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Date: October 23, 2025

Standing Committee on
Social Development

NORTHWEST TERRITORIES LEGISLATIVE ASSEMBLY

Report on Bill 23: *An Act to Amend the Children's Law Act* & Bill 24: *An Act to Amend the Family Law Act*

20th Northwest Territories Legislative Assembly

Chair: Ms. Jane Weyallon Armstrong

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SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its Report on Bill 23: *An Act to Amend the Children's Law Act* and Bill 24: *An Act to Amend the Family Law Act* and commends it to the House.

MLA Jane Weyallon Armstrong
Chair, Standing Committee on Social Development

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STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

REPORT ON BILL 23: *AN ACT TO AMEND THE CHILDREN'S LAW ACT* & BILL 24: *AN ACT TO AMEND THE FAMILY LAW ACT*

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INTRODUCTION AND BACKGROUND

Bill 23: *An Act to Amend the Children's Law Act* (Bill 23)[1] and Bill 24: *An Act to Amend the Family Law Act* (Bill 24)[2] propose changes to current family law legislation following amendments to the federal *Divorce Act* that came into force on March 01, 2021. The 2021 amendments to the *Divorce Act* were intended to promote the best interests of the child, address family violence, reduce child poverty, and ensure the family justice system is more accessible and efficient. While the federal *Divorce Act* addresses situations involving the break-up of married couples, the territorial *Family Law Act* addresses situations involving the break-up of common-law couples.

Changes to the *Children's Law Act* presented in Bill 23 include updates to the best interests of the child test, introducing new terminology that replaces current "custody" and "access" orders with "parenting" and "contact" orders, adds new provisions to address family violence, clarifies the legal process for family relocations, and describes new duties for parents, legal advisors and the courts. Bill 23 also proposes amendments to areas not related to the *Divorce Act* including allowing for the collection, use and disclosure of personal information by and to the Child Support Recalculation Service and amending Section 75 of the *Children's Law Act*. Amendments proposed in Bill 24 to the *Family Law Act* are closely tied to simultaneous amendments to the *Children's Law Act* in Bill 23.

The Minister of Justice brought Bill 23 and Bill 24 forward to the House in the February 2025 Sitting of the 20th Legislative Assembly. Bill 23 and Bill 24 received second reading on March 13, 2025, and were referred to the Standing Committee on Social Development (Committee) for review.

This report summarizes Committee's review of Bill 23 and Bill 24, starting with public engagement. This report also describes Committee's efforts to review and strengthen Bill 23 and Bill 24, including four (4) motions to amend Bill 23 and one (1) motion to amend Bill 24. Of which, 04 were accepted at the clause-by-clause review. This report also includes 10 recommendations.

PUBLIC ENGAGEMENT

On June 11, 2025, Committee hosted a public hearing, whereby Committee was briefed on both Bills by the Minister of Justice[3]. The Minister's presentation is included in Appendix A. There were no members of the public that attended the public hearing.

Between May 2025 to August 2025, Committee sought written submissions on Bill 23 and Bill 24. Committee sent three (3) targeted engagement letters to relevant organizations in the NWT. Committee received written submissions from a group of family law lawyers practicing in the Northwest Territories (NWT). Their submissions are also included in Appendix A.

Committee appreciates everyone who offered their feedback at public meetings and in written submissions. Participants offered thoughtful ideas to improve the Bills and feedback on key areas of family law in the NWT.

Committee categorized public comments received into ten (10) themes.

1. **Seeking clarity on definitions**

In a written submission to Committee, a group of family law lawyers highlighted a recent decision of the NWT Supreme Court (*Robertson v Robertson*, 2025 NWTSC 46) that interpreted the definition of "commencement date", which is used to start valuing matrimonial property. In that decision, the couple lived together for 10 months before marriage and the court found the *marriage date* to be the "commencement date".

In light of this court decision, Committee was informed that the existing definition under Section 33 of the *Family Law Act* (*FLA*) remains unclear and needs review. Presently, in Section 33 of the *FLA*, "commencement date" means in respect of a spousal relationship, the earlier of the dates on which the spouses (a) were married, or (b) started cohabitating outside marriage for a period or in a relationship sufficient to establish their spousal relationship. Therefore, the "commencement date" may be seen as the date when a couple begins living together.

Committee believes narrowing the definition of "commencement date" within family law legislation will help in clarifying any confusion raised around these dates in family law courts. Committee therefore recommends:

Recommendation 1: The Standing Committee on Social Development recommends the Government of the Northwest Territories conduct a jurisdictional review of the definition for "commencement dates" within family law legislation in Canada and propose new language and amendments within the *Family Law Act* to clarify the definition.

The group of lawyers also presented concerns on how to address a person's negative equity at the "commencement date", illustrating that in Ontario, a person's negative equity is "zeroed" and has no impact on a person's net worth at their "commencement date". They suggested that this concept is worthy of review for NWT's family law legislation, and therefore Committee presents the following recommendation:

Recommendation 2: The Standing Committee on Social Development recommends the Government of the Northwest Territories conduct research to develop a clear process in addressing a person's negative equity and subsequently propose related amendments to the *Family Law Act* or its *Regulations*.

Several definitions and concepts within the *Children's Law Act* and its Regulations were brought to the Committee's attention for further review, particularly in areas that remain unresolved at the national level. First, solutions are required to address "hybrid" parenting arrangements (i.e., situations where one parent has sole responsibility for one or more children, and both parents share responsibility for one or more other children). It was suggested that a jurisdictional review of other family law legislation would be prudent to determine strategies in addressing these types of situations to provide clear counsel to families. Secondly, strategies ought to be developed to allow "joinder" of child support cases. For example, solutions are needed to determine if the courts should allow bringing both the biological parents and the stepparent into the same child support case, in determining the potential obligations to pay child support.

Committee believes these issues merit review and present the following recommendation:

Recommendation 3: The Standing Committee on Social Development recommends the Government of the Northwest Territories study and evaluate strategies to address "hybrid" parenting agreements and solutions for permitting "joinder" of child support obligations within the Northwest Territories' *Children's Law Act*'s *Regulations* and present amendments to its *Regulations*.

2. Orders for urgent care of a child

Motion 1 Bill 23

Section 39 of the existing *CLA* outlined processes for courts to dispense with the consent of a parent for a child's medical treatment. This section was repealed without

replacement. Concerns were brought to Committee, although this section is sparingly used, its repeal could eliminate an important legal remedy for the court. They also note that this authority of the court may need to be explicitly stated if the Territorial Court is meant to have this authority.

Committee believes this is an important provision, particularly the *ex parte* or "urgent" aspect of this section, which would permit a parent to apply for an order for a child's medical treatment without the consent of the other parent. Committee understands that Section 39 of the existing *CLA* is partly achieved through Sections 15 and18 of Bill 23. Although, Committee remains committed to the ability to seek urgent relief as outlined in Section 39 of the existing *CLA and* therefore moved to add a new clause after clause 38 to add to section 77 to allow for *ex parte* urgent orders concerning decision making for a child more broadly, and not solely in medication cases. The motion was carried during the clause-by-clause review with the Minister's concurrence.

Motion 1 for Bill 23 is included in Appendix B of this report.

3. **Rights of the child**

Motion 2 Bill 23

In their written submission to Committee, the group of family law lawyers highlighted that Section 83 of the *CLA* could clarify that the court has the ability and authority to appoint legal counsel for a child. They note that these changes could also clarify that the child is not solely responsible for communicating their view and preferences, and that they can have the assistance of appointed counsel.

Committee believes it is important that the *CLA* explicitly state that the court may appoint legal counsel for a child. In particular, Committee views this as a critical access to justice measure that would strengthen legal protections and representation for children in the NWT.

Committee therefore moved that Bill 23 be amended by adding a provision after clause 42. The provision specifies that a court may, if it is in the best interests of a child in application under Part III, appoint counsel to represent the child, who shall act in the best interests of the child. The court may appoint a representative by its own initiative, or on motion by a party. The motion was carried during the clause-by-clause review with the Minister's concurrence.

Motion 2 is included in Appendix B of this report.

