the decisions of the Supreme Court of Canada unless the Supreme Court of Canada overrules and changes its previous decision. This is sometimes called the "precedent" system. It allows lawyers and anyone who reads these cases to better understand the law and how it can apply to each case. It also helps to identify the information (evidence) that a court needs when it is asked to decide a case. Case law gives helpful direction to people going to court but because most families are unique, it is not always possible to know exactly what will happen if a case goes to court.

## Who is a Spouse?

Family law will often refer to the rights and responsibilities of a “spouse”.

A spouse is a person who:

- is married to another person;
- has lived in a marriage-like relationship with another person for two years or more (often referred to as living “common-law” or being in a “common-law relationship” or being a “common-law spouse”); or
- has lived in a marriage-like relationship with another person for less than two years, but who has a natural or adopted child with that person.

Some federal laws recognize relationships as common-law after different amounts of time living together. For example, the *Income Tax Act* says that a couple is recognized as common-law after living together for 12 months, not the 2 years listed above.

The roles and responsibilities each spouse assume during a relationship can also affect a spouse’s right to financial support (“spousal support”) at separation, or a spouse’s obligation to pay that support. For more information on this, see the section called “What is Spousal Support?” at page 55.

Both spouses are entitled to use the family home and assets. This means that one spouse cannot deny the other access to the family home, money, or possessions without a court order. For more information on this, see the sections called “Family Home” and “Family Home on Reserve” at page 66.

**In the NWT, if you are a “spouse” you have certain rights and responsibilities when your relationship ends. For example, spouses have a legal right to a share of the property acquired during the relationship. For more information on this, see the section called “Family Property” at page 63.**

## Section 1: Family Law in the NWT

### Family Law Legislation

#### Family Law Legislation

Family law in Canada is dealt with in several Acts (or statutes) that are made by a province, territory or the federal government. The Provincial / Territorial government and the federal government have different but sometimes overlapping powers to make laws that affect children, families and family property.

The Federal Government has the power to make laws affecting marriage and divorce, which also deals with children and families, and financial support. It does not address property division (except if the property is on reserve). The federal government's power is included in a few Acts. The most commonly used is the *Divorce Act*.

The Territorial Government has the power to make laws affecting people who live together but do not get married and property division for all families. These laws can also apply to couples who legally married, so long as the couple is not getting a divorce.

Territorial laws make rules about:

- separation between spouses;
- arrangements for children;
- sharing the costs of raising children;
- adoptions;
- the protection of children;
- the enforcement of court orders for financial support for children and spouses; and
- ways to get protection from violent family members.

Because of this division of powers, the family laws of the Northwest Territories are not exactly the same as the other provinces and territories throughout Canada. It is important to remember this when you do your own reading and research. Information from the NWT and the Federal Government will be the most reliable.

The most commonly used family law legislation from the NWT and the Federal government are described briefly below.

### **Family Law Act (NWT)**

The *Family Law Act* describes the rights and responsibilities of couples who are legally married and couples who live together without being married, sometimes called common-law spouses. It has rules that apply both before and after separation. It also deals with spousal support and how people divide their property after separation or divorce. It does not deal with getting a divorce.

### **Children’s Law Act (NWT)**

The *Children’s Law Act* deals with matters affecting children like custody, access, and child support. “Custody” can mean different things. Sometimes it refers to which parent has more time parenting a child. More often, it refers to whether significant decisions about the care and upbringing of the child will be made by one or both parents. Access means the time that a parent spends with their children if they do not have day-to-day care of the children on a regular basis.

In some cases, like when a child was conceived with the help of assisted reproduction, it is necessary to decide who is a child’s legal parent. This Act includes the rules to apply whenever it is difficult to know who a child’s mother or father is. There are other rules about assisted reproduction in the *Vital Statistics Act*.

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## Section 1: Family Law in the NWT

### Family Law Legislation

#### ***Divorce Act (Canada)***

The *Divorce Act* is a federal law that only applies to people who are legally married and want to get divorced. It does not apply to people who live together without being married, sometimes called common-law spouses.

It covers many of the same issues as the NWT laws as they apply to people getting a divorce (like child and spousal support). Before March 1, 2021, the *Divorce Act* dealt with parents having “custody” and “access” of children, just like the NWT *Children’s Law Act*. Orders and agreements reached under the pre March 2021 version of the Act will still use those terms. After March 1, 2021, the Act stops referring to “custody” and instead refers to “decision-making responsibility” and “parenting orders”. It also stops referring to “access” and instead refers to “parenting time”. It also now includes terms of “contact” for people who are important to a child who are not a child’s parent or in a parental role. The *Divorce Act* now has clear obligations for a parent who wants to relocate, with or without, a child.

#### ***Child and Family Services Act (NWT)***

The *Child and Family Services Act* provides protection for children under the age of 16 years where there is a reasonable belief they are being abused or neglected or need protection from likely harm at home. The act also describes obligations and opportunities for children over the age of 16 (called “youth”) who are in the Government’s permanent care.

#### ***Maintenance Orders Enforcement Act (NWT)***

The *Maintenance Orders Enforcement Act* sets up the Maintenance Enforcement Program (MEP) and provides various ways to manage and enforce the payment of child and spousal support orders or agreements. The program is a free service and available if you register through the MEP office.

## Separation

In the NWT, the courts do not need to approve your separation for it to be official. It is enough for one spouse to move out of the house or to tell their spouse that the relationship is over.

Sometimes it is easy to identify the separation date. Other times, spouses do not agree on what their separation date was. If that happens, courts will first look at what the relationship was like before one party thought they separated to decide what was their “normal” way of behaving as a couple. The court will then look at some or all of these factors to decide if or when any of these things changed:

- when was there a physical separation – this can be shown by the spouses sleeping in separate bedrooms or living in separate homes;
- when did one or both spouses stop giving companionship, love and affection;
- when did sexual relations stop;
- when did the couple stop discussing family problems or stop talking completely;
- when did the couple stop doing social things together;
- when did the couple start to present themselves to outsiders as separated (ie telling friends, family or employers); and
- when did the couple stop acting as a family, for example by ending “family” or joint meals (if they used to have them together) or doing things for the other (ie. cleaning house, doing the others’ laundry, doing groceries for other).

The date of separation is important for two reasons. Under the *Family Law Act*, the date of separation is used to determine the value of the property (assets and debts) that are to be divided between spouses. For example, any bank accounts will be divided according to how much was in the account on the date of separation. It is also important if you want to get a no-fault divorce. You can ask the court to start your divorce anytime, but you can only finalize a no-fault divorce if you have been separated for at least 12 months.

**No single factor will decide the issue, and others may be considered too if something was considered “normal” during the relationship that later stopped.**

## Section 1: Family Law in the NWT

### Dispute Resolutions Options

Once you separate, you and your ex-spouse will have to take steps to separate your finances and make decisions about where you and your children will live. Some spouses can reach these agreements on their own. In other cases, spouses need help to reach agreements.

All family laws, including the *Divorce Act*, encourage people to resolve their disagreements outside court. The *Divorce Act* describes non-court solutions as a “family dispute resolution process” or a “family justice service”.

### Dispute Resolutions Options

When agreements are not easily reached with your ex-spouse, you have several options to resolve them. Sometimes you will select one option that works for you, other times you may need to use a few different methods.

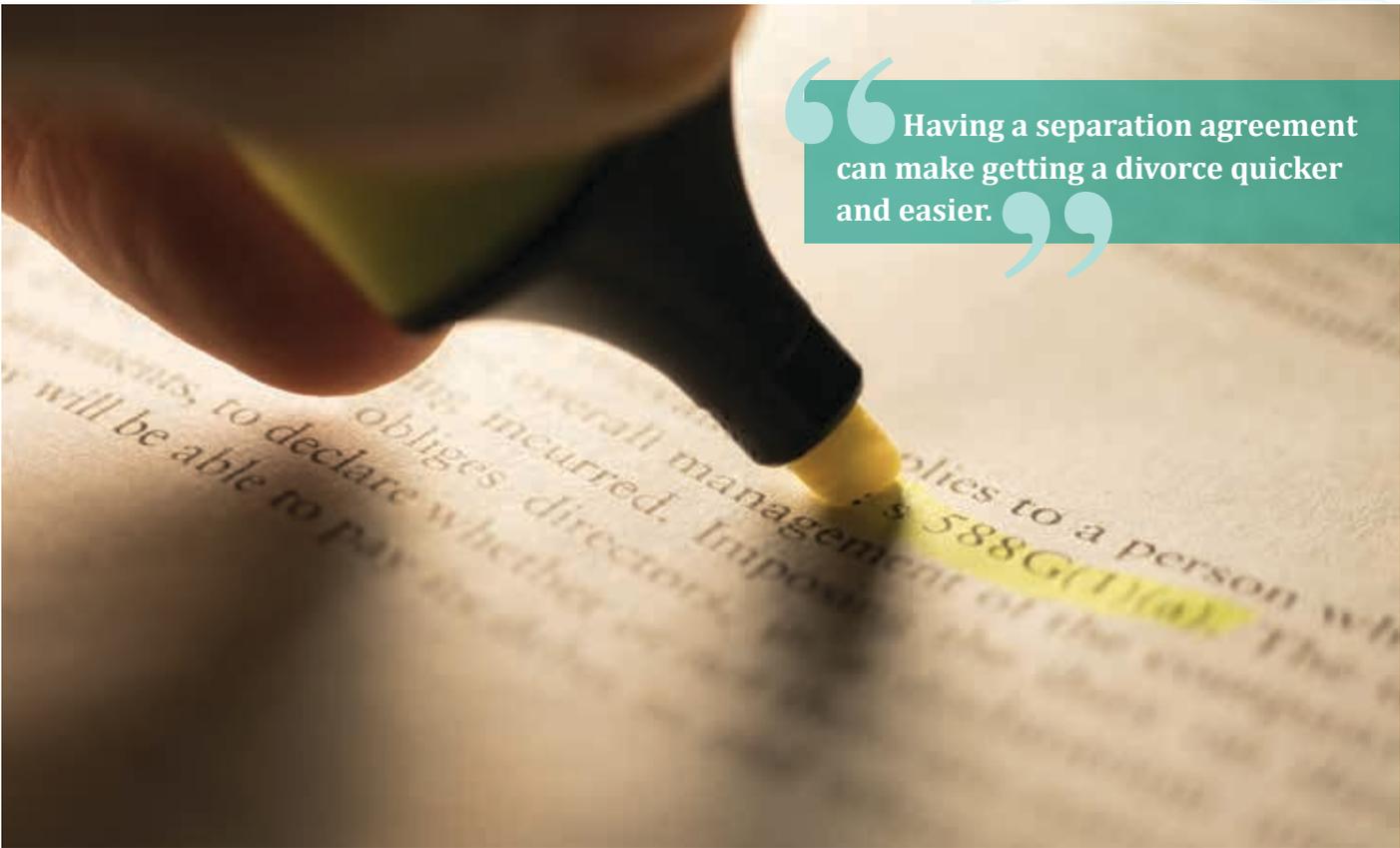
**Parties have more control in the final decisions if they engage in negotiation (with or without lawyers) or mediation.**

For example, through mediation you may be able to reach agreements on many things, but have one or two things that you cannot agree on. If this happens, you may want to consider working with a lawyer so they can negotiate the remaining issues for you. If that is not successful, you may decide to go to court so a judge can make the decisions that will affect you, your ex-spouse and your family. If you go to court, you have the least amount of control over decisions that are made. If you begin a court case you can still decide to resolve issues by agreement without the court’s help. However, once a judge has made a court order that affects you, the only way to change it is to get your ex-spouse to agree, or to try and appeal the judge’s decision.

### By Agreement

For many people, decisions on how to live separately are made and included in an agreement. An agreement can be made in writing or simply agreed on verbally. To be considered a contract, and be more legally binding, an agreement must be in writing, dated and signed by each of the spouses, and witnessed. This is sometimes called a domestic contract or a separation agreement.

Both common-law and married couples can make separation agreements. If you are legally married, you can get a separation agreement, a divorce, or both. If you plan to divorce, creating a separation agreement can address all the issues affected by your separation. Having a separation agreement can make getting a divorce quicker and easier.



“ Having a separation agreement can make getting a divorce quicker and easier. ”

#### Separation Agreement

A separation agreement should address questions like:

- who will make important decisions about the children
- where the children will live
- the time the children will spend with each parent and other important people in their lives;
- how you and your ex-spouse will share the costs of raising the children (called child support);
- whether one spouse will give money to the other spouse if they are not financially self-sufficient (called spousal support); and
- how things owned by the couple and any debt they might have are divided.

Separation agreements are an effective way to deal with the end of a relationship without going to court. If you are having difficulty reaching an agreement with your ex-spouse, sometimes a mediator or a lawyer can help you to reach the terms of an agreement.

Once an agreement is reached, it is a good idea to talk to a lawyer. The lawyer can put your agreement in writing, or review an agreement drafted by someone else. You and your ex-spouse should get advice from your own lawyers before signing any written agreement. The legal advice will help you be sure you know and understand your rights and responsibilities, if you have applied the family law rules or done something unique, if any essential parts of a separation agreement are missing, and if you understand and accept the consequences of the agreement. The lawyer will also review any financial elements and let you know if the outcome appears reasonable. Each lawyer will then sign a form that shows each person got independent legal advice. In the future, if one of you asks a judge to review and revise the agreement, proof that each person got legal advice can help ensure a judge will not change the agreement.

## Mediation

Mediation offers separating and divorcing couples the chance to work together to reach their own agreement. In mediation, the ex-spouses meet with a neutral person, the mediator. The mediator works for both spouses and does not take sides. The mediator makes sure that both spouses get to talk in a safe and productive way and helps them reach agreements together. The mediator helps ex-spouses make the necessary decisions and does not make major decisions for them. Although mediation can involve talking about what you hope for and what you feel, it is not counselling or therapy.

The benefits of using mediation are:

- It is private and confidential – that means you do not tell anyone, except your lawyer, what you talked about. Neither of you can use anything said in mediation in court later.
- You decide what should happen. Because you are making the agreement, you are both much more likely to be happy with it and to follow through.
- Having succeeded in reaching agreement once, you are more likely to be able to talk through any disagreements that develop later and reach new agreements.
- You can avoid court, which is often stressful for children, parents and extended family and is very expensive.
- Even if you don't reach agreement on anything or everything, you will have a better understanding of what is important to each other. This can help reduce disagreements and better manage ongoing issues when they come up.

The Department of Justice GNWT offers a free mediation program for parents who are separating or going through a divorce. Under that program, parents can work with a mediator to reach agreement on all decisions related to their children and their parenting, including decision making, the children's living arrangements, the time spent with each parent, and child support. If there is still time available under the program, parents can also use mediation to discuss spousal support and property division.

**The mediator will track any agreements that you reach during mediation in a written summary. The contents of the summary can become the heart of a written separation agreement.**



**To find out if this program is available to you call 1-866-217-8923.**

## Section 1: Family Law in the NWT

### Negotiation

#### Negotiation

Separating couples that cannot reach an agreement directly between themselves may negotiate an agreement through their lawyers.

Your lawyer will work with your ex-spouse or their lawyer to come up with a reasonable solution. The lawyers will give you advice based on their knowledge of family law and the most likely outcomes if you had to go to court for a decision. When lawyers are involved, negotiations are normally done through the exchange of letters setting out suggestions for settlement until a compromise is reached that everyone can agree to.

The negotiation process has a lot of flexibility, which allows you and your ex-spouse to reach an agreement that meets everyone's needs. It is often used after separation and before a divorce. Spouses can negotiate everything related to their children's needs and parenting, including child support. Spousal support, division of property and other financial matters can be addressed too.

A close-up photograph of a person wearing a dark suit jacket and a watch, sitting at a desk and writing on a document with a black pen. The person's hands are the main focus, with the background being a blurred office setting.

“The negotiated terms are then included in a separation agreement or a court order, depending on your lawyer’s advice.”

## Parenting After Separation

Parenting after Separation is a free workshop that is available in Yellowknife and by webinar. The goal of the program is to make separation or divorce easier for both children and parents.

In this workshop, parents learn how to cope with difficult issues that arise during and after separation or divorce. Information is also given on how to help children deal with their emotions about the separation in a positive way. The workshop focuses on a variety of things such as: the changing family, dealing with separation and loss, ways to communicate effectively, legal issues like custody, access (or parenting time, decision making responsibility and contact) and child support and planning for your future as a separated parent. Parents learn why it is important to follow agreements reached or orders that are made by a judge.

You may be required to take this program before you can begin a family court case in the Supreme Court of the Northwest Territories, including a divorce.

**It can be helpful to take this workshop if you are thinking about separating, or before you start mediation or negotiations.**



**If you want to know if you need to take this workshop before going to court, you can speak with a lawyer or contact the Yellowknife Court Registry toll free at 1-866-822-5864.**



**More information about this program, the schedule for upcoming workshops and registration options are available on the GNWT Justice website at:**

**<https://www.justice.gov.nt.ca/en/parenting-after-separation-workshops/>**

## Section 1: Family Law in the NWT

### Levels of Court

#### Levels of Court

There are four levels of court in the NWT: Justice of the Peace Court, Territorial Court, Supreme Court and the Court of Appeal. Each level of court has different responsibilities and decision-making powers for family law matters.

##### 1 Justices of the Peace

Justices of the Peace, or JP's, are people who have some training in legal issues but are not lawyers. Justice of the Peace Court can make decisions in some child protection matters, like deciding that a child needs protection under the *Child and Family Services Act*. Some JP's have been trained to respond if a person has experienced family violence, fears for their own or another family member's safety and wants to get an Emergency Protection Order. The JP's authority to make an order comes from the NWT's *Protection Against Family Violence Act*.

