



Parenting arrangements after separation or divorce

The laws concerning custody and access under the old *Divorce Act* changed when the new *Divorce Act* came into force on March 1, 2021.

Parenting arrangements for orders or agreements made before the new law came into force

The *Divorce Act* has certain rules about parenting arrangements for parents who divorce. The provinces and territories generally have similar rules for unmarried parents and for married parents who separate but do not apply for a divorce.

Under the old *Divorce Act*, parenting arrangements were referred to as “custody” and “access.” When the changes to the *Divorce Act* came into force on March 1, 2021, these terms were replaced with new language that focuses on parents’ responsibilities for their children and the tasks required to care for the children. A province or territory’s laws may use other words to refer to parenting arrangements.

What does my old order mean under the new *Divorce Act*?

If you have a “custody” or “access” order under the *Divorce Act* made before March 1, 2021, **you can continue to rely on your existing order.** The new Act’s provisions tell you what your order means under the new Act:

Before March 1, 2021	After March 1, 2021
Custody	Decision-making and parenting time
Access (spouse)	Parenting time
Access (non-spouse)	Contact

For information on how “custody” and “access” orders are dealt with under the new law please see the “Parenting orders” section.

Changing my order

If you want to change your custody or access order that was made before March 1, 2021, then the new *Divorce Act* rules will apply to your parenting arrangements. For example, if you want to change your court order to change the time each parent spends with the child, your new order will use the term “parenting time” and the court will consider the new factors to determine the best interests of the child.

It is important to note that the changes in the law are not a reason for a change to your existing order. To make a change to a *Divorce Act* order, parties must show that there has been an important change in their life or that of their child. This is called a “change in circumstances” in the Act. **The changes to the *Divorce Act* are not a change in circumstances.**

For more information please see: “Parenting arrangements for orders or agreements made or changed after the new law came into force”.

Parenting arrangements for orders or agreements made or changed after the new law came into force

The new *Divorce Act*’s parenting provisions focus on parents’ responsibilities for their children and the tasks required for the care of the children.

If you are seeking to obtain a parenting order or to change an existing custody and access order or agreement that was made before March 1, 2021, the following information applies to you.

The custody and access provisions of the *Divorce Act* changed on March 1, 2021.

Please keep in mind:

- **For court orders or agreements made after March 1, 2021:** the new *Divorce Act* rules will apply.
- **For court orders or agreements that were made before March 1, 2021:** you can continue to rely on your existing court order or agreement. If you want to change a court order or an agreement **that was made before March 1, 2021**, the new *Divorce Act* laws will apply.
- **The changes in the law are not a reason for a change to your existing order.** To make a change to a *Divorce Act* order, parties must show that there has been an important change in their life or that of their child. This is called a “change in circumstances” in the Act. **The changes to the *Divorce Act* are not a change in circumstances.**

Parenting arrangements

A parenting arrangement is a plan that you or a court make for the care of your children after you separate or divorce. This includes arrangements about where the children will live, and who will be responsible for making major decisions about issues such as where the children will go to school, their religious education (if any), their medical care, and so on.

The *Divorce Act* has rules about parenting arrangements for parents who divorce. The provinces and territories generally have similar rules for unmarried parents and for married parents who separate but do not apply for a divorce. Your province or territory's laws may use other words to refer to parenting arrangements.

Family dispute resolution processes

A family dispute resolution process is a process **outside** of court that is used by parties to a family law dispute to try to resolve any issues. It includes negotiation, mediation and collaborative law.

There are many advantages to resolving issues by agreement, rather than through court proceedings. Out-of-court dispute resolution can be less expensive and less time-consuming, and parties are often able to retain more control over the decisions that are being made about their lives. Parents are often best placed to make decisions about their children because they know them best.

The new *Divorce Act* provisions encourage parents to use family dispute resolution processes to help focus on their children's interests and try to resolve their dispute early and outside of court. Parents have a new **duty** to try to resolve their disputes through family dispute resolution processes, but only if it is appropriate to do so. These processes may not be appropriate in certain situations, such as where there has been family violence. If you have experienced family violence, you should carefully consider whether family dispute resolution processes are right for you. You may wish to speak to a lawyer or mediator about family dispute resolution options that are designed to help protect people who have experienced family violence.

For more information about family violence, please see [Making Plans](#).