Additionally, it was suggested to Committee that a provision should be made to incorporate the United Nations Convention on the Rights of the Child (CRC) in the *FLA* and the *CLA*. The CRC is an international legal agreement that describes the human

rights of every child. Including the CRC as a provision in the *CLA* or *FLA* would commit the courts and the government to apply the rights of the child that are outlined within the CRC. Canada ratified the CRC in 1991[4]. Committee believes this is worthy of review, and presents the following recommendation:

Recommendation 4: The Standing Committee on Social Development recommends the Government of the Northwest Territories conduct research to determine how the United Nations Convention on the Rights of the Child can be incorporated into the Northwest Territories' *Children's Law Act* or *Family Law Act*, and present amendments to these Acts.

4. Relocations

Motions 3a and 3b Bill 23

Committee was made aware of some potential challenges with provisions related to "relocations" and "change of residence" in smaller NWT communities. It was noted that these sections may work in larger centers in Southern Canada, but that they may have different impacts in Northern communities. Specifically in Section 38.5(3) of Bill 23, the phrase "significant impact" may be difficult to discern and the requirement to give notice if one parent relocates may be an unnecessary burden for families in smaller communities whereby frequent moves may be common and would not create as big of a disruption to family lives as compared to moves within larger centers. For this reason, Committee believes that in the definition of "relocation" in the new proposed Section 15 of Bill 23, a subclause be added that would allow for the Minister to further define "relocation" in the Regulations.

Committee believes this change will allow the Minister the ability to further define "relocation", including adapting the definition to the realities of NWT communities. Committee therefore moved to amend Clauses 14 and 43 of Bill 23. The motions were carried during the clause-by-clause review with the Minister's concurrence.

Motions 3a and 3b are included in Appendix B of this report.

5. Restrictions on access to family court files

Public concerns were presented to Committee regarding the access to family court files. Their concerns centred on the proposed restrictions on access to family court files within Bill 23, and that these restrictions may undermine the legislative objective of supporting resolution outside the courts. Committee believes this feedback is also related to the *Child and Family Services Act (CFSA)*, in that a restriction on access to family court files regarding a child in care of the government may be in direct conflict with the *CFSA*.

Committee takes note of this feedback, and believes it is important to strike a balance between access to court files to properly represent clients, protecting the identity of

children and the best interests of a child while also acknowledging that there are cases where appropriate access should be granted.

Therefore, Committee presents the following recommendation:

Recommendation 5: The Standing Committee on Social Development recommends the Government of the Northwest Territories review the *Child and Family Services Act*'s provisions on restrictions to family court files and access to information, and propose amendments to the *Children and Family Services Act* to ensure restrictions on accessing court files does not impede a child's best interests.

6. Domestic contracts

Motion 1 Bill 24

Committee heard concerns that Bill 24 repeals but does not replace Section 8(1) of the existing *FLA*. Section 8(1) of the *FLA* relates to "contracts subject to the best interests of the child", allowing the court to disregard any provision in a domestic contract where it is in the best interests of the child to do so. It was brought forward to Committee that this section ensures a child's best interests remains central within a domestic agreement.

Committee therefore moved to remove Clause 9 of Bill 24 to reinclude this section to ensure that a child's best interests are upheld within a domestic agreement. The motion was carried during the clause-by-clause review with the Minister's concurrence.

Motion 1 of Bill 24 is included in Appendix B of this report.

7. Child Support Recalculation Service

The Child Support Recalculation Service is a free service in the NWT that helps parents with child support orders recalculate their child support payments based on their income and meet their legal obligations[5].

Recommendation 6: The Standing Committee on Social Development recommends the Government of the Northwest Territories review the eligibility requirements in accessing the Child Support Recalculation Service and amend the Regulations to broaden the eligibility requirements so the Service is accessible to more families in the Northwest Territories.

8. Supervised Access

Section 36 of Bill 23 speaks about a court's direction for the supervision of parenting time or contact under a parenting order or contact order. There were concerns brought

forward about Child and Family Services being required to provide parental supervision, and that anyone providing this service should consent to doing so in advance. They also suggested that the court should maintain oversight if the Director of Child and Family Services agrees to this role. Committee understands there are issues with reliable supervised access solutions, especially in smaller communities, and therefore presents the following recommendation:

Recommendation 7: The Standing Committee on Social Development recommends the Government of the Northwest Territories work with Child and Family Services and explore partnerships with other qualified individuals or community organizations to develop and implement strategies that make supervised access more accessible, safer, and aligned with a child's best interests, particularly for families in small communities.

9. Family Mediation Program

The GNWT's Family Law Mediation program is a voluntary free service to help parents, guardians and other individuals with interest in a child's life deal with concerns related to separation or divorce[6]. Committee believes the GNWT's Family Mediation Program is an important avenue for families in family law court, and especially important for families that may have negotiated parenting agreements outside of family law court. This program may be a crucial access point for families to work with a mediator and determine parenting agreements outside of court.

Committee therefore presents the following recommendation:

Recommendation 8: The Standing Committee on Social Development recommends the Government of the Northwest Territories develop and implement communication strategies to ensure families outside the family court system are informed of the Government of the Northwest Territories' Family Mediation Program and its benefits.

10. Consequential amendments to other legislation

The terms "custody" and "access" were changed through Bill 23, in alignment with the 2021 changes to the *Divorce Act*. However, these terms still exist in other NWT legislation. It was recommended by the family law lawyers that considering these changes, the NWT's *CFSA* be amended to eliminate the terms "custody" and "access". It is emphasized that the *Children's Law Act* and the *CFSA* should work harmoniously, and that subsequent changes to the *CFSA* should have broader consultation and engagement.

To ensure these two Acts work together appropriately, Committee recommends the following:

Recommendation 9: The Standing Committee on Social Development recommends the Government of the Northwest Territories review the *Child and Family Services Act* and other related legislation to change terminology around "custody" and "access" as presented in the 2021 changes to the *Divorce Act* and in Bill 23: *An Act to Amend the Children's Law Act*.

CONCLUSION

On October 10, 2025, Committee held a clause-by-clause review for Bill 23 and Bill 24. Committee passed a motion to report Bill 23 and Bill 24, as amended, to the Legislative Assembly as ready for consideration in Committee of the Whole.

This concludes the Standing Committee on Social Development's review of Bill 23 and Bill 24.

Recommendation 10: The Standing Committee on Social Development recommends the Government of the Northwest Territories provide a response to this report within 120 days.

ENDNOTES

[1] Bill 23 is available at: https://www.ntlegislativeassembly.ca/sites/default/files/bills-and-legislation/2025-03/Bill%2023%20%28public%20version%29%20%281%29.pdf
[2] Bill 24 is available at: https://www.ntlegislativeassembly.ca/sites/default/files/bills-and-legislation/2025-03/Bill%2024%20%28public%20version%29%20%281%29.pdf
[3] Video of Committee's June 11th, 2025, public meeting in Yellowknife is available at: https://www.youtube.com/watch?v=fiytrv7cbhM
[4] www.childandyouthadvocatepei.ca/files/OCYA%20FAQs%20for%20website.pdf
[5] https://www.justice.gov.nt.ca/en/child-support/recalculation/
[6] https://www.justice.gov.nt.ca/en/family-law-mediation-program/

APPENDIX A

SUBMISSIONS and PRESENTATIONS

Act to Amend the Children's Law Act

And An Act to Amend the Family Law Act

A REVIEW AND RESPONSE

SUBMITTED BY:

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Renée Fougere
Ken Kinnear
Anastasia Kiva
Candace Lee
Margo Nightingale
Paul Parker
Caroline Pothemont

Thank you for the opportunity to provide feedback on the proposed amendments to the NWT Family Law Act ("FLA") and Children's Law Act ("CLA"). Many of the proposed changes are non-controversial, particularly when reviewing changes to the Family Law Act. Other changes, particularly within the Children's Law Act, raise concerns and are addressed in this response.

As a general observation, the proposed amendments do more than reflect the amendments to the Divorce Act and raise significant questions about the policy direction and future impact for parents and children in the NWT.

Having the context for these changes would help us assess the need and impact of the proposals. Without that, we are working with our personal and professional knowledge of the likely impacts. If there is additional information that would provide further context to the proposals, we would appreciate the chance to review that information.