You must stand up if you speak to a Justice of the Peace in court and call the JP "Your Worship".

##### 2 Territorial Court

The Territorial Court can make decisions regarding custody, access and financial support for children of a relationship under the *Children's Law Act*; maintenance enforcement under the *Maintenance Orders Enforcement Act and Inter-jurisdictional Support Orders Act*, and child protection cases under the *Child and Family Services Act*. The Territorial Court can make some but not all decisions about spousal support and the division of matrimonial property when spouses separate. It cannot deal with a divorce case or any orders related to a divorce under the *Divorce Act*.

You must stand up if you speak to a Territorial Court Judge in court and call the Judge "Your Honour".

### 3 Supreme Court of the Northwest Territories

The Supreme Court makes decisions on all issues under the *Divorce Act* and on all matters involving people's separations under the *Children's Law Act* and the *Family Law Act*. The court also has power under the *Protection Against Family Violence Act* to review all emergency protection orders made in Justice of the Peace Court. The Supreme Court hears appeals of decisions made in Justice of the Peace Court and in the Territorial Court.

You must stand up when you speak to a Supreme Court Judge and call the Judge "Your Honour".

### 4 Court of Appeal

The Court of Appeal does not conduct trials. It hears criminal and civil appeals from the Supreme Court and Territorial Court. The reasons for an appeal from a lower court decision are limited to the judge making an error about the law. It can be complicated to know if a Judge made a mistake that would allow you to get an appeal. If you want your case to be appealed, you should talk to a lawyer.

In rare circumstances where there is a unique issue of law, an appeal from the Court of Appeal can be made to the Supreme Court of Canada.

You must stand if you are going to talk to a judge in the Court of Appeal. If the Judge is a woman, call her "My Lady," "Madam Justice" or "Ma'am". If the Judge is a man call him "My Lord," "Mr. Justice" or "Sir".

### Court Registries

Court registries keep records of all court cases that have been started in the NWT. If you want to start a case to ask for custody, child support or another family law matter, you have to file documents at the court registry for the court that can deal with your case.

The three Territorial Court registries in the NWT are in Hay River, Inuvik, and Yellowknife. These registries also take paperwork for Justice of the Peace court.

There is one Supreme Court registry, located in Yellowknife.



You can also visit [www.nwtcourts.ca](http://www.nwtcourts.ca) for more information.



If you are not sure which court you should apply to, you can speak to a lawyer, or you can contact the Yellowknife registry office toll free at 1-866-822-5864.

To reach the Inuvik Territorial Court registry, call 1-866-344-3940.

To contact the Hay River Territorial Court registry, call toll free at 1-866-885-2535.

## Section 1: Family Law in the NWT

### Going to Court

**More specific information about starting a court case is available from a lawyer. You can access free legal advice from the Outreach Clinic. Contact information is available in the “Community Resources” section in this Guide at page 103.**

### Going to Court

This is a very general description of what must be done if a person wants a judge to make decisions affecting their separation or divorce.

A court case begins when one person prepares and files the first court document (“the originating document”). That document identifies the decisions a judge is to make and include in an order. Different documents apply to people who need a judge to make decisions during their separation and people who want a divorce.

If you are not sure what court document you need to prepare and file to start a court case, you can ask the Supreme Court registry office in Yellowknife who can give you general information about the court documents you need to fill and file.

The names of each spouse are shown on the top of each court document. This is called the “style of cause”. The person who files the first court document is sometimes called “the Applicant”. The other spouse is called “the Respondent”. In all cases, a spouse can also be called “a party” and both spouses when described together are called “parties”.

### Notice or Service of Documents

After you have filed the first court document(s) with the court, you must give one copy of the document(s) to your ex-spouse. This is called “service” or “serving” the other spouse. Giving these documents to the other spouse gives them notice that you want a court to get involved and what you want the court to do.

The Rules of the Supreme Court of the NWT state the kind of service required and the number of days the other spouse has to respond.

In almost all cases, the first court document(s) must be given personally or “served personally” on your ex-spouse. Later court documents can usually be served by mail or left with a designated person on behalf of the named person. If you have your ex-spouses’ agreement or a judge’s permission, you can serve your ex-spouse by email or other methods too.

## Responding to Court Documents

When an ex-spouse gets court documents starting a court case, they have a right to respond. If they disagree with the claims or requests made in the first court documents, or if they want to make a new claim of their own, a formal response to the original court documents must be prepared and filed with the court registry. Under the *Family Law Act* and *Children's Law Act*, this is done by filing a Notice of Motion and an Affidavit in support. In a divorce, different documents are needed. If you are not sure what documents you need, or how to reply, you should talk to a lawyer or the Outreach Clinic.

## Interim (“temporary”) Orders

Family law cases often take a long time. There are some issues that need to be resolved more quickly and this can be done at an interim hearing. This provides a temporary solution to some parenting, financial and property questions. For this reason either parent can make a court application (a motion) for a temporary order (interim order) at any time after the first court document has been filed starting the court case. An interim order is usually made in front of a judge, based on written documents called “affidavits” in a courtroom called “chambers”.

The applicant must have the motion documents served on the other spouse. In rare circumstances when the applicant can convince the judge that serious harm would occur if the other spouse got notice of the request, a judge can decide to make an interim order without the other spouse getting advance notice. That is called an “ex parte” application.

In almost all cases, both spouses will tell the judge their story in writing using a document called an “affidavit”. Each affidavit will include the relevant facts (or evidence) that the judge needs to make the decisions the judge is being asked to make. Each spouse swears, or solemnly affirms, the truth of the statements in their affidavit. Each statement should reflect only those things a person saw and did. It can include some things the person heard, but there are limits to that rule to exclude things like gossip and other unreliable third hand information. Affidavits must not include irrelevant or purely inflammatory statements. If they do, a judge can reject all or parts of the affidavit and penalize the party who filed it.

The judge will review the filed documents, and a person or their lawyer can make arguments in support of the case to the judge.

### Uncontested Proceedings

If a person does not file a response to the original court papers within the time the court allows, the applicant can file extra documents to ask the court for a final order without the other ex-spouse participating. Sometimes final orders can be made without having to appear in court. In some cases, the court can refuse this request and an applicant will need to go to court and tell the court (“testify”) under oath or affirmation and may get witnesses to testify. After all witnesses tell the court their evidence, the court will make an order.

## Section 1: Family Law in the NWT

### Going to Court

#### Consent Orders

At any time in the proceedings, the ex-spouses can agree on any issues in their dispute. If they do, the agreements can be included in a consent order and given to the court. In most cases, a judge will agree with that consent order and the ex-spouses will not have to have a hearing in front of a judge. If a judge does not agree with the consent order, the judge can either ask for more written explanations or ask the ex-spouses to appear in person to give the judge more facts.

#### Examinations for Discovery

If final decisions need to be made by a judge, a trial or other special hearing will have to be scheduled. At any time before that kind of hearing, parties can request more information about each other's claims. Sometimes this is done by written request. Other times, you and your ex-spouse can require the other person to release relevant documents and to answer questions at a pre-trial meeting called an "examination for discovery". The examination for discovery takes place outside of court in an office in front of a court reporter who records everything that is said. Each spouse's lawyer can ask the other spouse questions about the case. For example, your lawyer might ask about the other person's plans for caring for the children or the person's financial situation. When it is finished, the court reporter will prepare a printed record called a transcript. The examination for discovery is designed to give each spouse a clear idea of what a person will say when they appear in front of the judge at a trial. It helps to ensure there is no hidden information between both sides of the court case.

#### Pre-Trial

Before the trial is held, there are steps taken to make sure that the parties are ready for the trial. These include making sure people have tried to reach agreement on as many issues as possible to shorten the trial time or eliminate the need for a trial.

In family cases, spouses or their lawyers must have a meeting with a judge to confirm what the judge will be asked to decide, who will be giving evidence at the trial and how long the trial is likely to take. Sometimes a judge can also do a pre-trial mediation to see if the judge, acting as mediator, can help the spouses reach decisions without a formal trial. If one or both spouses' want a judge to make the final decision on any issue related to their separation and divorce, dates for the trial will need to be set.

## **The Trial**

To make a final order, a judge usually needs to hear the facts (“evidence”) directly from each spouse, or their witnesses instead of in writing. This stage of the process is called a special hearing or trial. There are separate rules that apply to a trial and extra documents must be prepared for the court. Getting legal advice to prepare is very helpful.

At trial, both spouses will testify under oath or affirmation, promising to tell the truth, and can have other people with relevant information testify as well. Everyone who testifies at a court hearing will also be asked questions by the other spouse’s lawyer. This is called “cross examination”. This helps make sure each witness gives all their relevant information and the judge can assess its accuracy and reliability when deciding what has happened and what decisions to make for the family.

After all the evidence is given, each party can make a final statement to the court, called a “closing argument”. Each party summarizes the evidence and the law and tries to convince the judge that his or her position is the correct one.

After the closing arguments, the judge will usually need time to consider all the evidence, which includes the testimony given in court and any documents accepted by the judge as evidence during the trial. The judge will also review any legislation or case law provided by the parties. At a future date, the judge will make a decision and give it to the parties, either verbally in court or in a written decision.

Once the judge has made a decision, the spouse who has been most successful, or their lawyer, will be responsible to prepare a written order. There is a form that must be used and the terms to be included will be set out in the judge’s decision. The other spouse or their lawyer may need to review it before it is given to the court registry. When it is in the right format and has the right contents, the court registry will get the judge to review it. Each spouse will get a copy of the order after it is returned from the judge.

There are more steps leading up to a trial and more rules about evidence and how to present it to a court. Some of these are included in the Rules of the Supreme Court of the NWT. Some of these are included in legislation and others are in case law. Lawyers train for years to know those steps and rules. If you do not have a lawyer, it is still best to try and get advice and guidance from a lawyer before attempting a trial on your own.

## Section 1: Family Law in the NWT

### Getting a Divorce

#### Getting a Divorce

Divorce is the legal way to end a marriage. You can file for divorce in the NWT if you or your ex-spouse have lived in the NWT for the past 12 months. You can start getting a divorce any time after you separate.

To finalize the divorce, you must prove you have been separated for 12 months. You can get a divorce sooner if there was adultery or physical or mental cruelty during the marriage that made continuing to live together intolerable.

For parents in Yellowknife, the court requires you to take a Parenting After Separation workshop before you can file for divorce, unless you have reached an agreement about your children. For more information about that program, see the section called Parenting After Separation in this guide at page 17.

When a person files for divorce, they can also ask the court to make an order under the *Divorce Act* that deals with parenting, the parents' decision making responsibility, parenting time, child support, spousal support and, using the *NWT Family Law Act*, an order for the division of property. If you already have a separation agreement that deals with these things, that agreement can be included in the court papers requesting the divorce and the divorce can usually be completed faster.

**You can get the divorce after filing a series of court papers that both of you sign. No one has to go to court.**

#### The Divorce Process

If you and your spouse have reached agreement on all issues in your divorce, you may choose to file for a divorce together.

If you prefer or you and your ex-spouse don't agree on everything at the time a divorce case is started, one of you can file for divorce, and have that document served on your ex-spouse. Your ex-spouse has time to file their reply. If your ex-spouse does not reply in the required time, you can ask the Court to allow you to apply for the divorce without your ex-spouse being involved. This request is usually approved.

In every case, the court needs to know if you and your ex-spouse have children and if so, whether reasonable arrangements have been made for their financial support. Usually, this means that you must apply the Federal Child Support Guidelines and that child support is being paid between you and your ex-spouse. If there is inadequate information, or the judge believes the approach being used does not meet the children's financial needs, a judge can refuse the divorce.

More information about the specific steps to get a divorce and the documents you must use can be found by contacting the Outreach Clinic. Contact information for the Outreach Clinic is found in the "Community Resources" section of this Guide at page 103. The Yellowknife Supreme Court registry staff can also give you general information about the forms that must be completed and filed.

When you get a Divorce Judgment from the court it may seem like your divorce is final, but it is not. You must still wait for 30 days. If an appeal of the divorce is not started in that time, you can apply for a Certificate of Divorce on the thirty-first day after the Judgment is filed. The Certificate of Divorce is the final document that proves your divorce is complete. You will need the Certificate of Divorce if you ever decide to re-marry.

If you wanted the court to make a divorce order that also addressed your children, spousal support or property division, you will need to give the court a draft order with those extra terms.

If you have a Divorce Judgment, but never got a Certificate of Divorce, you can contact the Court Registry that granted the Divorce Judgment to request a copy. If you are not sure where your divorce was filed, you can contact the Central Registry of Divorce Proceedings for Canada. They will not be able to give you the document but will be able to tell you the court registry that has your divorce file. You must then contact that court registry.

**Whether you file together, or only one spouse starts the divorce, the divorce can be completed in about three months if a separation agreement has been signed or other terms have been agreed to. If major disagreements exist, it can take much longer.**



**Here is contact information for the Central Registry of Divorce Proceedings**

<https://www.justice.gc.ca/eng/fl-df/divorce/crdp-bead.html>



**Telephone: 613-957-4519.**



# 2

## Separation, Divorce and Children

“Whatever solution is best for you, it can help to have some basic information about what children need when their parents separate, and what the law does and does not say about parenting after separation or divorce.”

Although separation and divorce are adult answers to adult problems, children are affected. When a parent moves away from the family home, children may feel loss, anger, sadness and even guilt. Children may react less and manage their feelings better if parents can co-operate and parent together even though they no longer live together. Children also feel more secure when they know how their parents' separation will affect them and their ability to spend time with each parent and their other family members.

## Section 2: Separation, Divorce and Children

### *Caring for your children*

Some parents will find it helpful to make a Parenting Plan. Others will choose something less formal. Still others will want a formal separation agreement. If the parents cannot agree, lawyers or mediators can help parents reach an agreement. If no agreement can be reached even with that help, either of the parents can apply to court for a judge to make those decisions. Judges will base their decisions on what they believe is best for a child and what arrangement can best meet a child's needs.

The legislation that addresses these issues for separating NWT parents is the *Children's Law Act*. For NWT parents who are divorcing, the federal *Divorce Act* applies. There are some differences between these Acts.

### **Caring for your children**

There are no fixed rules about where children will live when their parents separate or divorce. Parents do not have a guaranteed right to care for or make decisions for their children just because they are a parent. Under both the NWT *Children's Law Act*, and the federal *Divorce Act*, all issues affecting a child must be decided based on what is in each child's best interests.

**When a parent wants to spend time with their children and can't get the other parent to agree, a judge can be asked to make an order to allow this.**

The *Children's Law Act* uses "custody" when the *Divorce Act* refers to "decision-making responsibility". The *Children's Law Act* uses "access" when the *Divorce Act* refers to "parenting time". Until March 1, 2021, the *Divorce Act* used "custody and access" too and you may see them in divorce Orders or Agreements made in the past.

Now, the *Divorce Act* uses concepts and words that focus on relationships with children, such as parenting time, decision-making responsibility and contact. Even though the terms used are different, the essence of these terms is much the same and always requires parents and judges to consider what arrangements will be in a child's best interests.

In most cases, parents decide together what they think is best. It may work best to have the children spend equal amounts of time with each parent or to spend almost all their time with one parent. In some families, it works best for the children to be cared for by different parents so that one child will live with one parent and one or more children will live with the other parent. This is called "split custody" or "split parenting time".

When the parents are separating and must use the NWT *Children's Law Act*, the request will be for “access”. In a divorce case the parent can ask for “parenting time” with their children. In all cases, the judge will consider what is best for the children.

The NWT's *Children's Law Act* and the federal *Divorce Act* have a list of factors that relate to a child's best interests. Each list is a little different, but both require a judge to consider:

- the child's relationship with their parents, siblings and other family members;
- the child's views and preferences;
- each parent's ability to act as a parent and provide for the child's needs;
- whether there has been violence against a member of the household or family;
- the child's cultural, linguistic or spiritual upbringing and ties;
- each parent's willingness to provide ongoing contact between the child and other parent; and
- any plans proposed for a child's care.

The *Divorce Act* clearly says that if there is conflict between any of the factors a judge must make the safety, security and well-being of the child a priority above all other considerations. Although the *Children's Law Act* does not include this specific language, a judge will consider this as very important too. In cases where contact is harmful to a child, a judge can limit or stop all contact between a parent and child.

## Section 2: Separation, Divorce and Children

### *What children need*

**To reduce the uncertainty children can feel when they hear their parents are separating, it helps to have a schedule of parenting time already agreed upon, or that is set soon after the children are told.**

### **What children need**

At all times, it is important to remember your children have needs while you sort out the details of the separation or divorce. Each child's needs are different, and arrangements for one child may not be appropriate for another.

Children benefit most when they:

- feel involved in but not responsible for planning their future;
- can talk about their feelings without concern that it will affect how their parents react;
- have regular contact with both parents whenever possible;
- get consistent and predictable love and care;
- have stability in their relationships with family and friends, in their living environment, in school, in their clubs and activities;
- get their parents' help to deal with change because even small changes can be hard;
- get age-appropriate and clear information about what is happening;
- can love both parents equally and aren't asked to take sides, or to blame the other parent;
- are shielded from their parents' negative feelings and from their parents' disagreements;
- know their family history, origins and relationships in order to have a clear sense of belonging; and
- are introduced to their parent's new partner in a sensitive way.

Time with each parent is worth continuing or creating, as it helps build new relationships between children and each parent.

