



Duties for parents and others

Duties for parents and others: new legal obligations

In June 2019, the Government of Canada made changes to the *Divorce Act*. Some of the changes create new duties for parents and others who have parenting time or decision-making responsibility, or who are parties in a court matter under the *Divorce Act*. The changes also include new duties for legal advisers. These changes apply as of March 1, 2021.

Acting in the best interests of the child is the number one priority in all family law matters involving children.

The new *Divorce Act* sets out duties for parents and others to help them act in the best interests of the child, including when courts are involved.

Changes to the *Divorce Act* also include new duties for legal advisers to help parents and others meet their duties under the Act.

This document will

- give you information on each duty, and
- help you understand how best to meet your legal obligations.

There are five duties for parties under the *Divorce Act*

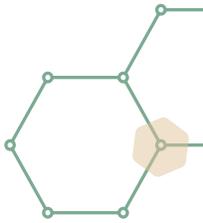
1) Acting in the best interests of the child

Making decisions in the best interests of a child is important. The best interests of the child is the test that courts apply when deciding cases involving children, and it's now a key duty under the new *Divorce Act*.

Under the new *Divorce Act*, if you have parenting time, decision-making responsibility or contact with a child, you must act in the best interests of that child when exercising your responsibilities to them.

The new *Divorce Act* includes a list of specific factors to help you and courts determine what is best for your child in a particular situation. These are factors, such as the child's

- needs, given their age and stage of development, such as their need for stability
- relationship with each parent
- relationships with siblings, grandparents and other important people in their lives



• If you have a contact order under the new *Divorce Act*, these duties also apply to you.

• If you are not a spouse but stand in the place of a parent or intend to stand in the place of a parent, these duties also apply to you.

- care arrangements before the separation and future plans for care of the child
- views and preferences
- cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage

Other factors include each parent's ability and willingness to

- care for the child
- support the child's relationship with the other parent
- cooperate and communicate about parenting issues

There are also other factors that may affect the child's safety such as

- any family violence and its impact on
 - the ability and willingness of any person who engaged in that violent behaviour to care for and meet the needs of the child, and
 - the appropriateness of making an order that would require people to cooperate on issues affecting the child
- any existing civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child

Consider these factors when you are making decisions about your child. For example, if you are choosing a new school, you and the other parent should make your decision based on which one will be best for your child. If you and the other parent cannot agree, a judge would look at these same above factors to make a decision.

More information on the best interests factors is available [here](#).

2) Protecting children from conflict

One of the most important things you can do for your children is to protect them from seeing or hearing conflict between you and the other parent.

The new *Divorce Act* sets out a specific duty for you to do your best to protect your children from conflict that may happen as result of your separation or divorce.

To help you meet this duty, here are a few things to keep in mind:

- try to avoid arguing or discussing the details of your court matter when the children can hear – either wait until they are not home or try to go somewhere they cannot hear you
- avoid criticizing or complaining about the other parent in front of the children
- avoid making the children feel they have to “take sides” against the other parent

A lawyer, mediator or other family law professional can help you come up with strategies to help you protect your children from conflict.

3) Using a family dispute resolution process

‘Family dispute resolution’ is a new term in the *Divorce Act*. It is an out-of-court process that families can use to solve issues related to parenting, family support, and for some families, property. Examples of family dispute resolution processes include negotiation, collaborative law, mediation and arbitration.

Under the new *Divorce Act*, you need to try to solve your family law issues by using a family dispute resolution process, but only if it is appropriate. For example, family dispute resolution processes may not be appropriate if you have experienced family violence and there are ongoing safety issues, or there is a significant power imbalance between you and the other person.

There are many advantages of using family dispute resolution processes instead of having a judge make decisions for you:

- you know what your children need. This can be difficult to explain to a judge who only sees a snapshot of your family during the court process
- family dispute resolution may be less expensive and much faster than going to court
- it can be good for your children to see parents cooperating
- some family dispute resolution processes can help improve your ability to communicate with each other

A lawyer, mediator or other family law professional can help you decide which family dispute resolution processes may be best for you.

You can also search the Department of Justice Canada’s website [here](#) to see if there are government-based family dispute resolution processes in your area.

There are many ways people can make decisions about issues related to separation or divorce. You need to decide on the approach that works best for you and your family. No matter what process you use, it is important to focus on your children’s best interests. Consult the Fact Sheet - [Family dispute resolution: resolving family law issues out of court.](#)

4) Providing complete, accurate and up-to-date information

The new *Divorce Act* says that parties have a duty to provide all the information required under the *Divorce Act* and its regulations. This is so parents can make agreements and courts can make orders based on accurate information.

