

# Strengthening and modernizing Canada's family justice system

## Related link

- [Legislative Background: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act \(Bill C-78\)](#)

On June 21, 2019, Royal Assent was given to Bill C-78 to amend Canada's federal family laws related to divorce, parenting and enforcement of family obligations. This initiative will make federal family laws more responsive to Canadian families' needs through changes to the:

- [Divorce Act](#)
- [Family Orders and Agreements Enforcement Assistance Act](#) (FOAEAA), and
- [Garnishment, Attachment and Pension Diversion Act](#) (GAPDA).

Federal family laws have not been substantially updated in more than 20 years. The legislation has four key objectives:

- promote the best interests of the child
- address family violence
- help to reduce child poverty
- make Canada's family justice system more accessible and efficient

It is important to note that many of the changes are not in effect, as the public, family justice professionals and governments need time to adjust to the changes within the family justice system. Due to extraordinary circumstances related to the COVID-19 pandemic, the Government of Canada deferred the coming into force date of changes to the *Divorce Act* to March 1, 2021. Amendments to FOAEAA and GAPDA will come into force over the next two to three years.

Family law in Canada is an area of shared jurisdiction between federal and provincial and territorial governments. The *Divorce Act* applies to married couples who are divorcing. Provincial or territorial legislation applies to:

- unmarried or common-law couples, and
- married couples who are separated but not divorcing

Provinces and territories are responsible for the administration of justice, including the court system, where cases related to the *Divorce Act* and the *Federal Child Support Guidelines* are decided. Provinces and territories are also responsible for enforcing

support orders, but the federal government may assist them through FOAEAA and GAPDA by helping find a support payor, by garnishing federal money owed to a support payor to satisfy a support debt or by suspending a debtor's passport or federal licences.

## Promoting the best interests of the child

In family law, a child's best interests is the top priority when making parenting decisions. The *Divorce Act* will promote this through several different measures:

### Best interests criteria

These amendments set out a list of specific factors that a court must consider when deciding what would be in a child's best interests in the child's particular situation. Along with the main considerations of the child's physical, emotional and psychological safety and wellbeing, other factors include:

- the nature and strength of the child's relationships with parents, grandparents, and other important people in their life
- the child's linguistic, cultural and spiritual heritage and upbringing, including Indigenous heritage, and
- the child's views and preferences

Each child is different and each family is different. There is no one-size-fits-all parenting arrangement. Courts will be required to order parenting time to each parent based on the child's best interests. The best interests criteria will help courts tailor parenting arrangements for each child's specific situation.

### Child-focused terminology

There are also changes to the wording used to describe parenting arrangements. This makes the law more child-focused, with a greater emphasis on the actual tasks of parenting. The new approach uses "parenting orders" to replace orders for custody and access under the *Divorce Act*.

A parenting order sets out each parent's "decision-making responsibilities," which refers to making important decisions on behalf of a child, and "parenting time." Both parents could have parenting time, depending on each child's best interests. The new wording is neutral and emphasizes that both former spouses will be caring for their child when the child is with them.

This more neutral wording is also less likely to reinforce the idea of a "winner" and a "loser" in decisions about parenting arrangements.

## Changes of residence

Other amendments to the *Divorce Act* address issues with parents or children relocating following a divorce. A new requirement to give notice of plans to move helps make sure that key information about a potential move is shared with others who have responsibilities for the child. A court will be able to modify the notice requirements where safety is an issue. There are also new guidelines to help courts decide whether the move would be in a child's best interests and should be allowed.

## Addressing family violence

Before the changes, the *Divorce Act* did not include measures for dealing with family violence, even though it can have a serious impact on children's wellbeing. The amendments to the *Divorce Act* fill that gap.

For the purposes of the *Divorce Act*, family violence is defined as any conduct that is:

- violent
- threatening
- a pattern of coercive and controlling behaviour
- causes a family member to fear for their safety
- directly or indirectly exposes a child to such conduct

The following measures will address family violence:

- **Courts will have to take family violence into account.** A list of factors have been added to the *Divorce Act* to help courts assess the seriousness of the violence and how it could affect future parenting when deciding what parenting arrangements would be in the child's best interests.
- **Before making parenting, contact or support orders, courts will need to consider any other proceedings or orders involving any of the parties.** This is to avoid situations where family court orders conflict with orders made by a criminal court. For example, contact or parenting time ordered by a family court may conflict with a restraining order against one of the parties.

## Reducing poverty

After a divorce or separation, spouses and children are at much greater risk of living in poverty if they do not get the financial support that they are owed. The updated legislation includes measures to:

- **Provide more tools to establish and enforce child support.** For example, in certain circumstances, the federal government will be able to release tax information to help determine accurate child support amounts. In keeping with

Canada's privacy laws, only certain groups, such as a judge or maintenance enforcement program, will be allowed to obtain this information. The *Family Orders and Agreements Enforcement Assistance Act* and its supporting regulations will have clear limits on to whom this type of information may be released and for what purpose.

- **Lessen the need for expensive court costs.** Going to court is expensive. A variety of measures in the legislation are aimed at reducing the need for families to go to court by making the family justice system more accessible and efficient.

## Making the family justice system more accessible and efficient

A number of new measures will help streamline administrative processes and make family justice more accessible and affordable:

- Provincial child support administrative services will be able to perform some tasks currently left to the courts, making it faster, less costly and less adversarial to determine or recalculate child support amounts
- Provincial recalculation services will be allowed to recalculate child support at any time if needed, instead of on a fixed schedule
- The process of varying a support order for parties living in different provinces or territories will be streamlined, allowing only one court to be involved instead of courts in both jurisdictions
- Legal advisers will have to encourage clients to use family dispute resolution processes, where appropriate, to attempt to resolve their family law matters
- Some amendments help make the law clearer, such as correcting inconsistencies in the English and French versions of the law

This initiative also brings Canada closer to becoming a party to two international family law conventions:

- the 1996 Hague Convention on the Protection of Children
- the 2007 Hague Child Support Convention

Canada cannot ratify and become a party to the Conventions until the legislative changes come into force, and at least one province or territory also makes the necessary legislative changes. Being a party to the Conventions would make it easier to resolve some family law issues when one or more of the parties lives in another country.