If you can't agree on a long-term plan, a short term plan is still better than having no plan at all.

It is important to remember that children's needs also change as they grow up and as circumstances change. The best schedule will change depending on the age of your children. Shorter, more frequent visits may work better for younger children. If visits are very short, or do not happen often, it can be difficult for a child to get comfortable with that parent. Whatever the pattern of care, children like to know the plans, look forward to seeing both parents and generally respond more positively to a regular pattern of contact with both parents. Without that reliable contact, children can start to worry they are not loved by both parents.

Children's time spent with each parent is meant to be enjoyable but getting used to new living spaces and different ways of spending time together can be stressful at first and may take time to become comfortable for everyone. Overnight stays, where possible, can be important in allowing the child to experience ordinary daily routines with each parent.

Because emotions can be raw following a separation, it may be difficult for parents to agree on new parenting arrangements. Always do what you can to shield your children from disagreements between you and your ex-spouse. To reduce the stress on your children, you may need to develop new communication styles and habits. If possible, look ahead and discuss the impact of likely change together, and with your children, before difficulties occur.

It is important to know that there is no age when a child is legally able to choose where he or she will live. Children of all ages will have opinions about this. Parents should encourage children to share their thoughts and feelings, but ensure children know those decisions will be made by the parents.

#### **When you and your ex-spouse are discussing changes with each other:**

- Respect each other's views, even when you don't agree with them.
- Do what you can to support each other as parents in things like discipline or supporting your children's education.
- Think about your continuing responsibilities as parents, rather than the difficulties of your past relationship.
- Do not criticize the other parent in front of your children.
- Do not fight with your ex-spouse if the children might see or hear it.
- Remember that we all make mistakes. It might be hard to reach agreement on some things but it does not mean that you should give up talking altogether.
- Think about when, where, how and how often you will talk to reduce any existing tension or conflict.

**If a child does not want to spend time with a parent, it is important to try to understand why and to talk with the other parent before any changes are made to the schedule.**

## Section 2: Separation, Divorce and Children

### Decision making for your children

#### When discussing changes with your children:

- Talk to each child separately, as well as together.
- Show your children that you support each other as parents, even though you can no longer live together.
- Use words and ways of talking that do not include blame on your ex-spouse, yourself or the children.
- Explain your plans and their impact on the children clearly.
- Listen carefully to your children’s views.
- Reassure your children whenever possible.

#### Decision making for your children

After separation, parents need to decide how significant decisions will be made for their children. Significant decisions relate to issues that go beyond day to day issues and include the children’s health, education, language, religion, spiritual or cultural upbringing, international travel and extra-curricular activities.

**When one parent makes the significant decisions this is sometimes called “sole custody” or “joint custody” when both parents make those decisions together.**

In all separations, parents will either decide together what decision making approach is best for them and their children or they will ask a judge to make that decision if they can’t agree. The *Children’s Law Act* provides that both parents can each make significant decisions for their children until there is an agreement or a court order saying otherwise. There are some exceptions to this rule, and you can talk to a lawyer to find out if an exception applies to you.

Parents’ decision-making responsibilities can be dealt with in different ways no matter what kind of parenting schedule is used. Some common choices are:

- parents make significant decisions together for all of their children;
- one parent may make the significant decisions for their children with or sometimes without the other parent having input into those decisions; or
- divide the areas that each of them has sole authority to make significant decisions for the children.

The term custody is used in the *Children’s Law Act* and up until March 1, 2021, it was used in the *Divorce Act*. After March 1, 2021, the *Divorce Act* stopped using “custody” and now refers to “parenting orders”, “decision-making responsibility” and “parenting time”.

When choosing a decision-making approach it is important to consider how you, as parents, talk together and if you are capable of making decisions together. It is also important to know that if you agree to make decisions together, both parents must agree before any significant change is made. If one parent has the ability to make significant decisions, the other parent can also have input and can ask a judge to review any decision that may not be in a child’s best interests.

Sometimes, when parents cannot agree what is best for their children or if there are allegations of abuse or neglect, parents may ask for the Office of the Children’s Lawyer to be appointed for the child. For more information about this, see the Office of the Children’s Lawyer section of this Guide at page 99.



**Other helpful information about the impact of separation and divorce on children is available online at:**

<https://www.justice.gc.ca/eng/fl-df/parent/index.html>.

## Section 2: Separation, Divorce and Children

### Parenting Plans

**If you create a written parenting plan, it can also be used by a judge if asked to decide whether one or both parents will make significant decisions for the children and what living arrangements or parenting time will be best for the children.**

### Parenting Plans

A parenting plan usually refers to a written document that sets out how parents will raise their children following a separation or divorce. It can be part of an informal document, or part of a formal separation agreement. Written parenting plans are not necessary, but they can be a helpful way for everyone to know what is going to happen and when.

In a divorce, if the parents have a written parenting plan, a judge must include its provisions in the court's parenting or contact order, unless the judge decides it is not in the best interests of the child to include some or all of those terms. If a judge thinks it is best, the judge can modify the plan in whatever ways the judge considers appropriate and include those changes in the order.

A parenting plan does not have to use legal terms and is best when the language clearly describes the arrangements you agree to follow, like:

- where the children will live;
- when and how the children will spend time with each parent;
- how significant decisions and daily decisions will be made for your children;
- how information will be shared between parents;
- how the children will spend their vacations, holidays and special days;
- when the children will have contact with extended family;
- how health emergencies and any non-emergent health needs will be dealt with;
- schooling;
- what kind of extra-curricular activities you support for your children;
- how you will address religion or spirituality for each child;
- encouraging a child's cultural awareness;
- how you will deal with plans to travel with the children;
- how you will make changes to the parenting plan to meet the changing needs of the children; and
- problem solving.

A detailed plan can be helpful for parents where there is a lot of conflict because it can clarify when you will communicate about the children and how you will do that to keep the contacts respectful and helpful for everyone. You may not need to include as much detail if the conflict level is low.

A parenting plan should change over time depending on the children's ages and abilities. Some parents find that it is helpful to have regular parent meetings to discuss the plan and the children in a focused manner.

The Federal Department of Justice has developed a Parenting Plan Tool that may help you to develop your own plan that meets your children's best interests. You can find this tool by doing an online search for "Justice Canada Parenting Plan".



**You can also find the English link here:**

<https://www.justice.gc.ca/eng/fl-df/parent/plan.html>

#### **They divide the plan into these broad subjects:**

- General statements and rules about the parenting relationship
- Making decisions about the children
- Children's time with each parent or Parenting Time
- Sharing information and communicating about the children
- Appointments and other practical arrangements for the children
- Children with Special Needs
- Travel
- Moves: Change in Place of Residence or Relocation
- Family Dispute Resolution Process
- Reviewing, monitoring and changing the parenting plan

## Section 2: Separation, Divorce and Children

### Parenting Plans

**If you do prepare a parenting plan, you and your ex-spouse should have a copy of the completed plan. If other people are included in your plan, you can give them a copy too.**

The clauses in the Parenting Plan Tool are examples only. You can use whatever you find helpful and ignore what is not. You can use whatever language makes most sense to you. If you suspect that there will be conflict about certain parenting issues, you can try to address them in your plan. The plan should be tailored to meet your children's specific needs along with your family situation. There is no one plan that works for all families.

The Federal Parenting Plan Tool does not cover the costs of parenting, whether it is child support or sharing extra expenses, like day care or extra-curricular activity costs. You may wish to include this in your own Plan.

If you can talk to a family lawyer when you are developing a parenting plan, the lawyer can help you understand your legal rights and responsibilities. In some situations, for example if there has been domestic violence or risk of harm to a child, a parenting plan may not be appropriate. In those cases, you should talk to a lawyer before agreeing to a plan.

If you complete a plan and sign it, it confirms what you think is a good way to parent. It is not a legal document. It is not an order of the court, nor is it meant to be enforced by the court. If you think you may need something more binding and enforceable, you should discuss this with a lawyer.



**More information about parenting plans is provided in the free Parenting After Separation Workshop. To register or to learn more you can do an online search for “GNWT Parenting After Separation” or visit <https://www.justice.gov.nt.ca/en/parenting-after-separation-workshops/>**

## Moving away (Relocation)

No matter what kind of decision-making responsibility you and your ex-spouse have, you cannot move to a new community with your children unless certain steps are taken first.

In general, your first goal will be to talk with your ex-spouse to see if you can reach an agreement to change the parenting arrangements you have and how the children will continue their relationship with each of you after a move.

If there is already an order under the *Divorce Act* for parenting arrangements for a child, there are more requirements. If a parent wants to move, they must give notice to anyone who has parenting time or decision-making responsibility for a child or contact with the child under a contact order. If the move is likely to have a significant impact on a child's relationship with someone who has or is applying for parenting time or decision-making responsibility or who has contact, the move is considered a relocation. When a parent is planning a relocation, they must give everyone with parenting responsibilities or contact notice in a form that includes a proposed new parenting or contact arrangement. That form must be given at least 60 days before the planned move. This form must be used even if the parent wants to move without their children. The *Divorce Act* also sets out two ways for someone with parenting responsibilities to object to a child's relocation: using a form that a parent can complete if they disagree with ("object to") a proposed move or making a court application. Either way, the objection has to be made within 30 days of receiving the notice about the relocation.

In all cases, if you cannot reach agreement with your ex-spouse, you can go to mediation or hire a lawyer to try and negotiate this for you. If you cannot reach agreement with this help, you will need a court order allowing the move. If a judge is asked to make an order, the judge will decide if the move is in the child's best interests.

It is important to know that if a child is moved without the other parent's consent, a court can be asked to make an urgent order to return the child. If granted, the child must be returned and the parent who took the child may have to pay all the costs. It can also result in the parent who took the child being criminally charged with parental abduction.

## Section 2: Separation, Divorce and Children

### *Moving away (Relocation)*

**Parental child abduction happens when one parent takes a child without either the legal right or the permission of the other parent. Parental child abduction is a crime in Canada. An exception may apply when a parent takes the child to protect them from immediate harm.**

What to do if a child has been taken without parental permission:

1. Try to locate the child by contacting the other parent or the child.
2. Collect relevant information to help find your child. Find out if
  - a. the other parent or the child has the child's passport
  - b. the child's personal belongings have been taken.
3. Tell authorities if there were any threats to take the child or harm the child or there has been violence in your relationship.
4. Consult with a lawyer immediately if you suspect that your child has been removed or may soon be removed from Canada. It may be necessary to make a special application to a Judge of the Supreme Court for a return order. There is an international agreement, the Hague Convention, that creates a system to use if a child is unlawfully removed from one member country (like Canada) and brought to another member country.
5. Call the RCMP detachment of your community and file a missing child report. Have your family court order on hand (if any), personal information on your child (i.e. date of birth, passport number), a description of your child and of the parent when you call the police.



## Travelling with Children

A parent can travel with a child within Canada without any special permission from the other parent, so long as the travel does not interfere with the child's regular time with the other parent. If a trip would change the child's time with the other parent, the travelling parent will need to get verbal or written permission from the other parent to be sure the change is agreed to.

If a parent wants to travel with a child outside Canada, written permission from the non-travelling parent is necessary unless the travelling parent has authority under a separation agreement or a court order to make that decision on their own. For all other cases, when parents share decision making or the travelling parent doesn't have decision making responsibility, a travel authorization form with a variety of necessary information must be completed and signed by the non-travelling parent. A sample form can be found by doing an online search for "International Travel Canada Children" at the Global Affairs Canada website and at <https://travel.gc.ca/travelling/children/consent-letter>. It is best to have this form signed in front of a notary public.

If one parent must get the other parent's permission to travel with a child and the other parent will not agree, the travelling parent will have to cancel the trip unless they can get agreement or a court order allowing them to leave. If asked to decide, a judge will consider what is in the child's best interests. It will also consider where and why the travel is being planned.

**Even though a parent with sole decision-making responsibility does not legally need the other parent's written permission to leave Canada, it is important to travel with your separation agreement or court order in case border agents ask you to prove this.**

## Section 2: Separation, Divorce and Children

### *Appointing a Legal Guardian*

#### Appointing a Legal Guardian

There are two ways in which a Legal Guardian is appointed for a child. In the first, a guardian can be appointed when the parent or parents are still alive and need someone else to care for their child. In the second, a guardian can be named in an agreement or Will to care for a child if one parent or both parents die.

When a child's parents are alive and need someone else to care for their child, the parents can transfer their parental responsibilities to someone else in a Guardianship Agreement. This can be helpful if a child is going to live temporarily with someone else (for example to attend a school in another community), or for a long term plan when a parent is unable to care for the child and wants to appoint someone else to stand in their place as the child's parent. Any parent who has decision making responsibility for a child must sign that agreement.



If Child and Family Services has been involved to protect a child, the child protection worker may also need to be a part of the discussion. More information about this can be found at the section of this Guide called Keeping Children Safe at page 85.

A Guardianship Agreement can cover a wide range of topics including where the child will live, who will be responsible for making significant decisions for the child, what financial arrangements are in place to pay the child's expenses and a date to terminate the agreement, if that is what is agreed upon.

When parents die before their children are adults, sometimes parents have identified the person they want to stand in their place in their separation agreement. In other cases, each parent can identify their preferred guardian for their children in their Will. In many cases, that guardian will be the other parent. In other cases, a parent wants someone else to look after their child if they die. If so, they must include something in their Will to show who they want appointed as their child's guardian. If the other parent is still alive, he or she may disagree and ask a judge of the Supreme Court to appoint them instead.

If you are considering appointing a non-parent as your child's legal guardian, you should get legal advice about the possible consequences.



# 3

## Child Support

**Child Support Guidelines have been used in Canada since 1997. The Guidelines are designed to create predictability and reduce disagreements about the financial support for children. They are based on the principle that both parents are responsible for the financial support of their children whether the children live in one parent's home or both homes.**

Research on family spending shows there is no single fixed cost of raising children. Families spend more on their children as family income increases. The Guidelines are designed to consider what a parent with a specific income would usually spend on his or her children and set support payments at that level.

## Section 3: Child Support

**Under the *Divorce Act*, if no child support order was made when the divorce was granted, you or your ex-spouse can request a support order afterwards. Also, under the *Divorce Act*, an ex-spouse can request that child support be calculated or recalculated by a child support calculation service. For more information on whether this approach would be appropriate for you, ask a lawyer.**

When a parent gets child support, they are also assumed to spend that support and their own money to cover day-to-day living expenses connected to raising children: housing, food, clothing, school expenses, and for additional items like haircuts, birthdays, and extra-curricular activity expenses that are not too expensive. The parent who gets child support decides how to use the money they get and are not required to explain or prove how it is used.

Child support is not paid in exchange for parenting time with the children. Failure to pay child support may be a problem between the parents, but it shouldn't be something that affects the children in any way.

Biological parents and adoptive parents are obliged to pay child support. Sometimes a stepparent must pay child support if that stepparent developed a parent-like relationship with the child. Stepparents can be obliged to pay child support even when the other biological parent is already paying child support. In those cases, a stepparent's support may be lower than the Guideline amount.

When parents separate, they use the *Children's Law Act* to get or to change child support. When parents get a divorce, or are divorced, they must use the *Divorce Act* to get or change a child support order.

If you would like a quick calculation of the child support that you must pay or that you would receive, you can use the Federal Child Support Guidelines: Step-by-Step tool. It has information about the Guidelines and worksheets to help you determine the child support amount for your children.



**To find this online, search “Justice Canada child support guidelines” or use this link:**

<https://www.justice.gc.ca/eng/fl-df/child-enfant/2017/look-rech.asp>

More information about the child support guidelines is below.

### **Calculating child support**

Whether you are separating or getting a divorce, the amount of child support that must be paid is set by using the Child Support Guidelines and the tables attached to the Guidelines.

To use the Child Support Guidelines (federal and NWT), you look at four things:

1. Where the children live;
2. the paying parent's income;
3. the number of children eligible for support; and
4. the province or territory where the paying parent lives (not where the children live).

### **Where the children live**

If one parent has care of the children the majority of the time (more than 60% in a year), the other parent will pay child support. Only the paying parent needs to share their income information with the other parent.

In shared parenting time or shared custody cases (where the children are cared for by both parents at least 40-60% of the time) and in split custody or split parenting time cases where one or more children live with each parent, calculating child support is more complicated. Both parents must exchange their income information.

### **Paying parent's income**

To determine the paying parent's income, the Guidelines require that parent to provide up to date income information to the other parent. To begin with, this will include three years of tax returns and notices of assessment and three recent pay stubs.

If a paying parent receives social assistance of any kind, is self-employed, is a partner in a partnership, controls a corporation or is a beneficiary of a trust, other documents must be given.

## Section 3: Child Support

### Child Support Guidelines

**If a parent quits his or her job to avoid having to pay child support, a judge can decide that parent should be earning a specific amount and base child support on that assigned (“imputed”) income.**

The payor’s “total income” before any deductions is the figure used to calculate the child support to be paid. Sometimes the total income is adjusted, either up or down, based on exceptions within the Guidelines. For example, annual union dues, spousal support received, and Universal Child Care Benefits are deducted from a payor’s total income.

When a paying parent is an employee, it is usually quite simple to identify their total income. It can be more complicated when the paying parent is self-employed or a shareholder or company director. It can also be more complicated when a payor’s income varies a lot from year to year, their income is paid from dividends, or they live in another country where tax rates are very different. In some situations, a paying parent may not have up to date or accurate income information. In all those cases, the court can make its own decision about the payor’s income and order support to be paid based on that amount.