For example, to help the court determine a fair and accurate child support amount under the Federal Child Support Guidelines (regulations under the *Divorce Act*), you need to give complete, accurate and up-to-date income information. This means you need to give

- your income tax returns for each of the three most recent tax years
- the notices of assessment and reassessment from the Canada Revenue Agency for each of the three most recent tax years

Depending on your situation, you may also need to give other information, such as

- your most recent statement of earnings or pay slip, or a letter from your employer stating your salary or wages
- your corporation's financial statements, if you are self-employed, or if you control a corporation
- information on income you received from employment insurance

More information on how to provide complete, accurate and up-to-date income information for child support purposes is available [here](#).

Families' involvement with different courts

Families sometimes become involved with different courts at the same time. This is often true in cases of family violence, when the criminal justice system, the child protection system, and the family justice system may all be involved.

These situations can be very challenging. For example, if a family court does not know about a criminal order saying there can be no contact between the parents, the judge might make a conflicting parenting order. This can make it hard or impossible to follow both orders and can create safety risks.

To help deal with this, the new *Divorce Act* says that judges have to take into account whether there are any current or pending civil protection, child protection, or criminal proceedings or orders related to the divorcing couple.

If you are divorced or divorcing and asking for a court order for parenting, child support or spousal support, you will need to tell the court about any criminal or child protection cases or orders that involve you or your former spouse, or about any restraining or protection orders against one of you.

More information on families involved in different parts of the justice system is available [here](#).

You have a legal obligation to provide all the necessary information to the courts when you are asked for it. Courts have ways to force individuals to give the information required under the *Divorce Act* and its regulations, such as making disclosure orders, but this results in delay which is not in your child's best interests.

5) Complying with orders

The new *Divorce Act* reminds parties that once the court makes an order, you have to follow that order.

This is not a new obligation, but parents sometimes mistakenly believe that they do not have to follow their family law orders.

For example, you have to pay child support until the order is no longer in effect. This means that if the order does not indicate when you can stop paying child support, you have to pay child support until a court changes the order.

Similarly, if the court orders a specific parenting schedule, you cannot unilaterally prevent the other parent from exercising parenting time without reason.

If you do not follow the order, there can be serious legal consequences. For example, the court could make a contempt order against you. The court could then impose a range of punishments, including

- a fine paid to the court
- money paid to the other party for their court costs (for example, lawyer's fees)
- jail time, in extreme cases

Sometimes you may not want to follow the court order because there has been a change in your life or your child's life that the court order does not cover. You may believe that the court order is no longer in your child's best interests.

In this situation, you have to go back to court to ask for the order to be changed to reflect the new situation. Until the order is changed, you have to follow the original court order.

Certification

It is important that you review your duties and are comfortable saying that you understand them.

Under the new *Divorce Act*, every time you file a document in court - whether it starts a court matter or responds to one - you will have to confirm that you understand each of your five duties under the *Divorce Act*.

This applies to anyone who is a party in a court matter. You will need to confirm this whether you have a lawyer or are representing yourself.

Duties for legal advisers

Under the new *Divorce Act*, a legal adviser is professional who is qualified to give you legal advice or represent you in cases under the Act. In some provinces, it may include a notary or paralegal.

Changes to the *Divorce Act* also set out new duties for legal advisers to help you with your duties under the Act. For example, legal advisers need to

- encourage their clients to try to use a family dispute resolution process to resolve their family matter, unless clearly inappropriate
- tell their clients about family justice services that could help them to resolve their family matter or meet their obligations under the *Divorce Act*

Legal advisers also have an obligation to explain your duties to you.

More information on family justice services is available [here](#).

Legal advisers also have a duty to certify that they have complied with their duties under the *Divorce Act*.

Related links

- [Making Plans: A guide to parenting arrangements after separation or divorce](#)
- [Parenting plan checklist](#)
- [Parenting plan tool](#)
- [Parenting Fact Sheet](#)
- [Family dispute resolution Fact Sheet](#)
- [Divorce and family violence Fact Sheet](#)
- [A Child's Views and Preferences Fact Sheet](#)

Remember – your duties are to

- 1) Act in your children's best interests
- 2) Protect your children from conflict
- 3) Try dispute resolution, unless it's not appropriate
- 4) Provide all information required in your court case
- 5) Follow your court order