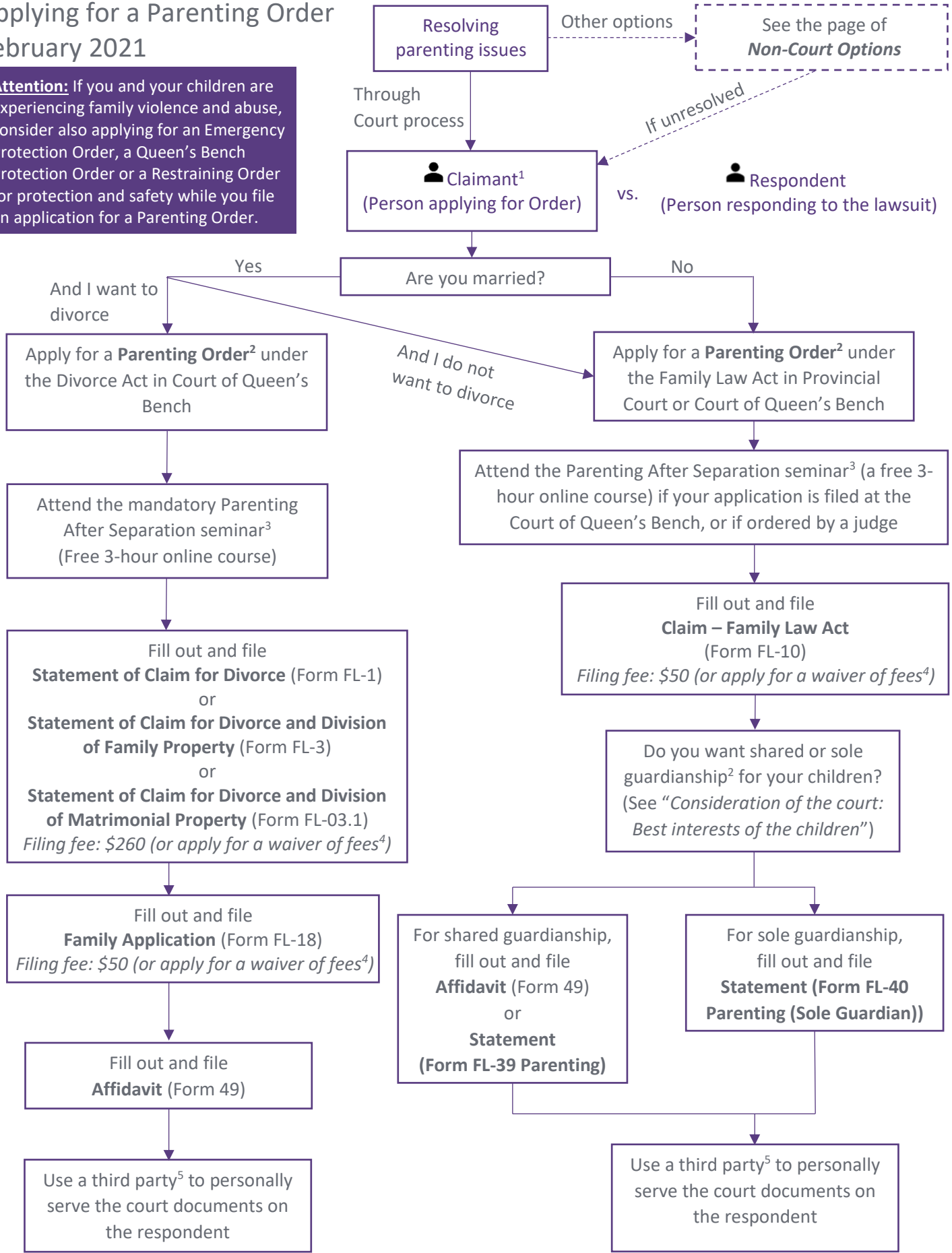


Applying for a Parenting Order February 2021

Attention: If you and your children are experiencing family violence and abuse, consider also applying for an Emergency Protection Order, a Queen’s Bench Protection Order or a Restraining Order for protection and safety while you file an application for a Parenting Order.