Once a paying parent’s income is agreed upon, or decided by a judge, the Child Support Guideline tables become important. You can find the tables and locate the payment that should be made using the Table for the province or territory where the paying parent lives, based on their income and number of children who are entitled to support.



**You can find this with an online search “Canada child support table” or use this link:**

<https://www.justice.gc.ca/eng/fl-df/child-enfant/2017/look-rech.asp>

No child support is paid by a parent if they earn less than the table’s minimum income, which is currently \$12,000.00.

### **Paying child support**

Child support can be paid based on a verbal agreement, a written agreement between the parents, or because of a court order. Child support is owed from the date of separation, not from the date an agreement is signed, or a court order is made.

If parents reach a verbal agreement, it cannot be easily enforced if child support isn't paid. If parents have a written agreement or court order, a parent can register with the NWT Maintenance Enforcement Program that then will collect, distribute and track child support payments between parents. More information about that Program is in the section of this Guide called Enforcing the Collection of Support at page 59.

In shared or split parenting time situations each parent calculates the child support they would pay the other parent as if they had full time care of the child. They can decide to send each other regular payments for their support or they could decide only the higher income parent will pay support after deducting the lower income parent's child support from their obligation. This is called a "set-off approach".

If parents earn the same amount of money and live in the same province/territory, they may owe the same child support to each other. If, however, parents have very different incomes or the costs for the children are higher for one parent, a different amount can be paid.

When parents have shared parenting time/shared custody, using the table amount may not be appropriate. Parents in these situations may agree or be ordered to pay a different amount based on the needs of their children and their own financial positions. This can be a factor when, for example, one parent will pay for more of the children's expenses. If that occurs, parents or a judge can adjust the child support paid to better reflect the increased costs of shared parenting.

Using a set-off approach can also affect the paying parent's ability to claim a child as an eligible dependent with the Canada Revenue Agency. If you want more information about how this could affect you, you can speak to an accountant or a lawyer.

**Parents can pay their child support once a month, or on a different schedule.**

## Section 3: Child Support

### Special Expenses

**All special or extraordinary expenses must be in a child's best interests. The extraordinary educational and activity expenses must also be assessed against both parents' incomes and ability to pay a share.**

#### How long child support is paid

Child support must be paid for a child under the age of majority. In the NWT, that is age 19. Child support can continue after that age if an adult child is unable to support themselves. This happens most often when a child is attending university or college full time or who has serious health problems or disabilities that make it impossible to be self-supporting. When an adult child is eligible for support, the table amount of support might be appropriate, or parents will need to consider the child's means, needs and other circumstances and the parents' means and needs as well. This can result in a different, non-table amount of support. This can be complicated to decide. Legal advice can help.

#### Additional costs related to children

Some expenses are not expected to be included in child support but can be added to the monthly child support paid.

This includes:

- childcare expenses paid so a parent can work or go to school;
- medical or health related expenses for the child;
- extraordinary educational expenses, including for post-secondary education; and
- extraordinary expenses for extracurricular activities.

These are known as “special and/or extraordinary expenses” under the Guidelines. The Guidelines require these expenses be reasonable.

When an expense qualifies as a “special or extraordinary” expense, both parents must contribute to the net cost of the expense in proportion to their incomes. That means both parents will share the expense after all tax deductions are made. The net amount may be shared equally when parents earn the same income. When they have different incomes, the higher earner would pay a proportionately higher share of the expense.

If you want to calculate each parent's share, you can do this by dividing each parent's total income by the combined total income of both parents. For example, if one parent has an income of \$20,000 and the other parent has an income of \$30,000, together, their incomes total \$50,000. The first parent would pay 40% (20,000 divided by 50,000 = .04 or 40%) and the second parent would pay 60% (30,000 divided by 50,000 = 0.6 or 60%).

If you share parenting time of your children equally, you can use your discretion about how you share any extra expenses in addition to child support based on the conditions, means, needs and other circumstances of you and your children.

### **When the table amount may not apply**

There are some situations when using the table amount of child support may not be appropriate and a different amount will be used.

This includes:

1. when parents share the parenting time of their children equally;
2. when a child is over the age of 19 and still entitled to support;
3. when a paying parent earns more than \$150,000.00;
4. when paying the table amount causes “undue hardship”.

The table amount will be reviewed and if it is not appropriate, the parents or a judge will need additional information to assess what amount of support should be paid. Many of these cases can be more complicated, and you should talk to a lawyer if you think any of these situations apply to you.

## Section 3: Child Support

### Child Support Agreements

#### Agreements

Parents can agree between themselves how much child support should be paid. However, to be accepted by a judge, if your situation ends up in Court, the agreement must normally meet the requirements of the Child Support Guidelines.

Even though parents may reach an agreement to calculate child support without using the Guidelines, a judge may refuse to accept it if the judge believes it does not meet a child's needs. A judge can decide to apply the Guidelines even though the parents wanted something different. In a divorce, a judge can also refuse to issue the divorce if it appears the agreement on child support does not meet the children's needs.

For that reason, if parents agree on child support that is less than the amount set out in the Guidelines, the agreement should be in writing and should include the reasons for this decision. If it can be shown that they have met the child's financial needs in other ways, the court may allow child support payments that are lower than the Child Support Guidelines suggest. It may be, for example, that the parent has given the family home to the parent.

If a judge does not accept the agreement, the change in child support may apply from the date of the original agreement. This means the paying parent would have to pay the difference between what the judge ruled should have been paid, and what was actually paid in the past.

If you and your ex-spouse want child support to be different than the Guidelines, you should both talk to a lawyer so that you understand how it may affect you and your children in the future.



**For more information about Child Support Guidelines or to see a copy of the tables used to set child support, do an online search for “child support NWT” (or the payor’s province/territory) or “child support federal” if you are getting divorce. You can also go to:**  
<https://www.justice.gc.ca/eng/fl-df/child-enfant/2017/look-rech.asp>

## Changing and Enforcing a Child Support Order

Every year child support is paid, income information will need to be disclosed by the paying party. If there has been a change in income, the Child Support Guidelines should be re-viewed to determine what new amount of child support should be paid.

Either parent can apply to have an order or agreement about child support changed if there is an increase or decrease in the payor's income or a change in the children's living arrangements, or after child turns 19.

If you and your ex-spouse can't agree on how to revise your child support payments, you can ask a court to change ("vary") child support. If you and your ex-spouse both live in the NWT, you would apply to the court that made your last support order. If you have no order yet, you can apply in the Territorial or Supreme Court of the NWT if you are separated, but not divorcing. If you are divorced or divorcing, you must apply in the Supreme Court of the NWT.

You may also be eligible to use the NWT Child Support Recalculation Service to adjust your child support amount each year. As of March 2021, this Service is under development.



**Check for updates on its operation on the GNWT Department of Justice website at:**

<https://www.justice.gov.nt.ca/en/browse/children-and-families/>

## Section 3: Child Support

### *Changing and Enforcing a Child Support Order*

If one parent lives outside the NWT and you are separated, but not divorced or divorcing, you will ask the court in the other Province or Territory for this change by using the procedures in the NWT Inter-jurisdictional Support Orders Act. If you are divorced or divorcing, you must use the procedures outlined in the Divorce Act. Regardless of which Act you use, the process is now very similar. In either case, it is best to get more information on your specific circumstances by getting legal advice. You can request the necessary forms from the NWT Maintenance Enforcement Program (MEP). The program will send these documents to the maintenance enforcement office where the other parent lives. The other parent will be notified of the application and the court where that person lives will make the appropriate support order. Your ex-spouse can also ask for a change in child support by sending those court papers to the Supreme Court of the NWT to ask for a revised court order.



To enforce an existing support order or agreement, you can register with the Maintenance Enforcement Program. They can take steps to collect support for payors living in the NWT and can work with another province/territory or country to enforce payment under the support order if your ex-spouse lives outside the NWT.



**Copies of the necessary forms are available on the Department of Justice website:**

<https://www.justice.gov.nt.ca/en/support-order-enforcement-forms/>

For further information, contact the Maintenance Enforcement Program office:  
3rd Floor, YK Centre East  
#17 - 4915, 48th St.  
Yellowknife NT X1A 3S4  
Telephone: 867-767-9258  
Toll free: 1-800-661-0798  
<https://www.justice.gov.nt.ca/en/boards-agencies/maintenance-enforcement-program/>



# 4 Spousal Support

## What is Spousal Support?

When a couple separates, one spouse may not be able to financially support themselves. This can happen if one spouse stayed at home to care for the home or children, or if one spouse was disabled or ill and could not work. A spouse in those circumstances can be entitled to get spousal support from their ex-spouse.

If the spouses were married and one of them has begun a divorce action, the *Divorce Act* is used to determine if a spouse should get support. If the spouses were not married or if married spouses have separated but are not seeking a divorce, the *Family Law Act* applies to spouses who live in the Northwest Territories. The law, in either case, is very similar. In the case of spouses who were not married, however, a spouse must apply for support within two years of the end of the relationship to be eligible for support under the *Family Law Act*.

## Section 4: Spousal Support

### *What is Spousal Support?*

In each case, it is important to consider:

- how long the couple lived together;
- the employment history of the spouses;
- the education level of the spouses;
- the earning ability of the spouses;
- the impact of parenting responsibilities on a parent's ability to be financially self-supporting;
- the age of the spouses;
- the spending patterns during the relationship;
- the current living expenses of each spouse; and
- the income of the spouses.

In determining whether a spouse should have to pay support to their ex-spouse, the case law decided in the Courts sets several other factors to consider:

- whether the people had an agreement to pay support at separation;
- any financial advantages or disadvantages to the spouse resulting from the relationship or the breakdown of the relationship;
- whether the spouse seeking support has responsibilities for childcare which may limit their ability to earn income; and
- whether either of the spouses has experienced financial hardship due to the breakdown of the marriage.

**Sometimes it is also necessary to look at each spouse's monthly income and expenses. This requires completing financial statements and budgets.**

If spouses have very different incomes at separation, this is not, on its own, a valid reason to require the higher income earner to pay spousal support to the lower income earner. Instead, the law requires a finding that a spouse is entitled because she or he has a compensatory claim or a non-compensatory claim for support or because it was part of a marriage contract / pre-nuptial agreement.

A spouse can be entitled to spousal support if they suffered economic loss or disadvantage because of the roles adopted during the marriage or when she or he gave their spouse something of financial benefit and weren't adequately compensated for it.

Common examples include when:

- a spouse stayed home with children full-time or part-time,
- was a “secondary earner”,
- moved for their spouse’s career,
- supported the other spouse’s education or training, or
- worked primarily in a family business before the separation.

In other scenarios, a spouse may be eligible because they have a need for support, often because they have been unable to work because of illness, because they were in a long marriage that resulted in financial hardship when it ended, and there is a demonstrated need for support.

If spousal support is paid, it is necessary to decide how much support should be paid and for how long. To decide the amount of support, some people look at the Spousal Support Advisory Guidelines. They provide a range of support that is designed to give each ex-spouse a very similar monthly cash flow. These guidelines are advisory only and are not binding, like the Child Support Guidelines.

The Spousal Support Advisory Guidelines will also suggest a length of time the support should be paid. It may be paid for a specific length of time, for example, half the length of a short to medium length marriage, or for an “indeterminate” period of time when the marriages lasted more than 25 years.



**If you want to read more about these Guidelines and when a person can be entitled to receive spousal support, you can do an online search for “Justice Canada Spousal Support Guidelines” or look here: <https://www.justice.gc.ca/eng/fl-df/spousal-epoux/ssag-ldfpae.html>**

If spousal support is agreed on, or required by a court order, it can be paid as one lump sum or as several payments over time. Unlike child support, if the spousal support is paid periodically, like every month, the paying spouse can claim the spousal support as a tax deduction, while the receiving spouse must pay tax on the support as income.

## Section 4: Spousal Support

### *Changing a Spousal Support Order*

#### Changing a Spousal Support Order

A spousal support order can be changed (varied) if there has been an unanticipated change in the condition, means, or other circumstances of one of the spouses since the original agreement or order was made. For example, it may be that the paying spouse has retired and now has a lower income. Or the receiving spouse may have been responsible for the care of young children and was not able to work but the children are now all in school full-time and he or she is working full time again.



Whether the order was made under the *Divorce Act* or the *Family Law Act*, you can make an application to vary the terms of the order in any jurisdiction in Canada. You may have to take steps to register the Order in the other jurisdiction before it can be changed (or varied) there.

If the spouse receiving support has difficulty collecting support, help is available from the Maintenance Enforcement Program. They can take steps to force collection in the same way that an unpaid child support order can be enforced.

### **Enforcing the collection of Support**

A spouse can choose to register an agreement or a court order for the payment of child support or spousal support with the Maintenance Enforcement Program (“MEP”). This is often helpful when spouses do not want to exchange money directly, they want a neutral agency to accurately track the payments that are made or received or they want help to collect support that is not being paid voluntarily.

If you register with the MEP, the other person is notified. If the other person owes the support (the “debtor”), MEP will attempt to make a payment plan with that person. Parents can pay their support by cash, cheque, direct bank withdrawal, credit card or straight off their pay cheques.

**The MEP can enforce child and spousal support orders all over Canada, the United States and many other countries.**

## Section 4: Spousal Support

### *Changing a Spousal Support Order*

If the debtor won't make a payment plan or does not make the payments, the MEP will take enforcement action that can include:

- **Federal garnishee**

The MEP can collect money from the debtor that is sent by the Federal Government like employment insurance, income tax refunds, GST rebates, Canada Pension Plan payments.

- **Wage attachment**

A portion of the debtor's wages can be paid directly from the debtor's employer to the MEP.

- **Non-wage garnishee**

The MEP can take money from the debtor's bank accounts and redirect payments made to the debtor from the Workers' Safety and Compensation Commission (WSCC) payments, social assistance or other GNWT program payments.

- **A lien on the debtor's property**

A lien is a notice filed with the Land Titles Office that tells people there is a debt owing and the land is security for that debt. This means that a buyer of that property may be responsible for the debt unless the lien is removed. Because a purchaser will usually not want that responsibility, the debt will have to be paid before the property can be sold.

- **Seizure of assets**

When assets are seized, a court official can take possession of the asset and sell it. The money received from the sale can then be used to pay the support.

- A debtor's passport, or other federal licenses can be held, and renewals refused.

- A debtor can be required to appear in court for a default hearing and the debtor must disclose financial records and income.

- A debtor can be jailed.

Once an agreement or order is registered with the MEP, all payments of support must be made to the Program. MEP will then give the money to the person who is receiving support. To register with the MEP, complete and submit the form in the registration package along with the court order or agreement that requires support to be paid. There is no cost to register with the MEP.

To get copies of the forms, contact your lawyer or the Maintenance Enforcement Program at:

3rd Floor, YK Centre East  
#17 - 4915, 48th St.  
Yellowknife NT X1A 3S4

Telephone: 867-767-9258

Fax: 867-873-0106

Toll Free: 1-800-661-0798

<https://www.justice.gov.nt.ca/en/boards-agencies/maintenance-enforcement-program/>



# 5 Family Property

**You have rights and obligations related to family property if you are a “spouse”. See the definition of spouse in the Glossary section of this Guide at page 117.**

Property most commonly includes assets like a home, land, a cabin, furniture, a family business, vehicles, bank accounts, investments and retirement savings and pensions. It can also include an interest in a trust and any other thing that has a financial value.

## Section 5: Family Property

The law recognizes that spouses contribute in different ways during a relationship whether that contribution is financial or otherwise. The law will consider these contributions as equal. Unless spouses made a written contract before or during their relationship that contradicts this, when a marriage or common law relationship ends, each spouse is entitled to get an equal share of their family property.

If spouses do not reach agreement on the division of their family property, the *Family Law Act* gives a spouse two years from the date of separation to file a claim with the court asking for the division of property. This time can be extended in some circumstances but is not easy.



## Division of Property

Under the *Family Law Act*, the general rule is that the “net family property” of each spouse is to be calculated and then divided equally between them. To calculate the net family property, each spouse must list and value all the assets they have at the separation date, then deduct the debts and liabilities each has at the separation date, then deduct their net worth from the start of their relationship.

Some property is excluded when calculating a spouse’s net family property:

- any property that was excluded in a pre-nuptial agreement or other marriage contract; and
- damages or a right to damages for injuries that a spouse received.

Some property is calculated differently. This applies to gifts from third parties, an inheritance or money received from a life insurance payout. If these types of property were acquired during the relationship, a spouse must determine the value of that property when it was first obtained and its value on the date of separation. The law says they can deduct the lower value from the net separation date value of their other property.

If the calculations of net family property show that one spouse would leave the relationship with more value than the other, that spouse would have to pay money to the other spouse so they both leave the relationship with an equal amount.

To reach an agreement on division of property that is fair, reliable and final, spouses must fully disclose details about all their property to each other. Full disclosure means sharing complete information that includes copies of all bank statements, loan statements, investment reports, and appraisals of more expensive items that can be difficult to value without professional assistance (like a home or business). Having this full financial disclosure ensures spouses can make the best decisions by relying on accurate information.

Although the general rule requires an equal division of property, the Family Law Act allows for an unequal division of property if it would be “unconscionable” to share the net worth equally. This kind of order is rare. If a court must decide this issue, the spouse who wants a higher share of the property must prove to the court that it would be extremely unfair to divide things equally.

## Section 5: Family Property

### Family Home

#### Family Home

The house or apartment that you and your spouse lived in at the time of separation is called the family home. A “family home” can be a place that you own or rent. Both you and your spouse have an equal right to live in (or “possess”) the family home at separation.