What follows represents input of nine family lawyers and two civil lawyers. There are some issues where we do not all agree. We have identified those issues and hope there will be enhanced government engagement on them to reduce the likelihood of confusion or future court challenges. These are our collective comments:

Definitions:

If one goal of this proposed legislation is to adopt terminology now being used in the Divorce Act, the GNWT Department of Justice {"Justice") should consider the reasons for any departures. Two examples are:

1. The Divorce Act defines and applies "**family dispute resolution process**" (s. 2 and s. 7.7(2)(a)) but the NWT proposed has chosen to use "**alternative dispute resolution**" in s. 32(3) and 33(4)(2)(a));

2. The Divorce Act uses the terms **"adviser"** and the NWT's proposed uses **"advisor"** in the CLA proposals. While it's not clear why these words are spelled differently, additional concerns arise in using this terminology.

   In the NWT's proposed changes to the CLA, "advisor" is also defined differently than in the Divorce Act. In part, this is because the Divorce Act's broad language is meant to include paralegals who give legal advice under the Divorce Act in some jurisdictions. Paralegals do not have this authority in the NWT, and more specific language in the proposed CLA would be helpful as a result.

   We are also concerned at the complexity of the proposed NWT definition for "advisor". This problem arises because the definition refers to a completely different Act, the Legal Profession Act ("the LPA"). That legislation has been completely revised and is currently before the Legislative Assembly. If the LPA is adopted, "advisor" is not defined. That word

appears once in the LPA (ie. “Canadian Legal Advisor”) and trying to discern the meaning of “advisor” requires reading through the LPA to understand who is a ”registrant”. This has not created a clear definition.

Further, an “advisor” is only applicable in Part III of the CLA but the terms “legal advisor” and “counsel” both exist in the CLA. Does use of both terms create confusion or clarity?

We have also looked at new definitions proposed in these sections:

- FLA ss. 2, 3, 27, 28, 29, 30
- CLA ss. 3, 15, 34

We encourage Justice to adopt a plain language approach when deciding what terms will be defined and how. We see the benefit of definitions when:

1) A term has a specific legal meaning that could be different than common useage (like “child”);
2) one term includes other “like” things (ie “domestic contract”)
3) where a term may not be understood or used correctly absent a definition (like “relocation”).

Definitions are not necessary in other situations. We encourage Justice to review the proposal to eliminate unnecessary definitions and ensure that remaining definitions enhance clarity, use plain language and avoid:

1) using the defined term within the definition itself; and
2) referencing another section, subsection or part of an Act, or another Act. Doing so may achieve some brevity at the expense of clarity.

With respect to specific proposed definitions, consider this:

“Child” has two different meanings in the CLA. The first relates to parenting time and parental decision-making and the second relates to child support. It would be more clear if this was made plain in the Act. When defined for the first purpose, it is proposed (at s. 15(1)) that a child is “a minor”. Given that “a minor” is defined in other legislation and is different in other parts of Canada, this definition can be a source of confusion not clarity. It may also be necessary to assess how the legal concept of a “mature minor” is addressed, particularly if the legislation will allow a court to address medical decisions for a child (something that is currently deleted from a court’s authority). This proposed definition also creates inconsistency with other NWT legislation without specifying why. We encourage Justice to re-examine this definition for consistency, accuracy and clarity.

Many people also think that there is a certain age when a child gains the right to choose between their parents. Can these amendments be used to provide clarity on that point?

"[C]hildren's welfare society" is a new term within the proposed CLA. This language doesn't reflect the existing government body or agencies responsible for child protection or child welfare, creating uncertainty. It also contradicts language within the NWT's Child & Family Services Act and the federal legislation An Act Respecting First Nations, Inuit & Metis Children, Youth and Families, two Acts that are central to addressing child "welfare". We recommend this term be re-considered and in doing so, we urge Justice to also consider:

1) how an Indigenous organization with jurisdiction in this field is addressed (are they included in this definition);

2) does the concept extend to other similar agencies / organizations / bodies outside the NWT?

We also ask whether there is a need to include this government agency within the legislation at all. This is discussed more when reviewing the proposal to have third parties provide evidence from the "society". **

"[F]amily member" is newly defined in s. 15 of the proposed CLA and includes a "**dating partner** of a parent who participates in the activities of the household". While this mirrors the definition within the Divorce Act, CBA Family Law lawyers did not support including this language in the Divorce Act. We recommend more discussion in the NWT about the practical implications of this change in the non-divorce context. For example, should there be some refinement of what it means to "participate in the activities of the household"? The language may be overly broad and create more uncertainties in the non-divorce context.

<u>"Family Violence"</u>

The proposed change to the CLA adopts the definition within the Divorce Act. It does so by reference. If this approach is to be used, it would be much easier for the public to understand if the CLA included the text, not just a reference to the Divorce Act.

Under the proposed change to the FLA, "family violence" is also defined by reference, but not to the Divorce Act. Instead, it directs people to the CLA definition. This is a confusing and circuitous approach to definition which we encourage the Department to change.

It is also important to consider that the NWT defines "family violence" in different Acts. Is inconsistency being created by adopting a definition that is different from that within the Protection Against Family Violence Act? We encourage Justice to apply a more consistent territorial definition.

"Relocation" is newly defined in s. 15 of the proposed CLA and is based on the definition in the Divorce Act. If adopted, the definition will expand how a change of residence will be addressed in non-divorce cases. The definition has changed some language to address non-divorce situations. As one example, the NWT proposals eliminate reference to someone with a "pending application" and instead refers to "an applicant". If intended to be more clear,

plainer language would be preferred (for example “a person who has applied to the court for a parenting order”). We encourage a reconsideration of this terminology and the broad application of this concept, even though NWT communities are all extremely small (as compared with major southern population centres). This is discussed more below.

Pronouns and neutralizing genders:

- FLA – ss. 7, 11-14, 16-19, 21-22, 26
- CLA ss 3 – 12, 18-20(1), 22, 23, 26, 29(1), 38, 77

We understand that families are now more complex social constructions. People in same sex relationships and transitioning or transitioned people may not be included within the existing terminology of “mother” or “father” or other gendered personal identifiers within the legislation. We agree that this must be addressed as legislation is being updated.

We also understand there is a trend in Canada to adopt language that eliminates the use of gendered language. We support that approach. Several different ways to achieve gender neutrality are discussed here:

Legistics - Gender-neutral Language (justice.gc.ca)

We have not compared the existing text with the proposed changes and we encourage Justice to assess the recommendations provided by Justice Canada at the above link and to confirm:

a. Are “they”, “them”, “themselves” being used in a grammatically correct way?
b. Is the replacement text clear or does it create any confusion in the provision itself?
c. Is it more appropriate and more clear to replace pronouns with gender neutral words or concepts like “parent” or “person” or “spouse”?
d. Are there cases where maintaining gendered terms remains appropriate in context?
e. Is other NWT legislation affected by the elimination of gendered concepts like “mother” and “father” in these revisions?
f. Do other terms better align with other territorial or federal legislation?

As one example where eliminating gendered concepts could be addressed differently, see s. 77 of the proposed CLA. We recommend that it would be more appropriate and consistent within the legislation if the proposed section used “biological parent” rather than “person whose sperm resulted in the conception of the child…” We are also unsure if provision has been made for situations where assisted reproductive technologies result in a pregnancy and/or birth where either or both “biological parents” are not the parent who gives birth.

Best interests of the child

- BIOC – FLA – s. 9
- BIOC – CLA – ss. 26, 38.7(2)

We question why s. 8(1) of the existing FLA has been repealed but not replaced. That section ensures a child's best interests remain relevant in the assessment of terms within a domestic agreement.

The proposed amendments to the CLA are very similar to the those adopted in the Divorce Act. Some minor amendments have been made in the proposed changes that do not improve clarity and do not increase "readability". In one instance (ss.26(5)), deleting the text after "contact" could result in confusion and the Divorce Act text is preferred.

We also note that while adopting the Divorce Act language expands the best interests of a child in positive ways, it results in the elimination of some unique provisions in our existing Act. In particular, we recommend that the North and its population is best served by continuing to recognize that "differing cultural values and practices must be respected in that determination [of a child's best interests]".

Currently, the CLA lists a "child's views and preferences if they can be reasonable ascertained" as an element of the best interests of a child. It is proposed to change that language to reflect language used in the Divorce Act. The proposed wording is:

> (e) the child's views and preferences, giving due weight to the child's age and maturity, unless the views and preferences cannot be ascertained;"

What is done if a child's views "cannot be ascertained"? This requires more thought, particularly now that the NWT has an Office of the Children's Lawyer that can be appointed to protect a child's rights and interests where a child lacks the ability to express their views and preferences (because of age of disability).