1. If without **legal assistance**, contact Resolution and Court Administration Services at 1-855-738-4747.
2. Differences between a Parenting Order under the Divorce Act and the Family Law Act are as follows:

	Parenting Order under Divorce Act	Parenting Order under Family Law Act
Meaning of Legal Terms	Decision-making Responsibility Responsibility for making significant decisions about a child, e.g. education and health. <i>Allocation of Responsibility</i> The court can allocate the responsibility as a whole or in any part: <ul style="list-style-type: none"> • jointly to more than one person, or • solely to one person (but conditions and restrictions could be imposed) 	Guardianship Ability to have decision-making powers over the child. <i>Shared / Sole Guardianship</i> <ul style="list-style-type: none"> • Shared guardianship: all guardians have joint decision-making power • Sole guardianship: only one guardian has the decision-making power
	Parenting time The time a child spends in the care of a spouse. It may be allocated by way of a parenting plan agreed to by the parties or a schedule decided by the court.	Parenting time The time a child spends with a guardian.
	Contact Time for a child to spend with a non-parent, e.g. a grandparent or extended family member	Contact Time for a child to spend with a non-guardian
Parties	Only between the parents, and the person who applies for a contact order	No limitation of number of guardians
Court	Court of Queen’s Bench	Court of Queen’s Bench or Provincial Court of Alberta

3. Where there is **family violence and abuse**, you could file your Parenting Order application without first completing the seminar if you are also applying for a *without notice restraining order* (a type of restricting order which does not notify the Respondent until the order is granted).
4. You may apply for a **waiver** of court fees. Search for “Waiving a filing fee” in www.alberta.ca to know more.
5. How to **serve the documents** through a third party:
 - a. If you have a lawyer, your lawyer will serve the documents for you
 - b. Hire a process server, such as SERV-IT (#111, 2719 – 7 Avenue NE, 403-244-4782, <http://www.serv-it.ca/>)
 - c. Ask a trusted friend or family member who is over 18 to serve the documents for you – that person will need to fill out and file with the court an Affidavit of Service to prove that the documents were served

Consideration of the Court: Best Interests of the Child

In Alberta, a child is any person who is under the age of 18. When making a Parenting Order, the court will only consider the best interests of the child, which includes:

- Greatest protection of the child’s physical, psychological and emotional safety, security and well-being?
- Any family violence and abuse, and its impact on the child?
- Child’s needs and circumstances:
 - Child’s age and stage of development?
 - Who has been caring for the child?
 - Child’s views and preferences?
- Relationship between the child and all people who play an important role in the child’s life?
- Ability and willingness of each party to care for and communicate on the needs of the child?

*The list is not exhaustive.

Disclaimer: This map is for general information purposes and professional consultation is recommended.

Revised on February 1, 2021

Changes in Divorce Act – Consideration of Family Violence and Abuse

(Effective on March 1, 2021)

What's new?

Now courts must consider the relevance of any family violence and abuse when making a Parenting Order.

Definition of Family Violence and Abuse

Family violence means any conduct that is:

- Violent
- Threatening
- Forms a pattern of coercive and controlling behaviour, or
- Causes a family member to fear for their safety or the safety of another person

It includes a **child's direct or indirect exposure** to such act:

- Direct exposure: seeing or hearing the violence
- Indirect exposure: seeing that a parent is fearful or injured

Examples of Family Violence and Abuse

- Hit, kick, punch, push, choke, strangle or use physical force against you
- Force or coerce you to have sex when you don't want to
- Threaten to kill or hurt you or other people you care about
- Harassment and stalking
- Fail to provide the necessities of life or withhold medication
- Criticize or blame you for everything that goes wrong in a threatening or controlling manner
- Control your access to money or personal documents
- Destroy your property or abuse your pets
- Threaten to hurt you or commit suicide if you leave

In assessing the impact of family violence and abuse, the court will consider...