If only one spouse’s name is on the lease or the title, the other spouse’s right to be in the home is different if they are married or were living common-law. When a couple is married, the spouse who is not on title or on the lease has a right to possess the home until they get divorced, unless an agreement is signed, or a court order says otherwise. If the spouses are not married and have separated, the right of possession for the other spouse expires six months after the date of separation, or a later date agreed to in a written agreement that is signed within 6 months of separation, or is in a court order that was requested within 6 months of the separation date.

When the home is rented, and only one spouse signed the lease, the other spouse may only get exclusive possession of the home for up to 90 days unless the landlord agrees to a longer period of time.

In some cases, a court can make an order saying that only one spouse has a right to be in the family home after the separation. If an order like this is made, the other spouse no longer has the right to go into the family home and can be charged with a criminal offence if he or she enters the home without permission.

#### The Family Home on Reserve

There are 2 reserves in the NWT. The Salt River First Nation, located in and around Fort Smith and the Kátł’odeeche First Nation in Hay River.

Territorial laws, like the *Family Law Act* and the *Protection Against Family Violence Act*, do not apply to homes on reserve lands. Instead, a federal Act called the *Family Homes on Reserves and Matrimonial Interests or Rights Act* does. The Act allowed First Nations to create their own laws about matrimonial real property on reserve and provides a set of provisional federal laws to be used until a First Nation establishes its own law.



Check with Legal Registries at 867-767-9302 or toll-free at 1-877-743-3301 to see whose name is on the title to the family home.

The Salt River First Nation has created its own laws under this Act. The Kát'odeeche First Nation has not and is subject to the provisional rules in the Act.

The Act applies to married couples and couples who have lived together for at least one year so long as one of the spouses is a member of the reserve or is Indigenous.

The federal law does three things:

1. it allows a judge to make an emergency protection order that affects a home on reserve so that a victim of violence can stay in the home for up to 90 days, even if they are non-Indigenous. The order can be extended.
2. It recognizes that both spouses have a right to stay in the home during their relationship even if one spouse is non-Indigenous. It allows a judge to make an order giving a spouse who does not own the home the right to stay in it for up to 180 days after a separation, or for 180 days after their spouse dies.
3. Each spouse is entitled to half the value of the family home on reserve. If a spouse is non-Indigenous, the Indigenous spouse will have to buy the other's interest in the home after separation.

The Act cannot give a non-Indigenous spouse the right to own property on reserve.

## Section 5: Family Property

### Pension Plans and RRSPs

#### Pension Plans and RRSPs

Pensions and RRSP contributions are considered assets like any other, and can be divided after separation.

Pensions are sometimes forgotten about when spouses divide property, but they are often the most valuable assets people have. The Government of the Northwest Territories and the Government of Canada have a formula to determine how government pensions are divided upon separation or divorce. It is a simple matter to request a statement calculating the maximum divisible value of a GNWT or federal government pension from the pension administrator. The pension administrator needs to know the date you began living together and the date of your separation to prepare the valuation. This report is prepared free of charge. Arriving at a reliable value for non-government pension plans can be complicated, and you should talk to a lawyer or an accountant to learn more.

**The amount of the retirement pension you or your survivor will receive is dependent on how long and how much you have contributed and in some cases your age.**

#### Canada Pension Plan

Everyone who works contributes to the Canada Pension Plan (“CPP”) through automatic deductions from their pay cheques. Employers contribute for every employee as well. These combined contributions create a small retirement pension. The CPP provides basic benefits to you when you retire or if you become disabled. When you die, benefits may be provided to your spouse or common-law partner and dependent children.

The pension “credits” that either spouse earned under the Canada Pension Plan during a marriage or common-law relationship can be divided equally between them on separation or divorce. To equalize the existing Canadian Pension Plan credits of spouses, a written agreement or court order must be provided as proof of the separation.



**You can find more information by doing an online search for “CPP division” or by looking here:**

<https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-split-credits.html>

### **Changing Beneficiaries**

At separation, you should review the many places your spouse is listed as your beneficiary. This often exists on a life insurance plan, a pension and retirement savings accounts, a tax free savings account, and in a will. Your employer may also show your spouse as a recipient of your family health care benefits. You should decide whether you want to and can keep this as is, which may be appropriate where you trust your spouse to use these financial resources to support your child or children after you die. You may instead decide to change your beneficiaries if you are concerned these funds could be used for other things or would form part of your ex-spouse's estate and then be paid, in part, to a new spouse instead of your children.



# 6 Family Violence and Abuse

**Family violence and abuse includes any attempt by one person in an intimate relationship, marriage or family to dominate and control the other. An abuser uses fear, guilt, shame, intimidation and violence to wear down a victim and keep control.**

Domestic violence and abuse can happen to anyone. It happens within heterosexual and same-sex relationships. It occurs within all age ranges, ethnic backgrounds and economic levels. And while women are more often victimized, men also experience abuse, especially verbal and emotional.

## Section 6: Family Violence and Abuse

Family violence often follows a cycle that can begin with insults or threats and verbal assault that can eventually escalate to physical violence. Usually the abuser will then feel remorse and there is a honeymoon phase before the insults or verbal abuse begins again. And while physical injury may pose the most obvious danger, the emotional and psychological consequences of domestic abuse are also severe. Emotionally abusive relationships can destroy a person's self-worth, lead to anxiety and depression, and make a person feel helpless and alone. Violent or abusive behavior is never acceptable. Everyone deserves to feel valued, respected and safe.

In Canada, about one in four couples who get separated or divorced have experienced some form of family violence or abuse. Violence between spouses often gets worse at the time of separation or divorce. The risk of serious injury or death increases after separation.

## Some Effects of Family Violence on Your Child

Children's health is linked with children's safety and security. Children living in a home with family violence are at risk of significant harm.

Children can experience family violence in many different ways, including:

1. Physical or psychological abuse may be directed at a child by a parent;
2. Children may be witnesses to family violence; or
3. Children may see physical injuries on a family member or may be aware that one parent is afraid of the other parent.

Men who are violent to their female partners are also likely to be violent to their children. The overlap between men's violence toward women and physical abuse of their children is estimated as in the range of 30-66%.

Children experiencing family violence often miss school and when they do attend, they can find it hard to concentrate because they are worried about what is happening at home. They are also likely to experience isolation and bullying, because of the fear, shame and secrecy surrounding the abuse in their home. They often feel they are to blame for violence in their family, and it damages their self-esteem.

If you are being abused and are forced to leave home for your own safety and you take the children with you, (or you could not take the children but you would like them to be with you) you should contact a lawyer immediately. If you wait too long, a judge can decide that a change in the children's care is not best for the children.

If you are afraid that your spouse will hurt you or your children, you have some choices in deciding what protection to use and what help to request. It can help to talk to a lawyer to understand your choices, legal rights and how the law can help you stay safe. It may also help to talk to a trusted counsellor or social worker to find out what resources exist to help you and your children stay safe. They may be able to help you create a safety plan that you can use when you feel afraid or want to stop the cycle of violence from getting worse. Find out what other services and supports are available in your community, whether it is a shelter, a family member or social services.

**Family violence is associated with a raised incidence of miscarriage, low birth weight, premature birth, fetal injury and fetal death. A third of family violence starts or escalates during pregnancy.**

## Section 6: Family Violence and Abuse

### *Some Effects of Family Violence on Your Child*

Youth who grow up in homes where there is violence and abuse have an increased risk of self-harm, drug and alcohol misuse and running away from home. Seeing their parents in a violent and unhealthy relationship can make it difficult for them to develop their own healthy relationships later in life. Children from abusive homes often find themselves in relationships where abuse continues by them, or against them.

The Department of Health and Social Services maintains a help directory which includes a variety of resources which are available to support NWT residents. Programs and services are available to assist with things like: Addictions, counselling, mental health, hospitals and health centres, support groups and more.



[www.hss.gov.nt.ca/sites/hss/files/help-directory.pdf](http://www.hss.gov.nt.ca/sites/hss/files/help-directory.pdf)

If you believe you or your children are in immediate danger, you can decide to use your safety plan or to call the local shelter or other support agency, or the RCMP.



**For more information on creating a safety plan, do an online search for “family violence safety plan” or look here:**

<https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/plan-your-safety.html>

## Family violence and the law

The law has declared family violence and abuse unacceptable.

The NWT *Protection Against Family Violence Act* and the *Divorce Act* both define family violence to include physical violence like hitting, emotional violence like being regularly insulted and unwanted sexual contact. Violence also includes damaging or threatening to damage your things; being forced to stay in the home when you want to go, and having money taken away from you to control you. The laws recognize other forms of family violence as unacceptable.

The *Divorce Act* prioritizes the safety, security and well-being of children above all other factors.

If a judge is convinced there has been family violence or abuse, this can affect a judge's decision about where children will live, if and how children will spend time with an abusive parent, and if an abusive parent will have decision making responsibilities. This applies whether parents are separating and asking a judge to make decisions under the NWT *Children's Law Act*, or if they are getting a divorce under the *Divorce Act*.

If you are getting a divorce, a judge will also consider the abuser's ability and willingness to care for and meet the needs of the child. To do that, the court must consider the history of family violence and how it affects the violent parent's ability to act in the child's best interests.

Some of the factors that will be considered include whether:

- the child fears the abusive parent
- the abusive parent could be violent against the child
- the abusive parent might use their relationship with the child to harm or control the other parent;
- the abusive parent can be an appropriate role model, and provide guidance to, the child; and
- the abusive parent has taken any steps to prevent future family violence and to improve their ability to meet the needs of the child.

Under the *Divorce Act*, proof of family violence will also allow a spouse to keep a new address or change of address private when they must send their spouse notice of a relocation.



## Section 6: Family Violence and Abuse

### Legal Protection from Family Violence

**If you believe there is an immediate risk of harm to you, someone else in your household, or to your property, you can ask a court for an emergency protection order (EPO).**

### Legal Protection from Family Violence

The NWT *Protection Against Family Violence Act* allows people in abusive relationships to ask a Judge for an order that creates time and space to reduce or eliminate the risk of family violence happening. A person can ask for an Emergency Protection Order, and a Protection Order. The differences between these orders is described below.

#### Emergency Protection Orders

An EPO can protect you from:

- a spouse or former spouse;
- someone who lives with you or who has lived with you in a marriage-like or family relationship;
- a parent of your child; or
- your child or grandchild.

**“An EPO can be made very quickly, usually in a few hours, and without a lawyer’s help.”**



## How to Apply for an Emergency Protection Order

**Call 1-866-223-7775 (Alison McAteer House) or your local RCMP and tell them that you want to apply for an Emergency Protection Order (EPO).**

1. You will need to tell them what is happening at your home and why you need help right away.
2. The person you call will help you talk to a specially trained Justice of the Peace, who will decide whether you need emergency protection.
3. When you talk to the Justice of the Peace you will need to talk about these things:
  - a. the nature of the family violence you have experienced;
  - b. the history of family violence you have experienced;
  - c. why you think there is immediate danger to you or someone else or your property; and
  - d. how an EPO will be in your best interests or in the best interests of any child that will be affected by the EPO.
4. An EPO will be made if the Justice of the Peace accepts what you say shows that family violence has probably occurred and that the situation is serious enough or that an order is urgently needed to protect you or another person from the risk of harm or is needed to protect your property from being damaged.
5. The RCMP will give you and the abusive person a copy of the Emergency Protection Order and will help to make sure you are safe. You can also ask for their help if the other person disobeys the order.
6. The Supreme Court in Yellowknife will review the order and either confirm the order or, if the judge does not think there was evidence to support the EPO, it can direct that a hearing be held.
7. If you want help to know how to respond to a notice of a hearing, you can contact the court worker closest to your community, Legal Aid or the Outreach Clinic.
8. You and the person you fear will receive notice of the decision. A review hearing can be done over the telephone. In order to set up a teleconference contact the Supreme Court Registry in Yellowknife at 1-866-822-5864. It is necessary to contact the Court Registry immediately regarding the hearing if making a request to be heard by telephone.

## Section 6: Family Violence and Abuse

### Legal Protection from Family Violence

**If an EPO is made, it takes effect immediately. It remains in effect until the Supreme Court either confirms it, changes it or cancels the order altogether.**

#### A JP can include these protections in an EPO:

- the person you fear cannot talk to you or other specified people (sometimes that includes your children, if they are also at risk of harm);
- you, or the person you fear must leave the house;
- if the person you fear is in the house when the order is made, the police can be told to remove that person;
- the police will go with the person who must leave the house to help them get their personal belongings;
- name who will have exclusive use and possession of other items in the house, at least temporarily (for example, a vehicle);
- the person you fear cannot damage, sell, or take property that you also own;
- the person you fear must give police any weapon they own and any document that allows them to own or purchase weapons for the length of the EPO;
- how long the EPO will apply (up to 90 days); and
- any other term that is necessary to give immediate protection to the person at risk of harm.

#### What to do if an EPO is made against you:

1. The RCMP will give you a copy of the Emergency Protection Order. The Order applies immediately. Read it carefully. You must follow the Order when it remains in effect.
2. If you disagree with the Order or the conditions of the Order, contact the Court Worker for your community or call Legal Aid at 1-844-835-8050.
3. Disobeying the conditions of the Order is an offence and you might have to pay a fine of up to \$5,000.00, go to jail for up to 6 months, or both.
4. You have the right to apply to the Supreme Court in Yellowknife to either change or cancel the Order. If you want to do this, contact legal aid or the Court Registry at toll free 1-800-822-5864.
5. You have the right to seek a lawyer for advice on what your rights are and what you are required to do respecting this Order.

## Protection Orders

A Protection Order applies when your immediate situation is not an emergency or you need protection for longer than 90 days and there are other issues for a court to deal with.

The Protection Order is an order of the courts and is granted only after you tell the judge why you want this Order. Sometimes this is done without notice to the person you fear. In most cases, a judge will decide whether to make the order after reading your sworn written statement of the reasons why you want this order (your affidavit). If the person you fear knows you are going to court for this, they can also prepare an affidavit for the judge to read and consider.

The judge making a protection order can do things that cannot be done with an EPO. For example, the judge can order the person you fear to go to counselling, to pay for medical and dental costs, repair or replace items destroyed, or pay other costs connected to their violence.

If a protection order is made without both people participating in the hearing, the Order is not effective until the other person gets a copy of the Order.

**Getting this order will take longer and it can be helpful to have a lawyer work with you.**

## Section 6: Family Violence and Abuse

### *Restraining Orders*

**You can get a restraining order by applying under the *Children's Law Act* or the *Family Law Act*.**

### Restraining Orders

A restraining order is another kind of order that can be made to help protect you from a person you fear. You must establish that a restraining order is reasonable. It does not require proof of a violent relationship or incident. If it is made, it stops the other person from contacting you and other people named in the order.

The order will list certain conditions, depending on what you ask for. Most of the time the order will say that your spouse or ex-spouse can have no direct or indirect contact with you or your children – no visiting the home or workplace, no phone calls or letters, and no messages through other friends or relatives. Talk with a lawyer about getting the order and discuss the conditions that will keep you and your children safe.

The court will not automatically order specific terms of the order. You must be sure to ask the court for the terms that you think will help you stay safe in your circumstances. A restraining order can be very detailed and specific to your needs. You should speak to a lawyer about applying for an order.

Most people apply for a restraining order at the same time they are making an application on other family law matters. If you have suffered from family violence but are not currently in an emergency, you can apply for a restraining order at the same time as other family matters.

In a non-emergency situation, the person you fear will be told you want a restraining order by getting served with the court papers. That person can then prepare a written response (their affidavit) and be in court to tell the judge what they hope the judge will decide.