Parents' Duties

Parents and others who apply for orders under the Act have a duty to:

- Exercise their parenting time, decision-making responsibility, or contact with a child under a contact order, in a manner that is consistent with the best interests of the child.
- Protect children from conflict arising from the proceeding.
- Where appropriate, try to resolve matters through a family dispute resolution process.
- Provide complete, accurate and up-to-date information as required under the *Divorce Act*.
- Comply with court orders until they are no longer in effect.

Best interests of the child

You can agree to any type of parenting arrangement, but you need to focus on what is in the best interests of your children. If you cannot agree on a parenting arrangement and a judge must decide for you, the judge's decision must be based **only** on the best interests of the child.

No presumptions

The new law does **not** include any presumptions about parenting arrangements because all parenting decisions regarding children are to be made based **only** on the best interests of the particular child. For example, the new law does not contain a presumption that parents have an equal amount of time with their children.

Best interests factors

The new *Divorce Act* provisions include a list of factors to determine the best interests of the child to help parents, family justice professionals and judges determine what is best for the child in a particular case.

Primary consideration

The Act's new provisions state that a court must give **primary consideration to the child's physical, emotional and psychological safety, security and well-being.**

This means that your child's safety, security and well-being are the most important thing that the court will take into account.

Other factors

Courts must also consider a number of factors, such as the child's:

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

The courts must also consider issues 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 the family violence 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.

Remember:

- This is not a closed list. Parents and courts can consider **any factor** that is relevant to the circumstances of the child.
- The importance of each factor depends on your child's particular situation. But the child's safety, security and well-being is the primary concern.

Other considerations

The judge will also apply the principle that a child should have as much contact with each parent as is in the child's best interests. However, a court must consider the child's physical, emotional and psychological safety, security and well-being, **above all else**. This will be particularly important in cases of family violence.

A person's past conduct or behaviour may not be taken into account unless it is relevant to the exercise of parenting time, decision-making responsibility or contact with the child.

Parenting orders

For parenting arrangements made or updated after the new law came into force, courts assign decision-making responsibility and parenting time through a parenting order, based only on the best interests of the child.

Parenting time

Parenting time is when you are responsible for your child. This includes the time when your child is not physically in your care, such as when your child is at school or in daycare.

Each person with parenting time can make day-to-day decisions about a child when the child is in their care, unless a court orders otherwise. Day-to-day decisions include matters such as a child's bedtime and meals.

Decision-making responsibility

The new legislation introduces the concept of “decision-making responsibility” as the responsibility for making major decisions about a child’s well-being. This includes decisions about your child’s:

- health
- education
- language, culture, religion, spirituality
- significant extra-curricular activities.

These are examples. Decision-making responsibility includes having the authority to make any major decision related to your child’s welfare.

Contact orders

Generally, contact between a child and others such as grandparents or other extended family members will take place during parenting time.

A court can make a contact order where it is not possible for contact to take place during a parent’s parenting time, and it is the child’s best interest. In this case, a contact order would allow a non-spouse and a child to visit or stay in touch.

Who can apply for a parenting or contact order:

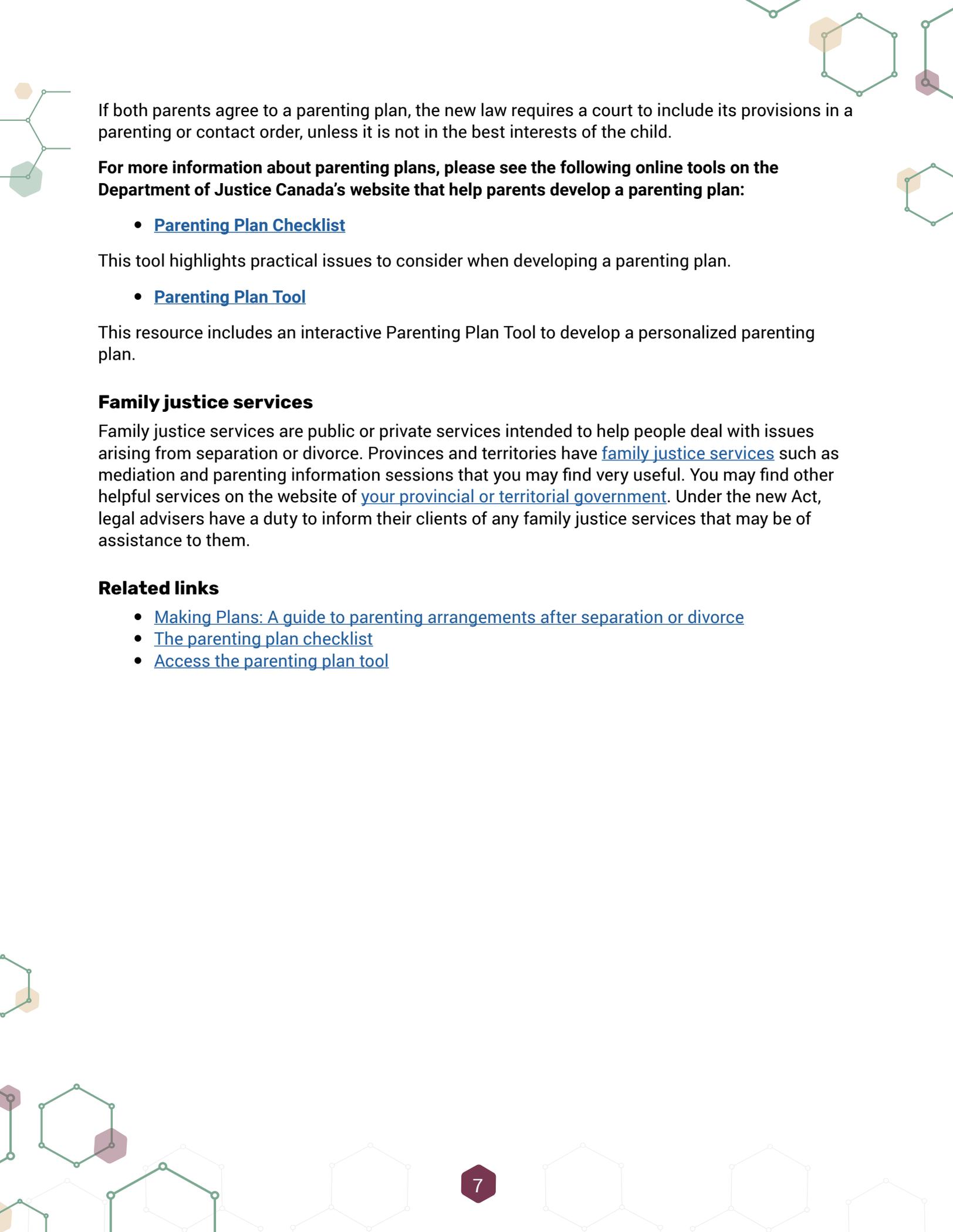
- Both spouses, a parent or any person who is currently in or seeking a parental role in the life of a child, may apply for a **parenting order**. Non-spouses need to seek “leave” of the court to apply for a parenting order. This means they need the court’s permission.
- Only a non-spouse can apply for a **contact order**. They must obtain the court’s permission to bring an application.

Parenting plans

When determining your child’s best interests, a court will consider how you and the other parent are planning to care for your child.

The new law encourages parents to develop parenting arrangements with as little court intervention as possible. A “parenting plan” is a tool that parents, mediators and lawyers use to help determine how parents will share responsibilities following separation and divorce.

A parenting plan may be very general, simply setting out a schedule for when your child will be in the care of each parent and who will make decisions about the child. It may also be very specific, setting out defined areas of decision-making authority for each parent, detailed schedules for your child’s activities and holidays, communication, travel and other aspects of a child’s care.



If both parents agree to a parenting plan, the new law requires a court to include its provisions in a parenting or contact order, unless it is not in the best interests of the child.

For more information about parenting plans, please see the following online tools on the Department of Justice Canada's website that help parents develop a parenting plan:

- [Parenting Plan Checklist](#)

This tool highlights practical issues to consider when developing a parenting plan.

- [Parenting Plan Tool](#)

This resource includes an interactive Parenting Plan Tool to develop a personalized parenting plan.

Family justice services

Family justice services are public or private services intended to help people deal with issues arising from separation or divorce. Provinces and territories have [family justice services](#) such as mediation and parenting information sessions that you may find very useful. You may find other helpful services on the website of [your provincial or territorial government](#). Under the new Act, legal advisers have a duty to inform their clients of any family justice services that may be of assistance to them.

Related links

- [Making Plans: A guide to parenting arrangements after separation or divorce](#)
- [The parenting plan checklist](#)
- [Access the parenting plan tool](#)