Use of Plain Language in addressing "best interests"

If Justice is willing to revise the language within the Divorce Act, we encourage Justice to apply plainer language in the NWT legislation. Sections 26(1), (2) and (3) could be combined to be more simple and clear in this way:

> 26 (1) When asked to make a parenting or contact order, the judge must give primary consideration to the child's physical, emotional and psychological safety, security and well-being and ensure the order is in the best interests of a child. Factors that are important to assess a child's best interests include: …

In general, where "a court" is given authority, it would be more clear to state that the action is taken by "the judge". This may require a new definition to address any issues arising.

We are also concerned that "best interests" are referenced in sections 16 and after, often referring to "best interests" that is referred to in s. 23. However, "best interests" is not mentioned in s. 23 and is not defined until s. 26. This requires review.

New terminology (eliminating custody/access per Divorce Act "DA")

- FLA – ss. 4-6, 14, 25
- CLA – ss. 2, 15(2), 15(3), 16-18, 21-23, 27-29, 36, 38, 38.1 (this includes some substantive changes to the old s. 32), 41- 43

Adopting new language to replace the concepts of "custody" and "access" are positive advances. Doing so with a "search and replace" approach to legislative amendment may be generally successful but there can be exceptions (see proposed s. 22). We encourage Justice to review each replacement more closely to ensure the meaning in each revised provision has not been altered.

Section 17(4) of the proposed CLA attempts to excise the concept of "custody" currently within s. 18(5) of the existing CLA. Some counsel have suggested that continuing to allow one parent to gain decision-making authority upon the implied consent of the other parent should not be included as it may encourage a parent to "leave with the kids first". Additional thought should be given to this clause. We also submit that it is less confusing and repetitive to delete "but not the entitlement to parenting time".

Based on the proposals, it appears a non-parent can apply for an order for decision-making responsibility (see proposed s. 18(2)) and a "contact order" but not an Order for "parenting time".[1] It also appears that a "contact order" cannot extend to full time care of a child. Should it be possible for a non-parent to be granted more time caring for a child than a "contact order" suggests or permits? This requires more analysis to determine the rationale and possible impact of that kind of change.

The Divorce Act (at s. 16.1(1)(b)) recognizes that a non-parent may apply or be considered for parent-like responsibilities if that person stands "in the place of a parent or intend[s] to stand in the place of a parent." Language like this should be continued in the proposed amendments to the CLA.

We also note that the proposed changes state that the person with parenting time has exclusive decision-making authority for day-to-day decisions when the child is with them. It does not extend to a person who has "contact". This deserves further review. If it remains as is, no one with "contact" can make any day-to-day decisions. This becomes more problematic if, by virtue of the current drafting of the CLA, a non-parent has full time contact but not

[1] See proposed s. 15(1) definition of "parenting time" – "which means the time a child spends **in the care of a parent of the child,** whether or not the child is physically with the parent during that time"

"parenting time", then non-parents could not make day-to-day decisions when the child/children are with them.

"Duties"

- CLA s.33 – 35

The Divorce Act now contains several clauses under the heading "Duties". The proposals for the NWT CLA largely mirror those changes. Some questions arise that would benefit from further clarity: Is any "duty" intended to be a fiduciary duty or a duty of care, either of which has additional legal connotation, or is it more accurate to refer to these additional elements as "expectations"?

Are different concepts of "duty", "obligation" or "expectation" more appropriate when considering what shall apply to a party, a "legal advisor" or a judge ("the court")?

What is the consequence if a "duty" is not upheld?

In s. 33(2) a party is to "protect any child" from conflict arising in the proceeding. The language as proposed, is much broader than used in the Divorce Act. Is it intended to apply to any "minor"? Does this apply to a broader definition of "child" to include adult children or children who are unrelated to the proceeding? How does this clause address situations where a "child" of the relationship may be providing evidence with respect to family violence?

There was disagreement among counsel about the implications and consequences of adopting the remainder of these clauses. While we understand they are intended to mirror clauses adopted within the Divorce Act, are there ways in which our Territorial context would be better addressed in a different way?

Some areas for further examination include:

- Should the language remain subjective and flexible to encourage out of court resolution, or should the use of court alternatives be mandated?

- If the proposed legislation refers to using a "process" of alternative dispute resolution, does that imply that less formal, non-process based alternatives are excluded or discouraged?

- Does the current proposed wording of s. 33(4) suggest that parties need not provide complete disclosure before or during any alternative "process"?

- Is it sufficient for a party to acknowledge that they are "aware" of the new "duties", or should any attestation require that a party will uphold those "duties"? (ss. 33(6))

- Is allowing for flexibility when application is "clearly not appropriate" in s. 34(2) and s. 35(2) too subjective? Should the determination of what is appropriate be the sole purview of a judge?

- Is there a negative consequence if a court decides that the failure to apply any "duty" was incorrect?

It is a positive advance that a court must now consider if there are any civil or criminal restrictions in place that could interfere with arrangements to care for a child. However, the proposed language of s. 35(2) does not mirror s.7.8(2) of the Divorce Act, and it could. Adopting the Divorce Act language would also improve 35(3) which would change the essential meaning of the Divorce Act at the end of s 7.8(2). The Divorce Act refers to information "obtained through a search carried out in accordance with provincial law, including the rules…" The NWT legislation proposes that material be obtained by a "lawful search". This implies a finding of constitutional lawfulness, and a lack of charter violation. We do not think that was intended.

Relocations

- CLA – ss. 28(2), 38.4 – 38.7

Subsection 28(2) is one example of many in the proposed legislation that highlights how efforts to be more clear in the drafting can have the opposite effect. Including phrases like "For the purposes of subsection (1) …. In accordance with section 38.7" makes the section much less "readable". In our view, it can be sufficient to clarify that a "relocation" is considered a "material change in circumstances."

We recommend that additional thought is given to deciding where this clause should be placed within the new legislation.

We submit that it would be more clear if the heading that precedes section 38.4 referred to a "change of residence" (not just "residence").

The proposed changes in 38.4 – 38.7 regarding "relocation" vs a "change of residence" would benefit from further consideration and review. Although the proposed language in the CLA is similar to the Divorce Act, some counsel argue that these may have different impacts in the North and the ways in which the Divorce Act have been adopted may require more Departmental review.

As examples:

1) the differences between "relocation" and "change of residence" are not easy to discern in the proposed legislation.

2) the proposed s. 38.4 requires written notice when a child's residence may change. Is any NWT community large enough to warrant this? Will this section create an access to justice barrier?

3) Is this legislating what is a courteous and probably common sense approach

4) If only a parent can having parenting time and parental decision-making responsibility, why does s. 38.4 refer to "a person" and not "a parent"?

5) The proposed amendments do not require someone with a "contact order" to provide written notice of a change of residence if that change would affect their contact with the child.

We encourage Justice to review this more fully.

Child Support Recalculation Service (including collecting and sharing of personal info)

- FLA, ss. 8 (re: 6.1)
- CLA, ss. 20(2), 24, 25, 27 – 28, 29(2), 30 -36, 45

The Recalculation Service was launched on March 3, 2023. It is a valuable administrative process that allows parents to recalculate child support orders and agreements without the need for Court and we are interested to see how and how much this Service is used.

Despite our separate submissions on this Service, decisions have been made to limit eligibility to this program, excluding interim-interim and without prejudice orders. It is our view this will result in a large number of families being ineligible for the service. We are grateful to see that the proposed legislation leaves the question of eligibility to the regulations which will be easier to modify if the service can be expanded in time.

To carry out its mandate, s. 35 of the proposed CLA grants the Recalculation Service several powers with respect to information collection and sharing. The ability to share income information between the payor and recipient is positive. While there is considerable breadth in the nature of additional personal information that could be shared without a party's consent under ss. 69.94(4), we expect that the stated limitations will limit disclosure to those that would otherwise be available for disclosure during the course of litigation and will allow parties to make informed decisions with respect to their rights and obligations.

The new section 10 of the *Maintenance Orders Enforcement Act* gives the Recalculation Service broad access to information that the Maintenance Enforcement Program collects for the purpose of enforcing a maintenance order. This change also ensures a wider sharing of information between government services that should assist in the alleviation of child poverty. Finally, it provides a mechanism by which the NWT can benefit from the additional rights of any "person, service, agency or body" to have an agreement or order regarding parenting rights and

child support enforced under the *Family Orders and Agreements Enforcement Assistance Act*, RSC 1985, c4 (2nd Supp).

