

Changes made to the Canadian *Divorce Act* and included in the New Brunswick *Family Law Act* as of March 1, 2021

The *Divorce Act* and *Family Law Act* will **REPLACE** the following terminology:

Terms used before March 1, 2021	Terms used in relation to separating couples March 1, 2021 onwards	Definition
Access (parental)	Parenting Time	Parenting time is defined as the period during which an individual is primarily responsible for the child, including when the child is in school or daycare.
Access (non-parent)	Contact Order	<p>A family member other than a parent, or another significant person in the child's life (such as grandparent), may ask the court for leave to apply for a contact order to see the child. A contact order, if granted, would allow the person to spend time with or to communicate with the child.</p> <p>A decision about whether to make a contact order would be made based on the best interests of the child.</p> <p>Persons with contact orders are not automatically entitled to make day-to-day decisions about the child during contact.</p>
Custody	Decision-Making Responsibility	<p>Decision-making responsibility means the responsibility for making significant decisions about a child's well-being, including in respect of:</p> <ul style="list-style-type: none"> (a) health (such as whether to undergo a medical procedure) (b) education (such as choice of school) (c) culture, language, religion and spirituality (such as which faith the child will follow, if any) (d) significant extra-curricular activities (meaning activities that require a relatively large investment of the parent's time or financial resources)
Custody Order	Parenting order	An order made under the <i>Divorce Act</i> or <i>Family Law Act</i> . Both spouses, a parent, or any person who currently has or is seeking a parental role in the life of a child, may apply for a parenting order. A parenting order may outline parenting time and decision-making responsibility.



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The *Divorce Act* and *Family Law Act* will ADD the following terminology:

Terms used before March 1, 2021	Terms used in relation to separating couples March 1, 2021 onwards	Definition
NEW to the <i>Divorce Act</i>	Best Interests of the Child	<p>When making decisions about parenting orders, contact orders, parenting arrangements or decision-making responsibility the court will look at what is in the best interest of the child.</p> <p>The best interest of the child is the exclusive consideration for decisions that affect a child.</p> <p>Anyone who has parenting time, decision-making responsibility or contact must fulfill these duties in the best interest of the child.</p>
NEW to the <i>Divorce Act</i>	How does the court decide what is in the best interest of the child?	<p>To determine what is in the best interest of the child a court will consider the following:</p> <ul style="list-style-type: none"> • The child’s needs, given the child’s age and stage of development, such as the child’s need for stability • The nature and strength of the child’s relationship with each spouse, siblings, grandparents and other important persons • Each spouse’s willingness to support the development and maintenance of the child’s relationship with the other spouse • The history of care of the child • The child’s views and preferences will be considered whenever appropriate • The child’s cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage • Any plans for the child’s care • The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child • The ability and willingness of each person in respect of whom the order would apply to communicate and cooperate • Any family violence • Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child

The *Divorce Act* and *Family Law Act* will **ADD** the following terminology:

Terms used before March 1, 2021	Terms used in relation to separating couples March 1, 2021 onwards	Definition
NEW to the <i>Divorce Act</i>	Family Dispute Resolution Process	<p>A process outside of court that is used by parties to a family law dispute to resolve any matters in dispute. Examples include negotiation, mediation and collaborative law.</p> <p>Although dispute resolution processes such as mediation may be preferable in some cases, they may not always be appropriate, as may be the case if there has been family violence or a significant power imbalance. As a result, the requirement to engage in dispute resolution processes is not absolute and will be required only “to the extent that it is appropriate to do so”.</p>
NEW to the <i>Divorce Act</i>	Family Violence <i>(in the context of the best interests of the child)</i>	<p>Family violence refers to any conduct by a family member towards another family member, that is violent or threatening or a pattern of coercive or controlling behavior, or that causes a family member to fear for their safety or the safety of another person. In the case of a child this can include the direct or indirect exposure to such acts.</p> <p>Family violence can include physical abuse, sexual abuse, threats to kill, harassment, the failure to provide the necessities of life, psychological abuse, financial abuse, threats to kill or harm an animal or damage property and the killing or harming of an animal or the damaging of property.</p> <p>The existence of family violence is an important factor to be considered when determining the best interest of the child.</p>
NEW to the <i>Divorce Act</i>	Parenting Plan	<p>A written agreement reached by parents about how they will share parenting responsibilities following separation and divorce.</p> <p>A parenting plan is a way that parents can express their views about parenting post-separation, but this criterion could include other ways for parents to describe plans for their children’s care and upbringing such as pleadings or affidavits.</p> <p>If parties agree to a parenting plan, the court must include it in a parenting order or contact order, unless the court considers that the plan is not in the best interests of the child. In such cases, the court can omit or modify the parenting plan.</p>

The *Divorce Act* and *Family Law Act* will ADD the following terminology:

Terms used before March 1, 2021	Terms used in relation to separating couples March 1, 2021 onwards	Definition
<p>NEW to the <i>Divorce Act</i></p>	<p>Relocation</p>	<p>Relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility – or a person who has a pending application for a parenting order – that is likely to have a significant impact on the child’s relationship with a person who has parenting time, decision-making responsibility, an application for a parenting order in respect of that child pending, or a person who has contact with the child under a contact order.</p> <p>Not every change of residence is a relocation. Under both <i>Acts</i>, a change of residence and a relocation differ in significant ways, for example the notice requirements are different.</p>

NOTE

Changes to the federal *Divorce Act* come into force (are effective) on March 1, 2021. Similar changes come into force provincially on that same date in the New Brunswick *Family Law Act*. It should be noted that the *Divorce Act* only applies to married persons who are divorced or divorcing from one another, while the *Family Law Act* applies to persons in common law relationships and to married persons who are not yet divorced or divorcing. In other words, some of the parenting terminology used may differ depending on whether parents were married, living separately, or cohabitating.



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