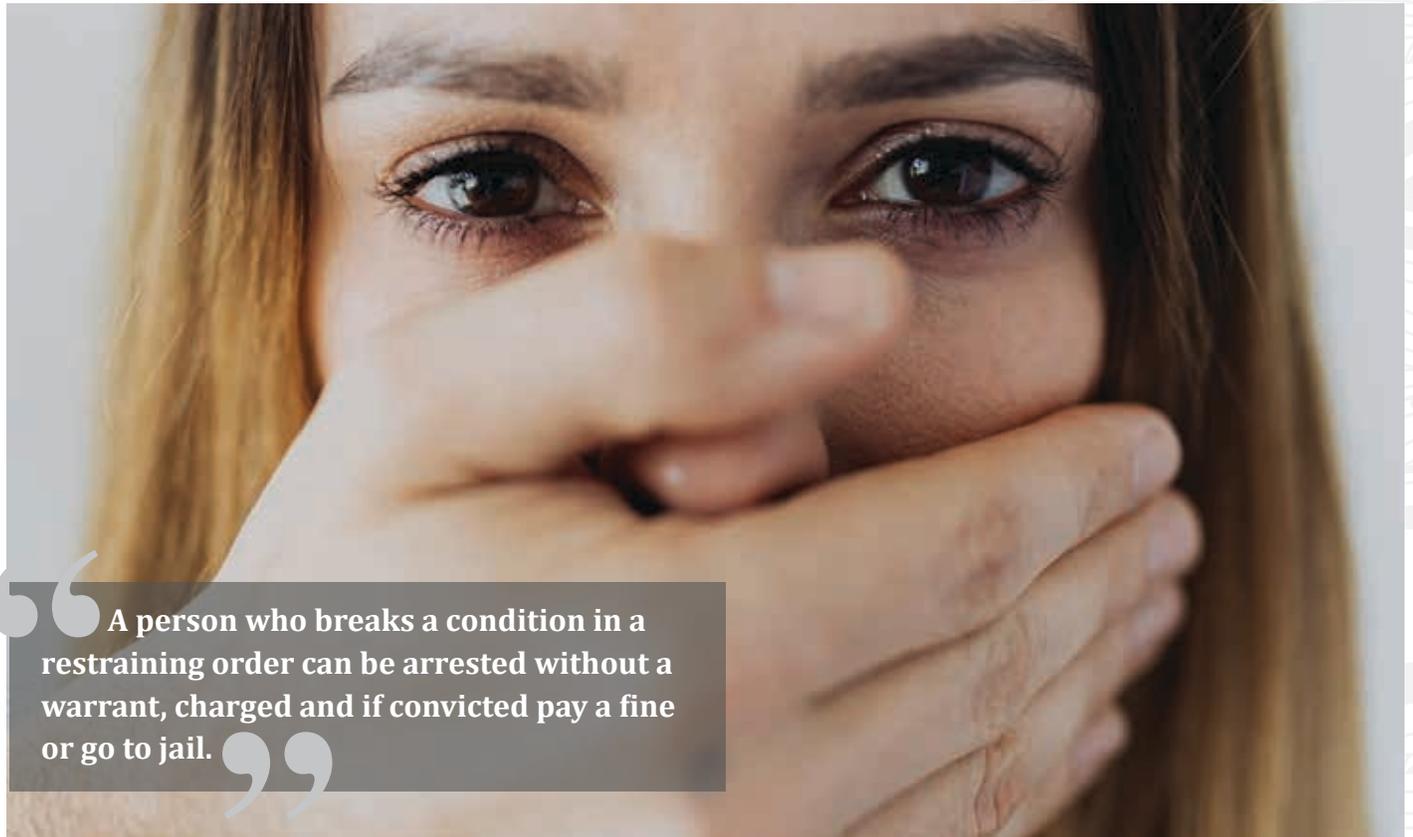
In an emergency it is possible to make an application for a restraining order, *ex parte* (without giving the other person notice of the hearing). If an order is made in that way, the court will set a date to review the order so that the person named in the restraining order can be there to present their side if they want to. The order will be effective after it has been served on the other person.

A restraining order can force your spouse or ex-spouse to:

- stay away from you or any children in your lawful custody;
- not communicate with you or children except as the order allows;
- surrender any weapons to authorities; and
- keep from possessing certain property.

A person who breaks a condition in a restraining order can be arrested without a warrant, charged and if convicted pay a fine or go to jail. Make sure that you have a copy of the restraining order to provide to the police if needed.

If you agree to see the person who is not supposed to contact you, or you invite them to talk while the restraining order is in effect, it may lead to the Order being ended early.



**“A person who breaks a condition in a restraining order can be arrested without a warrant, charged and if convicted pay a fine or go to jail.”**

## Section 6: Family Violence and Abuse

### Peace Bond

#### Peace Bond

A person can get peace bond under the *Criminal Code* if they have a reason to fear for their own or their children's safety or they fear their property will be damaged and a judge agrees it seems likely a person could commit a criminal offence, but there is no reasonable basis to believe an offence has been committed yet.

A peace bond cannot protect you from emotional or financial abuse. It is an order from a criminal court and requires someone to keep the peace and obey any other conditions that the court puts on the order.

To get a peace bond, you must make a formal complaint to the RCMP and you must swear to a statement called an "information" giving the details of why you are afraid a crime may be committed against you, your child or your property. The RCMP will take responsibility for getting this into court. A court will need evidence to support what you say to justify restricting the freedom of another person.

A peace bond can be granted for a maximum of 12 months and is enforceable anywhere in Canada. If a person does not follow the peace bond, they can be arrested and charged with a criminal offence. Make sure you have a copy of the peace bond.

If you agree to see the other person or invite or encourage the person to talk to you or ignore other terms of the peace bond, this could result in another court hearing and the judge may end the peace bond early.

#### Changing An Order

You can always ask a court to change a peace bond, restraining order, protection order or emergency protection order. Before you make a request for any changes, it is best to speak with a lawyer, a victim service worker or a counsellor from Alison McAteer House. Talk to them about how this will affect your safety and the safety of your children. It is important to be sure a change will not put you or your children at risk of harm.

## Victim Services

Victim services programs provide referrals, information, assistance and support to victims of crime – both reported and unreported.

**Victim Services workers provide information to people about:**

- the criminal justice system and processes;
- the progress of their cases;
- the role of the RCMP and Crown counsel;
- the recovery of property;
- being a witness and what it involves; and
- other local resources and types of assistance available.

**Victim Services workers help people with:**

- medical forms, offender restitution and Victim Impact Statements;
- home security checks;
- visiting various agencies and the courts; and
- arranging childcare and transportation.

**Victim Services workers assist victims involved in the court process by;**

- explaining the court to get familiar with the court setting;
- explaining procedures, terms and the roles of court personnel;
- going to court with the person when necessary; and
- providing emotional support from the time of first contact throughout the court process and after, if necessary.

**Victim Services workers can also refer people to outside resources in the community who provide:**

- medical services;
- financial help;
- child protection;
- counselling or mental health services;
- transitional housing; and
- rehabilitation services.





# 7

## Keeping Children Safe

All children have a right to live free from abuse and are entitled to protection from abuse, harm and neglect. Parents have a duty to protect children and to provide them with a nurturing and safe place to live. Children depend on their parents for their love, support and protection. Sometimes, a parent or caregiver is not able to meet these needs. This section of the Guide talks about child protection and the legal ways other people can get involved in your family if there is belief that your child is not safe, or they are being hurt, abused or neglected.

## Section 7: Keeping Children Safe

The law that applies in these situations is the NWT *Child and Family Services Act*. The *Child and Family Services Act* recognizes that everyone and every community has a role to support and promote the best interests of children and the well-being of families. It requires the Department of Health and Social Services and its Director of Child and Family Services (the “Director”) to offer programs and services to support families who are struggling to care for their children and in serious cases, if a child is not safe at home, the Director has the power to take a child out of their home.

One of the Director’s main roles is to help children and families and prevent harm before it happens. The programs and services created by the Director to help parents and families are offered by government social workers, called child protection workers. Child protection workers can work with children and families who ask for help, or agree to help that is offered by the child protection worker.



## Voluntary Support Services Agreement

Help can be given if parents enter an agreement with the child protection worker, usually called a “voluntary support services agreement”. It can be used to help parents get groceries, or extra help to look after the children at home (“respite care”), to get medical supports in place if a child is sick or disabled and to arrange counselling and access to drug and alcohol treatment programs.

Signing a voluntary services agreement is not a bad thing and does not make anyone a bad parent or caregiver. It does not mean a parent is doing anything wrong. It does not mean children should be apprehended. It only means that parents need extra help and is often seen as a sign of a responsible parent who is putting their children’s needs ahead of their own.

If a youth is between the ages of 16 and 23, he or she can independently enter into an agreement with the Director to get help caring for themselves for up to six months at a time when they are not receiving the care they need.

Entering into a voluntary support services agreement will not stop a child protection worker from apprehending children if the worker believes a child is at risk. They always have a duty to investigate any safety concerns even if there is an agreement in place.

**These agreements can last for up to 6 months at a time but can be renewed if needed. They can also be ended anytime they are no longer needed.**

## Section 7: Keeping Children Safe

### *When a child needs protection*

#### When a child needs protection

Everyone has a duty to keep children safe. The *Child and Family Services Act* requires anyone with information that a child needs protection to give that information to police or a child protection worker immediately. There are serious consequences if a person fails to do this including having to pay a fine, or in the most serious cases, up to six months in jail.

Under the *Child and Family Services Act* a child needs protection if there is a concern about:

- physical abuse;
- sexual abuse;
- emotional abuse;
- a parent's refusal to get their child necessary medical attention or other treatments;
- malnutrition, neglect, or abandonment;
- seeing or hearing family violence;
- use of alcohol, drugs, solvents or other substances and the parents do not get their child help;
- a child's parents have died and have made no plan for someone else to care for their child;
- a child's parents and extended family are not able or willing to properly care for the child;
- a child, older than 12, has killed or seriously injured another person or is damaging property and the parents do not get help for their child; or
- a child is involved in prostitution.

Based on this list, a child protection worker must investigate anytime someone reports a concern that

- a child was or is likely to be abused;
- parents are not providing reasonable care or supervision of their child;
- a home is unhealthy or unsafe for a child;
- a child is not being fed enough or at all;
- a parent has addictions to drugs, alcohol or gambling and it is affecting their ability to keep their child safe; or
- a child is being left alone with no sober caregiver.

## Investigations

Child protection workers also have the power to investigate reports of child abuse and neglect, and to remove a child from their home if it is necessary to keep a child safe until the parents can provide a safe home once again. When a child is removed from their home, this is called an “apprehension”, or that the child has been “apprehended”. Only children under the age of 16 can be apprehended.

The child protection worker will talk with the children. They can do this without telling the child’s parents. They will also want to talk to the parents or caregivers.

If the child protection worker does not think there was or will be a risk of harm to a child in their home, then the investigation will be closed, and the child will stay at home. A parent can always ask for extra help from the child protection worker and the child protection worker can offer to help the family too.

If the investigation confirms there is risk for a child at their home, the child protection worker must first look at all available options to see if the home can be made safe. Some options include entering a safety plan, or a short-term plan of care agreement. If there is no way to keep a child safe at home, the child protection worker must try to find another family member to care for the child. If no family option is found, the child will be placed in a foster home.

A child protection worker has 3 days (72 hours) to decide whether to keep a child away from home. If the child protection worker gets information that makes them believe it will be safe to return the child home, they will do that. If 3 days pass and the child would still be unsafe at home, the child protection worker must apply to court to ask the judge to approve (or “confirm”) the apprehension. The child protection worker must file documents with the court within 4 days after the apprehension. In that time, they are also supposed to establish a Plan of Care committee and may also (at the same time) try to negotiate a plan of care agreement with the parents.

**A parent has a right to be told what is being investigated and the details of the complaint. The child protection worker also must tell the parents they have the right to speak to a lawyer, and to help the parents find a lawyer.**

## Section 7: Keeping Children Safe

### Plan of Care and Plan of Care Committees



If your child has been apprehended, you have a right to get legal advice. You have the choice to participate in the plan of care process, or to choose to go to court. You do not have to sign anything unless you think it is going to be best for your child. If you want help to get information or to know what choices you can make after your child has been apprehended, you should talk to a lawyer. Legal Advice is available from Legal Aid (1-844-835-8050) or the Outreach Clinic (1-844-497-1319)

### Plan of Care and Plan of Care Committees

A plan of care committee will include one or both parents, a child that is over 12 years of age, and the child protection worker. It may also include another member of the child's extended family or other people who may be able to help the family. This committee's job is to try to develop a plan of care to ensure a child's safety and well-being and to get agreement from everyone to follow the plan.

A plan of care may include such things as:

- who a child will live with;
- what support services might help make the child's home safe;
- counselling for the parent, child, or both;
- the time a child will have with one or both parents;
- activities a child will enjoy; and
- whether a parent will help to pay the costs of caring for the child.

The committee must make a plan within 24 days after a child is removed from home. If the committee can prepare and sign the plan in time nobody needs to go to court. If a court case has already started, the child protection worker or their lawyer will tell the court about the agreement and it will be removed ("withdrawn") from court.

A plan of care can last for up to 12 months. It can be renewed for another 12 months if needed.

If the committee cannot agree on a plan within 24 days of the child being removed from home, the child protection worker must ask the court to make an order for the protection of your child.

## Apprehension Hearing

If no Plan of Care agreement is signed, the child protection worker will go to court for an apprehension hearing. At this hearing, a judge will hear what happened and decide if the child protection worker made the right decisions.

The judge must decide whether the child protection worker:

- had reasonable grounds to apprehend the child at the time of the apprehension, and that those grounds still exist at the time of the apprehension hearing;
- did everything reasonably possible to keep the child safe without apprehending the child; and

Parents have the right to appear in court at an apprehension hearing to tell their side of the story as well. It is a very good idea to get legal advice before going to court for any reason. Free legal advice is available by calling the Outreach Legal Aid Clinic, or by talking to the Outreach lawyer (or “duty counsel”) who is usually in the Yellowknife courtroom. If you do not know who duty counsel is, you can ask a sheriff or any member of the court staff to show you who you can talk to.

The judge will listen to the child protection worker or their lawyer, and to the parents or their lawyers and then decide whether the child did need to be removed for safety, or if the child should be returned home because it is no longer necessary. If the judge orders a child be returned home, there will be no more court unless there are new problems that come up in the child’s home. If the judge decides the apprehension was the right thing to do, the apprehension will be confirmed.

If the judge confirms the apprehension, the child will not go home. Instead, the child protection worker will decide whether the child can be safe if everyone can agree to a Plan of Care agreement. This can be an option even if a parent had refused to sign one before. If a Plan of Care agreement cannot be reached, or the child protection worker does not think the Plan can keep the child safe, the child will stay out of their home until there is another court hearing to get a protection order, called a “protection hearing”.

**The Judge must also find that keeping the child out of their home is the only reasonable way to keep the child safe.**

## Section 7: Keeping Children Safe

### *Apprehension Hearing*

The child protection worker will keep in touch with the parents and try to reach agreements together about what is best for the children. The parents will be asked if they agree their child needs protection and if they can agree to a protection order. This is an important thing to talk about with a lawyer before saying yes or no. If parents do think the protection order is best for their child, they can agree, and a court will make the order. If parents do not agree their child needs protection, or parents think the child protection worker's plan for the child is not going to keep their child safe, they can refuse to agree. In that case, there will be a protection hearing.



## Protection Hearing

A protection hearing is more detailed than an apprehension hearing. At an apprehension hearing, the child protection worker must prove they had a good reason to believe (or to think or there were “*reasonable grounds*”) that a child needed to be apprehended. In a protection hearing, the child protection worker must prove the child was actually in danger and the risk to the child was real.

At the protection hearing, a judge will decide whether your child is actually in danger and whether your child needs a protection order.

To make this kind of order, the child protection worker, with the help of a lawyer, must:

- explain why the child was removed from their home in the first place;
- explain why it is still unsafe for the child to be returned; and
- provide a plan of care to the court including provisions for:
  - where they think the child should live;
  - who they think the child should live with;
  - what support services they think might be needed to make the child’s home safe;
  - whether they think the parent or child needs counselling and if so, what kind of counselling, and how much counselling is needed;
  - how many visits, and what kinds of visits, are best for the parents to have with their child;
  - information on the child’s schooling and any supports the child needs at school;
  - what the child can do to have fun; and
  - anything else that they think might be best for the child’s health and well-being.

## Section 7: Keeping Children Safe

### Supervision Order

Like in an apprehension hearing, parents have the right to be in court and to have their own lawyer, to tell their side of the story, and to ask witnesses to tell the court helpful information about the child and the parents. Because the judge's decision is very serious, parents should always get legal advice before and during any court hearing.

The judge will listen to the child protection worker and their lawyer, and to a parent and their lawyer and anyone else who testifies in court. Then the judge will decide whether a protection order is needed to protect the child. If no protection order is needed, the process ends there and the child will be returned home.

If a protection order is needed, there are three different kinds of order that a judge can make:

1. a supervision order,
2. a temporary custody order, or
3. a permanent custody order.

The next section will explain more about each of these kinds of orders.

### Supervision Order

**Over time, the child protection worker monitors the home and the child to see what progress is being made.**

A Supervision Order is made when a child protection worker and a judge believe that a child can be safely cared for at home if the parents will follow conditions in the order and agree to let the child protection worker visit the home and the child from time to time. Some visits will be planned and sometimes the child protection worker will visit when the family wasn't expecting it.

A supervision order can last up to 12 months. If asked, and a judge believes it is still necessary, a judge can extend a supervision order for a longer period.

## Temporary Custody Order

Under a Temporary Custody Order, the overall goal is to help parents make the necessary changes so the children can be returned to a safe and stable home as soon as possible.

During the Temporary Custody Order, the Director is given most of the rights and responsibilities of a parent for the child. The child protection worker will work with the parents to give them access to services, programs and supports to deal with and correct the things that led to the child being apprehended. The child protection worker will also make sure the child is in a safe and healthy family or foster placement and gets all supports and services they need too.

The *Child and Family Services Act* sets time limits for these orders knowing that parents will need time to change their home or personal life, but this time is limited to recognize that children need safety, stability and certainty in their own lives.

A judge can add time to a Temporary Custody Order if parents are taking steps to make their home and family safe and need extra time to fix the problems so their children can return to them. Extending the order also makes sure children are kept safe while they wait.

The maximum time a Temporary Custody Order can be in place depends on a child's age recognizing that younger children need certainty of a safe and loving home sooner.

Children's Age	Maximum time for a Temporary Custody Order	Maximum time the Order can be extended
Birth to under 5 years	12 months	3 months
5 to under 12 years	18 months	6 months
12 to 16 years	24 months	12 months

## Section 7: Keeping Children Safe

### *Temporary Custody Order*

Once parents can offer a safe and stable home for their children, the Temporary Custody Order can be ended. This will be done in court. Either the child protection worker or the parents can ask the court to end the order. It is easiest to get this done if the child protection worker and parents agree the order should be ended. When the Temporary Custody Order is ended, parents will get to make the major decisions for their children again and the children will be returned home.

A child can only be returned to a person who was caring for the child when the child was apprehended, or to someone who has “lawful custody”. This means that sometimes a parent will need to get a written agreement or a court order giving them custody of a child before their child can leave foster care and live with that parent. If a parent is not sure if they have custody, they should talk to a lawyer.