These are positive amendments.

New additions to the legislation

There were several substantive changes that appeared to be unrelated to the Divorce Act amendments. We are not sure why these additional amendments are proposed now and if they will result in improved service to the public.

- **Family arbitrations** (FLA s. 8 re: 6.2 – 6.5)

We have not identified concerns with including this in the FLA and agree that in the event of a conflict, the FLA should have primacy over the Arbitrations Act. It appears that incorporating this kind of clause in our FLA will make the NWT legislation more consistent with other provinces.

If this is deemed an appropriate extension of "alternative justice processes", we suggest you consider incorporating this into the CLA. We recommend maintaining a separate "part" of the new legislation for the provisions that relate to this and mediation and any other identified alternatives.

From a practical perspective, we note that private arbitration can be very expensive. To our knowledge, no one is offering this service in the North and arbitrations are rarely used in the NWT. Other practical concerns in advancing "family arbitration" is that the Arbitration Act does not require expertise in family law so any person can put themselves out there as an arbitrator in theory. This may be a serious shortcoming and may need to be addressed in the family legislation.

- **Non-parent applicants** – s. 19, 19.1 and 20 CLA

Lawyers disagreed about the proposed elimination of an obligation on non-parents to seek leave to apply for an Order for parental decision-making responsibilities or contact with a child. This disagreement suggests that further consultation and sharing of policy analysis on this point will be very important.

Several lawyers raised concerns about the incorporation of requirements to obtain records from a "Children's Welfare Society". There are many reasons to be concerned about whether this is appropriate. This is discussed elsewhere in this submission.

We ask for more information to understand the purpose and impact of requiring disclosure within s. 19.1. This does not address the new provisions of the Divorce Act (s. 7.8(2)) which create a duty for the court to determine if there is a "child protection order, proceeding agreement or measure" in place before making a Corollary Relief Order involving "any party to that proceeding". Lawyers were concerned that if adopted, these provisions hold non-parents to a different standard than the Divorce Act. Accepting the proposed changes will not ensure access to justice to litigants but will instead enhances the bureaucratic complexity of applications to the court.

Some questions identified are:

1) if this is maintained in future legislative proposals, what is the evidentiary impact of this?
2) Does the "society" have standing to argue that materials are confidential?
3) Does the Child & Family Services Act need to be amended to allow this kind of information sharing? What would be the basis for requiring this legislative change?
4) Will the court and parties be able to assess the weight and relevance of these records?
5) Is there a risk that a report will be conflated with an active concern?
6) How does this kind of provision interact with the requirement that "past conduct" is of limited relevance?

Some of counsel's other concerns were:

- Some thought the existing requirement of a threshold for non-parents did not serve a child's interests. Others felt that this threshold was important to ensure that children did not become the subject of meritless applications.

- We did not know why s. 19 and 20 were being proposed

- We did not know why additional information was required for non-parents but not from parents.

- There are no existing mechanisms to ensure non-parents can obtain the required information in a timely manner, if at all.

- If enacted, the court would be empowered to undertake its own investigations without due process protections.

- This section may also contradict s. 26(5) that limits the relevance of past conduct.

- Section s 20(1) says that a clerk is required to provide information about other family law proceedings to the Court and the parties, but it is discretionary for the Court to require the clerk to provide information about criminal proceedings to the parties.

- It appears that non-parents may only apply for a contact order, when they may be seeking decision-making responsibilities or guardianship responsibilities.

- Counsel anticipated litigation over the disclosure of criminal and child protection matters.

- **Supervised Access (s. 36 CLA)**

While there would be significant benefit to have supervised access services in the NWT, the proposals within the CLA do not seem practical. We are concerned that:

1) the Director of Child and Family Services will need to be on board before the changes proposed in s. 36 can be realized.
2) if this section remains, the Director of Child and Family Services will need notice before the court can require their involvement in supervised access
3) there are inadequate financial and human resources available to provide this service.

There was agreement that more policy analysis and program development by Justice would be required.

- **Gathering evidence from outside NWT** - ss. 31-32

Counsel have asked when this might apply, given the reciprocal nature of s 32.

- **Restrictions on Access to Family Court files** – CLA, s. 80.2

There was mixed reaction among counsel to this clause. While counsel agree there is value to protect their client's privacy, it can undermine the legislative objective of supporting resolution outside the courts because a loss of privacy is one disadvantage in going to court.

We also had concerns about the application of the "open courts" principle and whether adequate safeguards were in place to protect Charter rights to access. We encourage further discussion and exploration about this clause before this change is made to ensure private materials and the identity of children are appropriately protected, without the need to restrict

access. We anticipate there could be some need to explain and justify this kind of protection to guard against future challenges from the media.

We also think greater benefit comes from legislating the ways in which this information can and cannot be used, rather than limiting access.

Limiting access to other court files could create a barrier to accessing justice, particularly if self-represented litigants cannot access or use other court file contents to inform their own steps and actions.

Other:

- **Court Ordered Assessments**

Counsel have suggested that s. 29(1) of the CLA should be amended further to specifically exclude the Office of the Children's Lawyer as an "person who has technical or professional skills to assess and report to the court".

With respect to s. 29(6), counsel asked if the section could be amended further to make clear that the court may draw "negative inferences" (not "such inferences") and that this change be made throughout the CLA (for example, in s. 10(6))

Counsel asks that the CLA maintain clear provision that the person appointed under s. 29 cannot recommend who will have parental decision-making, parenting time or contact with a child. It is our view this should remain the sole responsibility of the court.

Counsel has asked if the court orders the parties to pay for an assessment such as the one in section 29(1), does this apply equally to parties that are represented by Legal Aid counsel?

- **Consequential amendments to the Child and Family Services Act ("CFSA")**

We submit that terminology within the CFSA needs to be amended to eliminate use of the term "custody". Any change to that legislation will benefit from broader consultation as there are already cases that interpret this clause counsel for parents, the Office of the Children's Lawyer and the Director's counsel have differing opinions about the clause's role and merit.

The CLA's presumptions regarding parental decision-making responsibility and parentage also conflict with the CFSA. Although the Acts have different purposes, this is one area of overlap that requires additional review and assessment. As one lawyer suggested: if a parent is not yet awarded decision-making responsibility but their child is apprehended, can CFS now place the child with the other parent contrary to the wishes of the first parent? If these two Acts do not act harmoniously, it will be difficult to determine who a child can be placed with in the

event of an apprehension. A goal of these amendments should be to minimize the confusion as one already exists, not to exacerbate it.

Unsealing of judicially ordered mediated agreements

- CLA s. 30

Some thought should be given to this section to determine when and how it overlaps with the free GNWT Family Mediation Program. The Program has now been in effect for about 10 years. While private mediation may be appropriate in some cases, this legislation could better reflect the existing programs and services available to families.

In our view, these clauses are also best combined with other "alternative family dispute resolution" options. If the goal of the legislation is to encourage their use, this should receive greater prominence in the new Act, which may mean that it is placed earlier in the legislation.

Contempt provisions

- CLA ss 37, 38.2 (existing CLA is ss 72-73)

Section 27(1)(c) of the proposed legislation gives the court authority to issue what amounts to a [quasi} restraining order, allowing the Court to limit contact and/or communication between parties and between parties and children. However, "restraining orders" are addressed at s. 37 of the proposed legislation. Under that section, a Court can make either an interim or a final "restraining order". Several changes from section 72 of the current act are proposed including:

- Restraining orders can be obtained by and against more people
    - They are no longer limited to cohabiting parties or parents
    - They are available against anyone reasonably feared by the applicant
- The Territorial Court may now make a Restraining Order in the absence of a "custody" application
- There are no offence/punishment/enforcement provisions.

By expanding the range of people who may be subject to a restraining order, the legislation could be used by elders who seek protection from their children or others who they believe are abusing them. This may have value but should be reviewed to ensure this is an intended consequence. Is this how legislators intended the Children's Law Act to be used? If the legislature wants to allow this kind of order to be made, would it be more appropriate within the Family Law Act, or within the Protection Against Family Violence Act?

Under the current CLA, the breach of a restraining order could be punished under the restraining order provision itself, or under the contempt provisions, so there are currently two

different methods of addressing a violation. It may be appropriate to remove one of these, but not both.