- (a) the nature, seriousness and frequency of the family violence and abuse and when it occurred;
- (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- (c) whether the family violence and abuse is directed toward the child or whether the child is directly or indirectly exposed to the family violence and abuse;
- (d) the physical, emotional and psychological harm or risk of harm to the child;
- (e) any compromise to the safety of the child or other family member;
- (f) whether the family violence and abuse causes the child or other family member to fear for their own safety or for that of another person;
- (g) any steps taken by the person engaging in the family violence and abuse to prevent further family violence and abuse from occurring and improve their ability to care for and meet the needs of the child; and
- (h) any other relevant factor.

How would family violence and abuse affect the court proceedings / Parenting Order?

- The Divorce Act now requires the parties to *try* to resolve the matters through a family dispute resolution process. However, **dispute resolution processes may not be appropriate** when there has been family violence and abuse.
- The child's safety, security and well-being are the most important factors in making a Parenting Order. The court must consider the impact of family violence and abuse on parenting and contact arrangements of the child, including the ability and willingness of the parents to:
 1. **care for and meet the needs of the child**, and
 2. **cooperate or communicate** with each other on issues affecting the child.
- The parent living with the child usually has to inform the other spouse if the child will move to another place of residence. However, if there has been family violence, the court can **waive or modify** the requirement to provide **notice of a change in place of residence / notice of relocation**. For example, the court may order:
 - a longer or shorter period of notice, or
 - that there is no need to notify an individual the new location of the residence of the child or the parent because of safety concerns.

Disclaimer: This map is for general information purposes and professional consultation is recommended.

Revised on February 1, 2021

Non-Court Options



coParenter

A tool to empower families to resolve their own parenting issues. The platform includes online mediation and coaching, coronavirus-related safety plans, parenting plans, holiday and vacation schedules, agreements, education and support: www.coparenter.com



Our Family Wizard

Tools to manage schedules, track expenses, share files and communication are contained within this app, so parents can solve parenting challenges faster and without confusion: ourfamilywizard.ca



Alberta Family Mediation Society (AFMS)

A professional association of family mediators and parenting coordinators in Alberta: <https://afms.ca/>



Alternative Dispute Resolution Institute of Alberta (ADRIA)

A professional association of mediators, arbitrators and other ADR practitioners in Alberta: <https://www.adralberta.com>



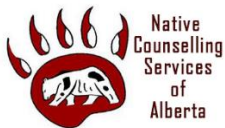
Family Mediation Programs

A voluntary service to help parents and families resolve issues that affect their children. To qualify for this service, one of the parties must have a gross income of less than \$40,000 per year, both parties must agree to participate, and there must be at least one dependent child who is either under 18, or over 18 and eligible for continued child support: <https://www.alberta.ca/family-mediation.aspx>



Collaborative Practice

Collaborative practice is a process that enables separating or divorcing spouses to create their own divorce (or separation) agreement with the support of specially trained professionals. It allows parties to resolve disputes without resort to a third-party decision maker, and may include legal, mental health, financial and other experts as needed. In Alberta there is a provincial organization and six regional associations: <https://collaborativepractice.ca/>



Native Counselling Services of Alberta

A number of services to support families, and to assist in family court: <http://www.ncsa.ca/programs/help-with-childrens-services/>



References:

1. Booklets published by the Centre for Public Legal Education Alberta
 - a. Families & the Law – Child Custody and Parenting
 - b. Families & the Law Domestic Violence Series – Child Custody and Parenting
 - c. Families & the Law Domestic Violence Series – Emergency Protection Orders

2. Resolution Services – General Information Booklet – Guardianship, Parenting, Custody, Access and Contact
<https://www.alberta.ca/assets/documents/rcas-general-information-guardianship-parenting-custody-access-and-contact.pdf>

3. Legislation
 - a. Section 18, Family Law Act, c F-4.5 2003
 - b. Protection Against Family Violence Act and Regulations

4. Changes made to Divorce Act
 - a. Department of Justice: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/div2.html>
 - b. Virtual Session for IMPACT/CDVC Members on Bill C-78: PowerPoint & Notes