## Permanent Custody Order

If parents are not able to make their home safe and stable for their children, even with the time they get from a Temporary Custody Order, the child protection worker will ask the court to make a Permanent Custody Order. This can happen at any time before the Temporary Custody Order ends.

A Permanent Custody Order transfers all of the parents' rights and responsibilities for their children to the Director who becomes the permanent legal guardian of the child. This means that the Director, through a child protection worker, will make all decisions about a child's care. Parents can still get information about their child's health, education and general welfare, but they will no longer be able to make decisions about those things.

## Ending a Permanent Custody Order

A Permanent Custody Order remains in effect until a child turns 16. The Order can be extended to apply until a youth turns 19. This must be done by a judge. The child protection worker and their lawyer will help with this. A youth is also entitled to have a lawyer work with them on this and can get that help from the Office of the Children's Lawyer. More information about that program is in the section of this Guide called Office of the Children's Lawyer at page 99.

In some cases, a parent can ask to end a Permanent Custody Order before their child turns 16 and so long as the child has not been adopted. This can only be done when a parent has made significant changes and has been able to show that they can give the child a safe and stable home. Ending this Order must also be in a child's best interests. This can be complicated, and it will be best for a parent to talk to a lawyer before trying to end the Order.

**Under a Permanent Custody Order, the Director must also place each child on an adoption list. This is a standard practice. It does not mean that a child will be adopted.**

## Section 7: Keeping Children Safe

### *Permanent Custody for the Purpose of Adoption (by Consent)*

After a Permanent Custody Order is made, parents can usually have ongoing contact with their child if it is in the child's best interests and the child has not been adopted. If a child is placed for adoption, the natural parents lose any right they had to have contact with their children. It may only be possible if the natural parents of a child have a good relationship with the adoptive parents and everyone agrees it is good for the child.

### Permanent Custody for the Purpose of Adoption (by Consent)

In some cases, parents decide it is best for their children if they are adopted by another family. This is done with help from the Department of Health and Social Services who can help to find a family to adopt that child.

Parents must sign a form giving the Director permanent care of their child. The Director is under a duty to provide parents with information about all the alternatives and services available to assist them and their child before this form is signed.

Once that form is signed, there is a 10-day waiting period before the parents are asked to give final agreement for the adoption. This 10-day period gives parents time to think over the decision and be sure it is for the best.

A parent can change their mind up to the point that a court makes a Permanent Custody Order for Adoption. That must be done in writing.

Adoption is final. Once completed, the adoption cannot be reversed. Once the adoption process has been completed, birthparents may no longer have any rights to see their child.

This decision is very serious. A parent should get legal advice before making this decision.



**If you want to know more about the child protection process, you can look at the Child and Family Services Act yourself. You can find a copy of that law online by doing a search for “NWT child and family services act” or going here:**

**<https://www.justice.gov.nt.ca/en/files/legislation/child-family-services/child-family-services.a.pdf>**

## Office of the Children's Lawyer

A Children's Lawyer is appointed by a court to represent a child in two types of court proceedings:

1. family law cases; and
2. child protection cases.

Including children in these cases, where decisions are being made that affect them, can help children's long-term sense of well-being, give them a sense of control during difficult times and give them a chance to share their views and preferences so that parents, child protection workers and judges can make decisions that have more focus on that child and that child's needs.



## Section 7: Keeping Children Safe

### *Office of the Children's Lawyer*

The Office of the Children's Lawyer works to ensure children in family law and child protection cases have legal advice to:

- Ensure children's rights and interests are protected, including their rights to share their views and preferences in court;
- Support the maintenance of culture, language, connection to family and community for Indigenous children;
- Assist in getting better outcomes for children in court decisions;
- Encourage parents to focus on the needs and best interests of children;
- Promote early appropriate decision-making for children; and
- Reinforce the importance of reducing conflict and eliminating children's exposure to adult conflict.

In family law cases, the Office of the Children's Lawyer will be appointed for a child after one or both parents ask the judge to make that order. In child protection cases, a child protection worker will usually ask a child if they would like to talk to a lawyer and if so, they will tell the Office of the Children's Lawyer and then ask a court to make an order for the appointment.

**There is no cost to a child or their family if a lawyer is appointed from the Office of the Children's Lawyer.**

A child between the ages of 16-19 who is in the child protection system is called a "youth" and can apply directly to the Office of the Children's Lawyer to be represented by a lawyer.

The Office of the Children's Lawyer does not appoint lawyers for children involved in the criminal justice system. The Legal Aid Commission should be consulted in this situation.

## What does a Children's Lawyer do?

A Children's Lawyer will meet and speak privately with a child as soon as they are appointed. They will continue to meet with the child until a final decision is made. Anything the child says to the lawyer will be confidential, unless the child asks the lawyer to share what has been said.

The lawyer will explain the court proceeding in an age appropriate manner, answer any questions a child has, and explain what actions a child can take in their circumstances. They will be told that the decisions that must be made about them will be made by their parents, or a judge or a child protection worker. The child will be informed that the adults involved will be making the decisions, and those decisions will be better if the adults know the child's views and preferences. The lawyer will ask the child for their views and preferences and will, over time, confirm they are consistent. The lawyer will work with the child to decide what information will be shared with the adult decision makers so the adults will factor the child's views and preferences into a settlement or decision that is ultimately in the best interests of that child.

A Children's Lawyer will also perform several other valuable functions for a child client in court proceedings. A Children's Lawyer can meet with other people such as parents, social workers, teachers, doctors or counsellors to better understand the issues and the perspectives of the child. In discussions with parents or child welfare workers, a Children's Lawyer may be able to offer creative solutions to difficult problems for the consideration of the parties. When the judge is getting information at a hearing or a trial, the Children's Lawyer will ensure information related to the child's best interests is presented. If their child client would like to speak with a judge, the Children's Lawyer can make that request and help the child prepare and participate in the meeting if a judge agrees. The Children's Lawyer will always encourage all court participants to focus on the best interests of the child, and to take steps to reduce conflict whenever possible.



# 8 Appendix

## Community Resources

**This is a short list of community resources available to assist with obtaining further support or information. To find a complete list of services in your community check the list at the Department of Health and Social Services: [www.hss.gov.nt.ca](http://www.hss.gov.nt.ca) and look for Reports: Programs and Services Inventory of Northwest Territories.**

## National

### Kids Help Phone:

(toll-free) 1-800-668-6868

Text/SMS: Send “Connect” to 686868  
to begin [www.kidshelpphone.ca](http://www.kidshelpphone.ca)

### Cybertip

[cybertip.ca](http://cybertip.ca)

Canada’s national tipline for reporting  
the online sexual exploitation of  
children.

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## Northwest Territories

### Legal Aid Commission

(toll-free) 1-844-835-8050

1-867-767-9361

### Law Society of the Northwest Territories

1-867-873-3828

### Emergency Protection Orders Applications c/o Alison McAteer House

(toll-free) 1-866-223-7775

### Maintenance Enforcement Program

(toll-free) 1-800-661-0798

1-867-767-9258

(fax) 1-867-873-0106

[www.justice.gov.nt.ca/en/boards-agencies/maintenance-enforcement-program/](http://www.justice.gov.nt.ca/en/boards-agencies/maintenance-enforcement-program/)

### Family Law Mediation Program

(toll-free) 1-866-217-8923

1-867-873-7122

<https://www.justice.gov.nt.ca/en/family-law-mediation-program/>

### Parent After Separation Program

(toll-free) 1-877-776-2838

1-867-873-2473

(email) [nwtpas@northwestel.net](mailto:nwtpas@northwestel.net)

<https://www.justice.gov.nt.ca/en/parenting-after-separation-workshops/>

### Dene Nation

1-867-873-4081

toll free 1-866-511-4081

### Foster Family Coalition of the NWT

1-867-766-3326

toll free 1-866-233-0136

[www.ffc Northwest.com](http://www.ffc Northwest.com)

### Native Women’s Association of the NWT

1-867-873-5509

[www.nativewomensnwt.com](http://www.nativewomensnwt.com)

### NWT Disabilities Council

1-867-873-8230

Toll free 1-800-491-8885

[www.nwtcdc.net](http://www.nwtcdc.net)

**Income Support Program**

1-867-766-5100

**Unlimited Potential Community Services**

1-867-920-4626

[www.upcs.org](http://www.upcs.org)

**Office of the Children's Lawyer**

(Ext. 82055) 1-867-767-9253

**Supreme Court Registry**

(toll-free) 1-866-822-5864

**Hay River Court Registry**

(toll-free) 1-866-885-2535

**Inuvik Court Registry**

(toll-free) 1-866-344-3940

**Yellowknife Court Registry**

(toll-free) 1-866-822-5864

**Victim Services**

(collect calls are accepted)

(Ext. 82214) 1-867-767-9261

**NWT Help Line:**

(Available evenings from 7pm-11pm)

(toll-free) 1-800-661-0844

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## Beaufort-Delta Region

**Beaufort-Delta Health and Social Services**

1-867-977-2140

**Inuvik Transition House Society**

1-867-777-3877

**Aklavik**

**Community Counselling Program**

1-867-978-2941

**Community Social Services Workers**

1-867-978-2613

**Court Worker**

1-867-777-7338

**RCMP**

1-867-978-1111

**Victim Services**

1-867-777-5493

1-867-678-4493

**Fort McPherson**

**Community Counselling Program**

1-867-952-2245

**Community Social Service Worker**

1-867-952-2245

**Community Wellness Worker**

1-867-952-2245

**Healthy Family Program**

(Ext. 6) 1-867-952-2245

**Tetlit Gwich'in Council Designated Gwich'in Organization**

1-867-952-2330

[www.gwichin.nt.ca](http://www.gwichin.nt.ca)

## Section 8: Appendix

### Community Resources

#### **Court Worker**

1-867-777-7338

#### **RCMP**

1-867-952-1111

#### **Tl'oondih Healing Society**

1-867-952-2025

1-867-678-4493

#### **Ulukhaktok**

#### **Community Counselling Program**

1-867-396-3907

#### **Community Social Service Worker**

1-867-396-3907

#### **Community Wellness Worker**

1-867-396-3024

#### **RCMP**

1-867-396-1111

1-867-678-4493

#### **Inuvik**

#### **Community Social Services Worker**

1-867-777-8101

#### **Inuvik Court Registry**

(toll-free) 1-866-344-3940

1-867-777-7300

#### **Court Worker**

1-867-777-7338

#### **Inuvik Transition House Society**

1-867-777-3877

#### **Mental Health and Addictions**

1-867-777-8101

#### **Arctic Family Centre**

1-867-777-4400

#### **Gwich'in Tribal Council**

1-867-777-7900

[gwichintribal.com](http://gwichintribal.com)

#### **Inuvik Justice Committee**

1-867-777-3181

[inuvikjusticecommittee.com](http://inuvikjusticecommittee.com)

#### **Ignamo Hall Friendship Centre**

1-867-777-2166

#### **Inuvialuit Regional Corporation**

#### **Health & Wellness Di-vision**

1-867-777-7088

[irc.inuvialuit.com](http://irc.inuvialuit.com)

#### **RCMP**

1-867-777-1111

#### **Victim Services**

1-867-777-5493

1-867-678-4493

#### **Paulatuk**

#### **Community Counselling Program**

1-867-580-3147

#### **Community Social Services Worker**

1-867-580-3800

#### **Court Worker**

1-867-777-7338

**Paulatuk Community Corporation**

1-867-580-3601

**RCMP**

1-867-580-1111

**Victim Services**

1-867-777-5493

1-867-678-4493

**Sachs Harbour**

**Community Counselling Program**

1-867-396-3024

**Community Social Services Worker**

1-867-396-3907

**Court Worker**

1-867-777-7338

**Wellness Worker**

1-867-690-4181

**Healthy Family Program**

(Ext. 6) 867-952-2245

**Sachs Harbour Community Corporation**

1-867-690-4703

**RCMP**

1-867-690-1111

**Victim Services**

1-867-777-5493

1-867-678-4493

**Tsiigehtchic**

**Community Counselling Program**

(Ext. 2 & Ext. 3) 1-867-952-2245

**Community Social Services Worker**

1-867-952-2245

**Court Worker**

1-867-777-7338

**RCMP**

1-867-953-1111

**Victim Services**

1-867-777-5493

1-867-678-4493

**Tuktoyaktuk**

**Community Counselling Program**

(Ext. 3) 1-867-977-2511

**Community Social Services Worker**

1-867-977-2140

**Court Worker**

1-867-777-7338

**Wellness Worker**

(Ext. 5) 1-867-952-2511

**Healthy Family Program**

(Ext. 4) 1-867-977-2511

**Tuktoyaktuk Community Association**

1-867-977-2390

**RCMP**

1-867-977-1111

**Victim Services**

1-867-777-5493

1-867-678-4493

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## Sahtú Region

### Sahtú Health and Social Services Authority

1-867-587-3650

### Regional Mental Health

1-867-587-3650

### Colville Lake

### Community Counselling Program

1-867-444-6743

### Community Social Services Worker

1-867-587-3650

### Court Worker

1-867-587-2525

### RCMP

1-867-709-1111

1-867-598-1111

### Victim Services

1-867-598-2247

### Déline

### Community Counselling Program

1-867-589-5545

1-867-444-1253

### Community Social Services Worker

1-867-589-5543

### Court Worker

1-867-587-2525

### Mental Health & Addictions Counsellor

1-867-589-5545

1-867-444-1253

### RCMP

1-867-589-1111

### Victim Services

1-867-598-2247

### Fort Good Hope

### Community Counselling Program

1-867-598-2059

### Community Social Services Worker

1-867-598-2940

### Court Worker

1-867-587-2525

### Wellness Centre

1-867-598-2352

### RCMP

1-867-598-1111

### Victim Services

1-867-598-2247

### Norman Wells

### Community Counselling Program

1-867-444-6743

### Community Social Services Worker

1-867-587-3650

After hours emergency:

1-877-415-6735

**Court Worker**  
1-867-587-2525

**Mental Health & Addictions  
Counsellor**  
1-867-587-3650

**RCMP**  
1-867-587-1111

**Victim Services**  
1-867-598-2247

**Tulita**  
**Community Wellness Agency**  
1-867-588-4019

**Community Social Services Worker**  
1-867-588-4271

**Court Worker**  
1-867-587-2525

**Regional Wellness**  
1-867-588-4271

**RCMP**  
1-867-588-1111

**Victim Services**  
1-867-588-3341

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## Deh Cho Region

**Northwest Territories Health &  
Social Services – Deh Cho Region**  
1-867-695-3815

**Fort Liard**  
**Community Counselling Program**  
1-867-770-4770

**Community Social Services Worker**  
1-867-770-4770

**Court Worker**  
1-867-695-2106

**RCMP**  
1-867-770-1111

**Victim Services**  
1-867-695-3136

**Fort Providence**  
**Community Counselling Program**  
1-867-699-3421

**Community Social Services Worker**  
1-867-699-3421

**Mental Health & Addictions  
Program**  
1-867-699-3421

**Zhati Koe Friendship Centre**  
1-867-699-3801

**Family Life Program c/o Zhahti Koe  
Friendship Centre**  
1-867-699-3801

**Court Worker**  
1-867-695-2106

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### Community Resources

**RCMP**  
1-867-699-1111

**Victim Services**  
1-867-876-2020

#### **Fort Simpson**

**Community Social Services Worker**  
1-867-695-2293

**Mental Health & Addictions  
Program**  
1-867-695-2293

**Court Worker**  
1-867-695-2106

**Łíídlı́ Kúé First Nation**  
1-867-695-3131

**Deh Cho Friendship Centre**  
1-867-695-2577

**RCMP**  
1-867-695-1111

**Victim Services**  
1-867-695-3136

#### **Jean Marie River**

**Community Social Services  
Worker**  
1-867-695-3421

**Court Worker**  
1-867-695-2106

**RCMP**  
1-867-695-1111

**Victim Services**  
1-867-695-3136

#### **Kakisa**

**Community Social Services Worker**  
1-867-825-2005

**Court Worker**  
1-867-695-2106

**RCMP**  
1-867-695-1111

**Victim Services**  
1-867-695-3136

#### **Nahanni Butte**

**Community Social Services Worker**  
1-867-602-2203

**Court Worker**  
1-867-695-2106

**RCMP**  
1-867-770-1111

**Victim Services**  
1-867-695-3136

#### **Sambaa K'e**

**Community Social Services Worker**  
1-867-206-2838

**Court Worker**  
1-867-695-2106

**RCMP**  
1-867-695-1111

**Victim Services**  
1-867-695-3136

### Wrigley

**Community Social Services Worker**

1-867-581-3441

**Court Worker**

1-867-695-2106

### RCMP

1-867-695-1111

**Victim Services**

1-867-695-3136

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## South Slave Region

**Deninu Health and Social Services  
Office**

1-867-394-5010

**Hay River Health and Social  
Services Authority**

1-867-874-7213

**Fort Smith Health and Social  
Services Authority**

1-867-872-6300

### Fort Resolution

**Community Counselling Program**

1-867-394-5010

**Community Social Services Worker**

(Ext # 222) 1-867-394-5010

**Court Worker**

1-867-874-2475

**RCMP**

1-867-394-1111

**Victim Services**

1-867-876-2020

1-867-874-6701

### Fort Smith

**Community Social Services Worker**

1-867-872-6300

**Community Wellness Office**

1-867-872-6310

**Court Worker**

1-867-872-6568

**Healthy Family Program**

1-867-872-6283

**Child and Family Services**

1-867-872-6200

**Salt River First Nation #195**

1-867-872-2983

**RCMP**

1-867-872-1111

**Sutherland House Women &  
Children's Safe Shelter**

1-867-872-5925

(toll free) 1-877-872-5925

(Crisis Line) 1-867-872-4133

## Section 8: Appendix

### Community Resources

#### **Trailcross Treatment Centre**

1-867-872-0878

#### **Uncle Gabe's Friendship Centre**

1-867-872-3004

#### **Victim Services**

1-867-621-2273

#### **Hay River**

#### **Community Counselling Program**

1-867-874-2446

#### **Community Social Services Worker**

1-867-874-7213

#### **Hay River Health and Social**

#### **Services Authority**

1-867-874-7213

#### **Hay River Court Registry**

(toll free) 1-866-885-2535

#### **Court Worker**

1-867-874-2475

#### **Family Support Centre/Safe Home**

#### **Network**

1-867-874-3311

(toll free) 1-833-372-3311

#### **Soaring Eagle Friendship Centre**

1-867-874-6581

#### **RCMP**

1-867-874-1111

#### **Victim Services**

1-867-876-2020

1-867-874-6701

#### **Enterprise**

#### **Community Social Services Worker**

1-867-874-7213

#### **Court Worker**

1-867-874-2475

#### **RCMP**

1-867-874-1111

#### **Victim Services**

1-867-876-2020

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## **North Slave Region**

#### **Northwest Territories Health and Social Services Authority**

1-867-873-7224

#### **Yellowknife Legal Aid Clinic**

1-867-767-9372

#### **Northwest Territories / Nunavut Council of Friendship Centers**

1-867-873-4332

(toll free) 1-866-925-4419

**Yellowknife, N'dilo & Dettah**

**Alison McAteer House**

1-867-873-8257  
(Crisis Line) 1-866-233-7775  
1-867-669-0235

**Yellowknife Women's Society**

1-867-669-2339  
www.ykws.ca

**A New Day (Operated by the John Howard Society of the NWT)**

1-867-920-4276

**Yellowknife Salvation Army**

1-867-920-4673  
www.salvationarmynwt.ca

**Yellowknife Social Services  
(Child & Family Services)**

1-867-767-9122

**Yellowknife Court Registry**

(toll free) 1-866-822-5864

**Community Counselling Program**

1-867-767-9110

**Foster Family Coalition of the NWT**

1-867-766-3326  
Toll free 1-866-233-0136  
www.ffcnwt.com

**Hope's Haven**

24/7 number 1-867-766-4673

**Side Door**

1-867-766-3272

**Yellowknives Dene First Nation in Dettah**

1-867-873-4307  
1-867-920-2925  
www.ykdene.com

**Yellowknives Dene Nation in N'dilo**

1-867-873-8951  
www.ykdene.com

**Court Worker**

(Ext. # 82289) 1-867-767-9359

**Legal Aid Commission**

1-867-767-9361  
(toll free) 1-844-835-8050

**Outreach Legal Aid Clinic**

1-867-767-9384  
(toll free) 1-844-497-1319

**Mental Health Clinic**

1-867-767-9110

**Native Women's Association  
of the NWT**

1-867-873-5509  
www.nativewomensnwt.com

**RCMP**

1-867-669-1111

**Transitional Housing Project**

1-867-873-5760

**YWCA**

1-867-920-2777  
giving@ywcanwt.ca  
24 Hour Crisis Line 1-866-223-7775

## Section 8: Appendix

### Community Resources

**Tree of Peace Community  
Wellness Program**  
1-867-873-2864

**Victim Services**  
(Ext. 231) 1-867-920-2978  
(Ext. 229) 1-867-873-5509

#### **Łutselk'e**

**Łutselk'e Community Wellness  
Agency**  
1-867-370-3212

**Łutselk'e Health Centre**  
1-867-370-3111

**Court Worker**  
1-867-392-6386

**Community Counselling Program,  
Łutselk'e**  
1-867-370-3212

**RCMP**  
1-867-370-1111

**Victim Services**  
1-867-920-2978

#### **Behchokò**

**Tłıchq Community Services Agency**  
1-867-392-3000

**Community Counselling Program**  
1-867-392-3000

**Behchokò Friendship Centre**  
1-867-392-6000

**Community Social Services Worker**  
1-867-392-3005

**Court Worker**  
1-867-392-6386

**Health Centre**  
1-867-392-6075  
Emergency: 1-867-492-0008

**Tłıchq Government**  
1-867-392-6381

**RCMP**  
1-867-392-1111

**Victim Services**  
(Ext# 1332) 1-867-392-6381

#### **Gamètì**

**Community Social Services Worker**  
1-867-392-3005

**Court Worker**  
1-867-392-6386

**Tłıchq Government**  
1-867-997-3074

**RCMP**  
1-867-997-1111

**Victim Services**  
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# 9 Glossary

**These definitions of key words will help you understand some of the legal terms you may come across in a family law matter.**

These definitions do not replace legal advice from a lawyer on what these terms mean and how they may apply in your situation.

These definitions may be worded differently than the definitions in a statute (law) so that they are easier to understand. If there is a difference between a definition here and what is in a statute, the definition in the statute applies.

## Section 9: Glossary

**Access** a parent’s right under the *Children’s Law Act* to visit with and be visited by their child and to make inquiries and to be given information about the child’s health, education and welfare. A separation agreement or court order can set terms for a parent’s access. An agreement or court order can also change or end the right to access. Under the *Divorce Act*, this is called “parenting time”.

**Adjournment** When a court hearing or trial is delayed or postponed.

**Adultery** When a married person has sexual relations with someone other than their husband or wife. Adultery can be used as a reason to get divorced and allows a divorce to occur before the couple has been separated for 12 months.

**Affidavit** A written statement of facts that is sworn or affirmed under oath as being the truth. It is given to a court as evidence of relevant facts in a case.

**Age of Majority** The age when a child is considered a legal adult. This age varies in each province and territory. In the NWT, the age of majority is 19.

**Alternative Dispute Resolution** Ways to settle differences without involving the courts. Methods of alternative dispute resolution include settlement conferences, mediation, or negotiation.

**Appeal** A review of a lower court decision to decide if the lower court made an error in the law, or in applying the facts to the law.

**Appellant** The person who asks a court to review (appeal) a lower court decision.

**Applicant** The person who starts a court file is “applying” to a court and is called the “applicant”.

**Application** When a person prepares and files documents with the court to ask (or apply) to the court for a judge’s order for specific remedies.

**Application to Vary** When a person applies to a court to change an order. An application to vary is usually filed when there has been a significant change in circumstances that are either financial or personal.

**Apprehend** When a child protection worker takes a child from his or her home because there is a real risk the child needs protection.

**Arrears** The amount of money that has not yet been paid under a court order or agreement.

- Best Interests** The test that judges use when they make decisions about children. Lists of factors to be considered are included in the *Children's Law Act*, the *Divorce Act* and the *Child and Family Services Act*.
- Certificate of Divorce** The document that says a divorce is final.
- Chambers** A courtroom, private room or office where a judge will make decisions.
- Chattels** The legal term for a person's property other than real estate.
- Child Support** Money paid to a parent or caregiver to cover the basic living expenses associated with raising a child.
- Child Support Guidelines** Rules used for calculating how much child support a person must pay. There are federal guidelines that apply in a divorce and territorial guidelines that apply when a couple had a child together but never married. The amount of support is based on tables (charts) attached to the guidelines.
- Child Support Tables** Each province and territory has its own charts that show how much support is paid under the Child Support Guidelines. There are two sets of charts for each province and territory (federal and territorial). Both are the same.
- Common-Law Relationship** When a couple has lived together for a specific length of time in a marriage-like relationship. For income tax purposes, it is 12 months. For family law purposes it is 24 months, or a shorter time if the couple has a child.
- Contempt of Court** When a judge decides that a person intentionally disregards or breaks a court order without a valid excuse. This can lead to a person's arrest or jail.
- Contested Hearing** When parents do not agree and must argue their different positions to a judge so the judge will decide for them.
- Contract** A legally binding document, like a pre-nuptial agreement or a separation agreement, that is in writing, has been signed by the parties and witnessed.
- Corollary Relief** A court order issued on or after the date of a divorce judgment that includes terms on parenting, child support, spousal support or the division of property.
- Costs** A judge may order a person who is unsuccessful in court to pay money to the other person to cover some or all that person's legal and court fees.

- Court Order** A document that includes the specific decisions made by a judge. Some examples of a court order include an order that is made in the beginning stages of a case (an “Interim Interim Order”) or for a short term basis (“Interim Order”) or when both parties agree (a “Consent Order”) or after a trial (“Final Order”).
- Court Registries** Offices where court records are kept, actions are filed, and fines are paid. There are three Territorial Court registries and one Supreme Court registry in the NWT.
- Creditor** A person who is owed money. In child support (Maintenance Enforcement) cases, it is the person who gets child support.
- Custody** A legal term in the *Children’s Law Act* and the *Divorce Act* before March 1, 2021 that identifies who is responsible for making significant decisions about their children and the parent with whom the children spend the majority of their time. One parent may have that responsibility (sometimes called “sole custody”) or parents may share this responsibility and make all significant decisions together (sometimes called “joint custody”). After March 1, 2021 the *Divorce Act* now refers to “parenting orders”, “parental decision-making responsibility” and “parenting time”.
- Custom Adoption** An arrangement made between two Indigenous families. To have a custom adoption recognized, an application must be completed and sent to the Aboriginal Custom Adoption Commissioner. Contact your local Health and Social Services Authority for more information.
- Debtor** A person who owes money to another person. In child support (Maintenance Enforcement) cases, it is the person who pays child support.
- Default Hearing** A court appearance when a debtor (person who must pay child support) is asked to explain why they have not paid all the support they were ordered to pay.
- Departmental Adoption** The adoption of a child in the permanent care of the Director of Child and Family Services.
- Division of Property** After a relationship breakdown, the couple must identify, value and divide their family property using rules in the Family Law Act. In almost all cases, the division will be equal. This can be done by agreement or by a judge.
- Divorce** The legal ending of a marriage.

**Divorce Judgment** A document issued by a court, which says that a marriage is over. If the judgment has not been appealed within thirty days, the divorce will become final and a Certificate of Divorce can be issued proving this.

**Enforcement Remedies** Steps taken by the Maintenance Enforcement Program to collect child support or spousal support that has not been paid. They include taking money directly off the person's pay cheque, or keeping their tax refund, or refusing to renew their drivers' license.

**Evidence** Facts and relevant information presented to a judge. It can be verbal (testimony) or in writing (in an affidavit). Judges make their decisions by referring to the evidence in a case.

**Exclusive Possession** The right of one party to be the only one to live in a home or to use family assets. This may be one of the terms of a separation agreement or the court may award exclusive possession when one of the parties applies for it.

**Exhibit** A paper, document, or piece of physical evidence that proves a fact and is provided to the court at a trial or hearing or attached to an affidavit.

**Ex Parte** When a court is asked to do something for one person without telling the other person first.

**Ex Parte Order** An order made by a court for one person without telling the other person and without the other person having a chance to tell their side of the story before the order is made.

**Family Property** Any asset that one or both spouses have an interest in that they got during the time they lived together. This includes real estate and personal property like furniture, vehicles, and pensions and retirement savings. It can be something that was used only by one person, by part of the family or by all the family. It can include things that were owned before the couple began living together.

**Family Home** The house or apartment that a couple shared at the time of separation. It can be owned or rented.

**Fees** The money payable to the court for certain services. Parties must pay a fee to the court to file documents or to obtain a legal document such as an order.

**Filing Documents** This is the process of adding documents to a court file by giving the original and one or more copies to the court clerk at the court registry. There is a fee to file some documents. Any document to be used in court must be filed with the court.

**Financial Statement** A form prepared to show a person's total income, total deductions and estimated monthly expenses. In Maintenance Enforcement Program cases, the financial statement includes a list of the person's assets (what a person owns) and debts (what a person owes). This form is used by the courts and it must be sworn or affirmed as being true.

**Garnishment** A process most often used by the Maintenance Enforcement Program to take money off a person's pay cheque, or bank account for child support and spousal support.

**Hearing** When people appear in front of a judge to argue their case, the judge will hear them and make a decision.

**Imputed Income** When a person's actual income cannot be identified or it appears a person has reduced their income to avoid paying child support, a judge can choose an amount that the judge believes is more likely to be the person's actual income.

**Interim Order** A temporary order that deals with the matters that the parties are discussing. The interim order is in effect until it is replaced by a final order or another interim order.

**Joint Custody** The term used in the *Children's Law Act* and, until March 1, 2021, in the *Divorce Act* when both parents must make significant decisions about their children together. After March 1, 2021 the term "custody" was deleted from the *Divorce Act*. Parents may now have "joint decision-making responsibility".

**Leave of the Court** When a judge must give permission before a person can have their case heard or dealt with in a certain way.

**Legally Binding** Any agreement or contract that is legally binding can be enforced by a judge.

- Lien on Property** A notice filed with the Land Titles Office (often by Maintenance Enforcement Program) to ensure any unpaid child support is paid on or before the sale of the land or home. The Lien tells prospective buyers that there is a debt against the land or home for unpaid support, or another unpaid debt. A prospective buyer will want the lien removed before they will buy the land or home.
- Maintenance Enforcement Program (MEP)** In the NWT, court orders or separation agreements for child or spousal support can be filed with the MEP. The payor then makes payments through the program. If the payor fails to make payments required in the court order or separation agreement, the MEP may take action to enforce the order. MEP also helps collect child support when the payor lives outside the NWT.
- Majority Parenting Time** When one parent has the children living with them for more than 60% of parenting time over the course of a year.
- Mediation** A type of dispute resolution where a trained, impartial person (the mediator) works with a couple to help them have productive discussions to reach agreements to resolve a dispute.
- Notice of Intention to Act in Person** A court form that a person must prepare, file and serve on the other parent (or party) to tell the court and the other person that they are not working with a lawyer anymore and in future, that person will appear in court for themselves without a lawyer.
- Notice of Motion** A court form used after a court case has started that asks a judge to make certain decisions. It includes specifics of what the person wants the judge to decide.
- Notice of Hearing** A court form filed with the court and served on the other parent (or party) that says when and where a trial will be heard by the court.
- Parties** The people who are formally named in court documents as the people involved in a disagreement. Parties have the right to appear in court and ask the court for an order.
- Peace Bond** A formal, legal promise that a person makes to the court not to contact another person or go to a certain place. If a peace bond is broken, the person who signed it may be fined or jailed.

## Section 9: Glossary

- Preservation of Property Order** This order prevents either spouse from damaging or selling family property before it is divided when a couple is separating.
- Pre-Trial Conference** A meeting with a judge before a trial is scheduled. A judge hears information from both parties to determine if both parties are ready for trial or to clarify what the trial is about and how the trial will be held.
- Reciprocating Jurisdiction** All provinces and territories have agreements to use their courts to allow people to create, vary or enforce a support order in a different province or territory when the person who pays lives in that different province or territory and the person who is entitled to support lives in the NWT (or vice versa)
- Reconcile** To re-establish a relationship or “get back together”.
- Residency Requirement** The length of time a person must live in one province or territory to be able to ask the court for certain things. For example, to file for divorce one spouse must have lived 12 months in the NWT.
- Respondent** The person (or party) who responds to court case started by another person (the applicant).
- Seize Assets** When a court official (like a sheriff) takes possession of an asset to be sold to pay off an outstanding debt.
- Separation Agreement** A legally binding, written contract signed by ex-spouses after deciding to end their relationship and live apart. The document includes agreements made about where children will live, when children will see each parent, how significant decisions will be made for the children, how the costs of raising children will be addressed, whether spousal support will be paid and how a couple will value and divide the net worth of their family property.
- Serve / Service** When a court document must be given or sent to a person involved in a court case. The proper way to serve a person is set out in the Rules of the Supreme Court, or by a court order. It can include giving the person the documents by hand, or by mail or left with a designated person on behalf of the named person.

- Settlement Conference** A meeting between the parties to a court case to attempt to resolve issues between the parties without going to court. Both parties must agree to participate in the process. A judge hears information from both parties. The judge at a settlement conference cannot be the trial judge if the matter goes to court.
- Shared Custody** Under the NWT Child Support Guidelines, there are rules for parents who share the care of their child or children between 40-60% of the time in a year. Under the Federal Child Support Guidelines, this is referred to as “shared parenting time”.
- Special or Extraordinary Expenses** These are expenses that arise in addition to the basic amount in the child support tables including day care, medical and dental costs, some special education costs, post-secondary schooling and the cost of extraordinary extra-curricular activities.
- Split Custody** Under the NWT Child Support Guidelines, this term refers to parenting arrangements when one child or more children live with one parent and one or more live with the other parent.
- Spouse** A person who is married to another person, has lived in a marriage-like relationship with that other person for two years or more or has lived in a marriage-like relationship with another person for less than two years and has a natural or adopted child with that person.
- Standing** A person who has standing has the right to participate in a court proceeding.
- Subpoena** A court document that requires a person to appear in court to testify. If a person who is served with a subpoena fails to appear in court, they can be arrested and brought to court.
- Uncontested Hearing** This is a court hearing where both parties want the judge to make the same order, and usually results in a Consent Order.
- Undue Hardship** Under the Child Support Guidelines, a parent can ask to adjust the amount of child support that would be payable under the Guidelines if that amount would result in “undue hardship”. This is rarely successful because “undue hardship” must be extreme, improper, unreasonable and unjustified.