The proposed CLA also eliminates many penalties for violation of a restraining order. This is a particular concern for any application within the Territorial Court as its authority must be found within the legislation. The Supreme Court has additional authority to find someone in contempt and hold them responsible for violations of their orders. We recommend amendment to ensure that the Territorial Court has authority to act where its orders are not followed.

Further review is required to determine if this was intended or an oversight. It is our view that some penalties are required.

Dispensing with Consent for Medical Treatment

It is proposed (at s. 14 of the CLA) that ss. 15-39 of the existing act are to be deleted. Most of those clauses have been replaced and use updated terminology. However, this deletion also results in the elimination of s. 39 which allows a court to dispense with consent for medical treatment of a child or youth. Although this section may not be much used, it remains an important remedy for the court that must be specified if the Territorial Court is intended to have this authority.

Impact of deleting ss. 59.2, ss 70-73 and s. 84 of the *Children's Law Act*

- CLA ss. 21, 36 and 44

Is there any analysis to determine the impact of these proposed deletions? On its face, deleting these may seriously limit the authority of the Territorial Court

Amendments that "improve clarity and readability" (aka plain language)

Some changes do improve the clarity of the legislation. Others appear less helpful. For example:

Some clauses are proposed to use "support for a child payable" in the same clause as a "child support order". The Divorce Act uses both terms, but it would be more clear to avoid using these two concepts in the same section as proposed in s. 25(1) CLA and s. 84 CLA.

s. 27(1) and 28(1) of the proposed CLA are not needed for clarity or legal correctness.

Specific plain language changes include our request that reference to "**parental" agreements** be charged to "parenting" agreements.

It is common for the proposed legislation to refer to the powers of "the court" and to refer to things "the court" can do, which are more plainly and accurately described as things that a judge can do. We encourage Justice to use language that is clear and direct and to avoid use of the "the court" where an action is taken by "a judge". This may require a new definition, but would ensure much greater clarity.

Office of the Children's Lawyer:

Section 83 of the CLA could be improved to make the point that the court has the ability and authority to appoint legal counsel for a child through the Office of the Children's Lawyer. Changes could also clarify that the child is not solely responsible for communicating their views and preferences, they can have the assistance of appointed counsel from a specially trained GNWT department.

> **S83(1) In considering an Application under Part III, a court shall, where possible, take into consideration the views and preferences of the child.** (We are omitting "to the extent that the child is able to express them")
>
> **(2) The court may, on its own motion or upon the motion of a party, appoint the Office of the Children's Lawyer to represent the interests of a child if the court finds it is in the best interests of that child.**

Provision should be made to incorporate the UN Convention of the Rights of the Child into the FLA and the CLA.

RESPONSE TO:

Children's Law Act (Bill 23)

Family Law Act (Bill 24)

Submitted by:

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Introduction:

Family law in Canada is an area of shared authority between federal and territorial governments. The Divorce Act is the law that applies across Canada when a married couple wants to get divorced or if they have already divorced in Canada. In addition to creating the process to get a divorce, it addresses things like child support, spousal support and parenting arrangements for children. If a couple has matrimonial property, a judge will use the NWT's Family Law Act to divide that property in a divorce.

In 2019, the federal government introduced changes to the Divorce Act that came into effect on March 1, 2021. The new legislation had 4 key objectives:

- promote the best interests of the child
- address family violence
- help to reduce child poverty (by expanding ways to get child support)
- make Canada's family justice system more accessible and efficient.[1]

To further these objectives the federal government amended the Divorce Act hoping the changes would reduce the adversarial nature of family court proceedings following divorce. The changes also included:

- a list of relevant factors to consider when assessing the best interests of a child;
- replacing the term "custody" with "parental decision-making", "access" with "parenting time" and introducing the concept of a "contact order";
- a definition of "family violence";
- relocation guidelines that apply when one parent wants to move and that move would change the parenting tim;
- new duties for parents, lawyers and the courts; and
- compelling lawyers to encourage clients to use family-dispute resolution services, such as mediation.

Changes to the Divorce Act provoked some changes in the NWT, in particular, revising court forms to use the new terminology and new duties. NWT forms were also created to address the new federal rules on relocation.

Changes to the Divorce Act prompted a broader review of NWT family laws. Proposed changes to the Children's Law Act and the Family Law Act were prepared by legislative counsel and shared with lawyers for their review and response in 2023. NWT family lawyers understood a comprehensive review and prepared a written response in May 2023. At the time, as now, family lawyers were told that the proposed amendments were

[1] Strengthening and modernizing Canada's family justice system

intended to reflect the changes in the Divorce Act. The legal review showed the proposals went farther and included several substantive changes to the NWT law.

When Bills 23 and 24 were introduced again in 2025, family lawyers were again invited to comment. They were not shown how the 2023 and 2025 versions differed or if their 2023 recommendations were incorporated or addressed. A request for the amendments was made but none had been created. Instead, one lawyer reviewed the old and the new drafts to identify the changes, at considerable time and effort. Based on that review, it appears that the 2025 versions address issues related to the Director of Child and Family Services, but not family law concerns.

Family lawyers are few and workload is high. Based on their experiences from 2023, they are sceptical of the current consultation process and believe that participation in this review is a poor use of their limited time. As a result, fewer family lawyers have directly participated in this response, although most have been canvassed.

Based on their input, family lawyers continue to support the 2023 response, attached as Appendix "A". Those noted on the front cover of this Response have also approved the contents of the 2023 document and this written submission. Both documents should inform you and other lawmakers as the development of these Acts continues. Other issues have arisen from the amendments and in recent case law. Those are addressed in what follows.

NWT laws:

Now that Bill 23 and 24 are before the legislative assembly, we believe some additional context is helpful.

The NWT has authority to pass laws related to marital separations (but not divorces) and have done so in the Children's Law Act ("CLA") and the Family Law Act ("CLA"). These Acts apply to:

- unmarried or common-law couples[2], and
- married couples who are separated but not divorcing.

The CLA relates to all issues affecting children who are subject to parental disagreement. This includes defining who is a parent, who can care for a child, and how children are entitled to receive financial supports from their parents. Decisions under this Act are to be

[2] Under these Acts, a "common law" couple is one that has lived together for 2 or more years, or a shorter time if they have a relationship of some permanence and a child.

made with a child's best interests in mind and factors that are part of a child's "best interests" are itemized in the CLA.

The FLA addresses elements of separation unrelated to children like spousal support and the division of property.

The Supreme Court of the Northwest Territories is the only NWT court with power to address matters of divorce for NWT residents.

The Supreme and the Territorial Courts both have power to address common law separations, or the parenting and child support arrangements for couples that are not divorcing. In practice, the Supreme Court is more likely to address all family law situations.[3] Although the Territorial Court has this authority, it is rare for a family matter to be addressed by that court, unlike child protection matters under the Child and Family Services Act, where almost all cases are dealt with by the Territorial Court (despite the Supreme Court's shared ability to respond).

The Territorial Court gets all it's power from legislation, like the CLA and FLA. The Supreme Court has some "inherent" powers which exist even if they aren't included in the CLA, the FLA or the Divorce Act.

Why does updating family law matter?

It is often said that it is much easier to start a relationship than end it and few people are equipped with the knowledge and skills required to separate. Marital separation is usually an emotional and difficult experience for adults and children. Any extra effort required to legally end a relationship can be overwhelming.

Some will choose to get legal advice to assist them through this process. Others will either choose to act for themselves or be unable to hire a lawyer. A 2012 report by the Canadian Forum on Civil Justice (CFCJ) suggests that the number of unrepresented litigants for family matters in Canada could be as high as 50%. [4] There is no data to confirm the rate in the NWT, but anecdotally, there are concerns the rate of self-represented litigants in family law has been increasing over the years.

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[3] The Territorial Court may have this authority because it offers circuit courts, which might be seen as offering expanded access to justice. Given the Territorial Court's lack of experience in this field, it might be appropriate to consider whether this remains a reasonable approach.

[4] CFCJ, "The Cost of Justice: Weighing the Costs of Fair & Effective Resolution to Legal Problems" at 4, online: CFCJ <https://cfcj-fcjc.org/sites/default/files/docs/2012/CURA_background_doc.pdf>; Rachel Birnbaum, Nicholas Bala & Lorne Bertrand, "The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants" (2013) 91:1 Can Bar Rev 67 at 71, online: <https://cbr.cba.org/index.php/cbr/article/view/4288>.

In 2021,[5] NWT statistics showed that 58.5% of couples had children. Of them, 39.9% of NWT couples with children were married (which means almost 60% of couples with children were common law). Available statistics also show that 35.7% of NWT couples lived common law (with or without children).

It is presumed (though not officially studied) that the rate of common law relationships has increased in the NWT (and across Canada). There are no statistics about the rate of family separation but it is presumed that if common law relationships are increasing, rates of marriage may be reducing. With more common law relationships, there is a likelihood there will be an increase in common law separations.

When couples choose to live common law and not marry, the NWT legislation has a broad impact on residents that is at least as important as the Divorce Act.

For these reasons, the NWT laws will apply to a lot of people. They should be easy to understand and apply. Where possible, the laws should be similar to federal divorce rules (that apply all across the country) to reduce confusion. The rules should only differ when necessary to address uniquely northern issues or realities.

What programs are available for separating couples in the NWT:

In the NWT, there are about 18 private lawyers that identify as practicing family law. Four live in the NWT and the remainder live and work outside the NWT. There are another 4 lawyers that practice family law as legal aid staff lawyers.[6]

Some NWT adults will qualify for a legal aid lawyer to represent them when they need a court order about a child (whether it is to make a major decision for a child, to establish parenting time or to get child support). Legal aid will not assist anyone who is not seeking support but only wants a divorce or marital property division.

One hour of free legal advice is available to all NWT residents through the Legal Aid Outreach Program. Although currently unstaffed, the advice is being dispensed by legal aid lawyers and outside counsel.

There is a free mediation program available for separating parents who both agree to participate and at least one parent lives in the NWT. That program does not replace legal advice and while verbal agreements can be reached in mediation, the parents must make

[5] The Daily — State of the union: Canada leads the G7 with nearly one-quarter of couples living common law, driven by Quebec

[6] This compares with about 35 staff lawyers working with the GNWT Department of Justice who provide legal advice and assistance to other GNWT departments.

other arrangements to have a written separation agreement or court order if they want the promises to be enforceable.

There is a free parenting after separation workshop that gives parents a lot of information about children and what they need as their parents go through the separation. In some cases, parents must take this program before they are allowed to start a court action.

The NWT has a relatively new child support recalculation service. It has many limits, and it is not yet clear how many child support orders or agreements will qualify to be recalculated within the service.

The NWT does not have parenting coordinators (who can make decisions about parenting time instead of a judge) and the NWT does not offer supervised parenting programs.

Court Rules:

Each province and territory has its own regulations, called court rules, that determine how people and judges will apply the legislation. In the NWT, these exist in the Rules of the Supreme Court of the Northwest Territories (brought into force in 1996) and the NWT Divorce Rules (brought into force in 1994).

There have been considerable changes in the way family law operates that affects these Rules. These changes include how property division is addressed and the introduction of Child Support Guidelines, both of which came into effect in 1997. There have also been changes to the way spousal support is addressed since the 2008 creation of the Spousal Support Advisory Guidelines. There has also been a considerable body of judge made law on these issues and more.

Significant amendments were made to the federal Divorce Act that came into effect on April 1, 2021. In 2021, NWT divorce court forms that relied on "old" concepts of "custody" and "access" were changed to ensure the terminology reflected the updated Divorce Act. Although they are now expected to be used, those forms have not replaced the old forms that are part of the NWT Divorce Rules and anyone who tries to find the new forms online, will find the old forms without reference to the changes. The new forms are available online, but remain difficult to find.

The NWT Supreme Court Rules have been amended three times but without reference to changes in the family law and the Divorce Rules have not been changed at all. There are now two committees whose purpose is to create separate Rules of Court for Civil actions like personal injury or business disputes and new Family Court Rules. These committees operate independently. A law firm has been contracted to devise the Civil Rules. Volunteers and a judge are tasked with creating Family Court Rules.

A full review and update of the NWT Divorce Rules and other family court rules are long overdue. This would be greatly enhanced by directing appropriate resources to the project and assigning dedicated experienced legal counsel to the project. Subject knowledge (if not expertise) is important.

What changed between the 2023 and 2025 versions (CLA – Bill 23)[7]:

You are encouraged to rely on the 2023 submission prepared by various family lawyers as it has continuing relevance. This written submission focuses on what has changed between 2023 and the drafting of Bill 23.

While there appear to be several small changes, the more substantive changes appear to be as follows[8]:

- s. 15(1) was changed to delete the definition of "children's welfare society" and replace it with a definition for "Director of Child and Family Services". (This was something family lawyers recommended and continue to approve.)
- s. 16.1 on Confidentiality and Disclosure is new and is discussed more fully below.
- s. 18(4) has deleted 2023 references to, among other things, information that must be provided about ongoing child protection matters
- s. 19.1 of the 2023 version has been deleted – it required a person who was not a parent to request a report about child protection matters
- in 2023, s. 35(2) recognized a duty on a court to consider a child protection order, proceeding, agreement or measure. In 2025, this duty has been deleted.
- s. 36(1) now deletes reference to a "children's welfare society" as a body that a court may direct to provide parental supervision (something family lawyers addressed);
- s. 36(2) is now amended to ensure the Director of Child and Family Services cannot be directed to act as a parenting supervisor unless it consents (something family lawyers addressed)
- s. 80.2(5) has been added to the 2023 version to ensure a court considers additional confidentiality requirements in any other enactment including the CFSA;
- s.84 – the power to make regulations has been changed to delete reference to prescribing a "children's welfare society" (under (b)); and amending ss (c) which is no longer relevant (if s. 19.1 is deleted)
- Consequential amendments from 2023 have changed. The 2025 version proposes new "consequential" changes to the Family Law Act, the Interjurisdictional Support Orders Act and the Protection Against Family Violence Act. For each Act, it is

[7] This is based upon a review of the 2 versions of each Act / Bill – and may not be complete or accurate.
[8] This listing was created by a private lawyer's line by line review of the 2 proposals.

proposed that they include the same clause about confidentiality and disclosure as proposed in s. 16.1 of Bill 23 (which is discussed more below).

What changed between the 2023 and 2025 versions (FLA – Bill 24):

The only changes in the 2025 version (Bill 24) of the Family Law Act appear to relate to the consequential amendments. There are no longer any amendment being proposed for the Legislative Assembly Retiring Allowance Act, the Northern Employee Benefits Services Pension Plan Act and the Supplementary Retiring Allowance Act. In 2023, it was proposed that the definition of "separation agreement" in each of those Acts be replaced. If the 2025 version is approved, those Acts will continue to use their existing definitions of "separation agreement" which is more clear than the language proposed in 2023.

The 2025 version (Bill 24) still proposes changes to the Change of Name Act, primarily to ensure concordance with the section number used in the new FLA clauses. The language remains repetitive and unclear.

There is also a consequential amendment in Bill 23 that would amend the Family Law Act (discussed below). It is not clear why this is treated as a consequential amendment if Bill 23 rather than a separate section of Bill 24.

2025 New additions to the CLA and FLA

Section 16.1: "Confidentiality and Disclosure" and s. 80.2 "Confidentiality".

The current CLA and FLA do not currently include anything like what is proposed in s. 16.1 or 80.2. This proposed clause is also absent in the Divorce Act (pre or post 2021. If adopted, this clause would amend the Family Law Act, the Interjurisdictional Support Orders Act and the Protection Against Family Violence Act.

In 2019, the NWT Supreme Court created a Practice Direction on "Non-Party Access to Family Law Files". The proposed language in Bill 23 is more restrictive than this practice directive, and there are many in the bar who argue the practice directive went farther than the law allows.

As currently written, s. 16.1 of Bill 23 proposes mandatory restriction on access to court files. If accepted into law, it would stop anyone who is not directly involved in a case from accessing any part of a court file, eliminating any ability to access or review court documents, regardless of the reason for doing so. A restricted person could get access only after making an application to a judge for an exception to the rule. If passed into law, s. 16.1 would stop a lawyer or a self-represented person who is not a party to the case from reviewing other court files for samples or precedents, or for a lawyer to determine whether or not that lawyer can or will represent a party. It would also stop media from reviewing these files. Others who may need access to a court file would also be prohibited including

police officers, crown attorneys, the Director of Child & Family Services (or their delegate), and a mediator.

Section 16.1 makes "confidentiality" mandatory. A similar but discretionary power is also included in the proposed s. 80.2. These sections are contradictory, yet both are included in Bill 23. Section 80.2 was part of the 2023 proposal, raised legal concerns and was discussed in the attached Appendix from lawyers' 2023 review. (See below for new concerns about s. 80.2(5) which was added in Bill 23.)

It is our recommendation that s. 16.1, the related consequential amendments and s. 80.2 should be completely eliminated from Bill 23.

Eliminating Information Silos:

Under s. 7.8(2) of the amended Divorce Act a judge is given the duty to assess other court documents and processes unless it would clearly not be appropriate. This was implemented in the Divorce Act to "coordinate proceedings" and to ensure a judge's order in a divorce case did not conflict with another existing or pending order, undertaking, recognizance, agreement or measure.

This was a significant change to the Divorce Act that affects each divorce file. It is our view that it should be adopted in NWT legislation. Despite that, the 2025 proposals eliminate this requirement (see s. 18(4), s. 19.1 and s. 35 of Bill 23). While complex and requiring new processes, the elimination of information silos and the requirement that materials be produced in family court is an important way to ensure judges and parties are fully informed. Family lawyers see no basis to exclude this duty, particularly as doing so would maintain information silos and create differences between divorce and non-divorce cases without a clear reason for creating the discrepancy.

If the 2025 proposals in Bill 23 are to remain, further study and explanation for this decision is required.

Eliminating court oversight of the Director of Child and Family Services:

In 2023, family lawyers had identified concerns if child protection services were required to provide parental supervision. We agree that anyone providing this service should consent to do so in advance. However, we disagree that the court should have no oversight if the Director agrees to this role, which would occur if s. 36(1) of Bill 23 becomes law.

Under Bill 23, the Director may choose to supervise parenting and do so in whatever way it deems most appropriate. This may seem reasonable given the independence already granted to the Director, but it may not address a child's best interests and a judge should always maintain it's ability to ensure a child's best interests are central to decisions affecting a child.

Other missing elements of Bill 23 and 24:

1. The CLA could be bolstered by a provision that recognizes the court's ability to appoint a lawyer for a child, on its own initiative at any stage of a proceeding. Other provinces and territories have legislation that recognizes this ability. Some include criteria for appointment and others do not. This should be considered here. The specific duties of an appointed child's lawyer could be addressed in court rules. [9]

2. The CLA should include a provision that commits the courts and government to apply the rights of a child that have been included in the UN Convention on the Rights of the Child (as is done in similar PEI legislation) and other relevant UN Conventions (like that related to Abduction).

3. The terms "custody" and "access" are eliminated by the new Divorce Act and in Bills 23 and 24. However those terms remain in other NWT legislation, like the Child and Family Services Act (the "CFSA"). A full review should be done to identify when "custody" and "access" are used in other NWT legislation and whether their use remains appropriate or if the new terminology introduced in the Divorce Act should be used instead and further consequential amendments are made in Bill 23. If "custody" and "access" are to remain in other NWT legislation, the rationale should be shared.

All of this is respectfully submitted this 8th day of July, 2025

POST SCRIPT:

Since distributing this document to other lawyers, the primary author has become aware of other issues that could be addressed within Bill 23 and 24.

A recent decision of the NWT Supreme Court (Robertson v Robertson, 2025 NWTSC 46) made a determination of the "commencement date" to value matrimonial property. In that decision, the couple had lived together for 10 months before getting married and the court found the marriage date was the "commencement date". Some family lawyers have interpreted the Act to mean that commencement is determined as the date when a couple began living together which strongly suggests that the existing definition within s. 33 of the FLA is unclear. A review of other provincial and territorial legislation shows that the terms has been defined differently. This issue is worthy of review.

[9] More information about the different ways children are entitled to a lawyer are discussed here: 2. Legal Representation of Children in Canada: Legislative Authority - Legal Representation of Children in Canada The NWT's program was changed in May 2024 when the lawyer acting as "the Children's Lawyer" retired and was his duties were transferred to the Executive Director of Legal Aid.

The FLA is also silent on how to address a person's negative equity at the "commencement date". A survey of other legislation suggests that only Ontario has specifically said a negative equity is "zero'd" and has no impact on a person's net worth at commencement. Some other jurisdictions specifically reject that notion and allow a negative commencement date value. In others, the issue is left unclear. This issue is worthy of review.

With respect to child support, there are two potential problems that may benefit from considering under the CLA:

1. across Canada there are 2 ways to address "hybrid" parenting arrangements that exist when one parent has sole care of one or more children and both parents share care of one or more other children. In some jurisdictions, courts have used "an economies of scale" approach and in others a "hybrid" approach. Although this is a problem of long standing, there has been no appeal to the Supreme Court of Canada and the NWT's approach (as well as the national approach) remains unclear. Each approach can result in very different child support amounts, which makes dispensing legal advice difficult and can create uncertainty which can only be decided by a court (which policy suggests family lawyers are to avoid).

2. When there is a biological parent and a step-parent who may both have child support obligations should the CLA allow 'joinder" of all who might have an obligation to pay child support? Currently, there is no provision for this.

Child support issues are also dealt with in the Divorce Act. Neither of these issues has been addressed on a national level.

All family lawyers were queried about these issues. Only one responded, and supported their addition to this response.

It should also be noted that adding 80.2(5) to Bill 23 requires some thought and evaluation. To date, family lawyers are aware that the CFSA has been interpreted by the Director to severely restrict access to child protection materials. The provisions within the CFSA have been used to stop a foster parent from providing legal counsel with the name of a foster child. It has also been used to stop a lawyer for a child from getting access to information about their client and from sharing information with a court in a family custody matter. It has also been used to stop workers and new foster homes from having full information about a child's mental and /or physical health.

The provisions within the CFSA have been interpreted to replace those within Access to Information legislation and thus make it more difficult to challenge a Director's refusal to release information as the ATIPP office cannot process a complaint and a party seeking

more information must apply to a court. This deserves more discussion about it's potential impact.

In May, 2025, second reading was given to Bill 27, an Act to Amend the Protection Against Family Violence Act. The general effect of Bill 27 is to change the definition of "family violence" to include "stalking", to create a tort of stalking (which would create a right to sue someone in civil court for stalking with no further information given) and to expand the list of people that are affected by the Act. This deserves further thought and consultation as this Act can affect legal proceedings when a couple is separating and have significantly broader implications.

APPENDIX

APPENDIX B

MOTIONS

MOTION

AN ACT TO AMEND
THE CHILDREN'S LAW ACT

That Bill 23 be amended by adding the following after clause 38:

38.1. The following is added after section 77:

77.1. Notwithstanding anything in Part III, an application under that Part may be made to the court without notice if there are circumstances that the court considers urgent, including the endangerment of the life or health of the child.

MOTION

LOI MODIFIANT LA LOI SUR LE
DROIT DE L'ENFANCE

Il est proposé que le projet de loi 23 soit modifié par insertion, après l'article 38, de ce qui suit :

38.1. La même loi est modifiée par insertion, après l'article 77, de ce qui suit :

77.1. Malgré toute disposition de la partie III, une requête fondée sur cette partie peut être présentée au tribunal sans préavis si des circonstances que le tribunal estime urgentes le justifient, notamment lorsque la vie ou la santé de l'enfant est en danger.

MOTION

AN ACT TO AMEND
THE CHILDREN'S LAW ACT

That Bill 23 be amended by adding the following after clause 42:

42.1. The following is added after subsection 83(4):

Court may appoint counsel

(5) In an application under Part III, the court may, if it determines that it is in the best interests of a child, on its own motion or on a motion by a party, appoint counsel to represent the child, who shall do so in the best interests of the child.

MOTION

LOI MODIFIANT LA LOI SUR LE
DROIT DE L'ENFANCE

Il est proposé que le projet de loi 23 soit modifié par insertion, après l'article 42, de ce qui suit :

42.1. La même loi est modifiée par adjonction, après le paragraphe 83(4), de ce qui suit :

Pouvoir du tribunal de désigner un avocat

(5) Dans le cadre d'une requête présentée en application de la partie III, s'il conclut qu'il est dans l'intérêt supérieur de l'enfant, le tribunal peut, de sa propre initiative ou sur requête d'une partie, désigner un avocat pour représenter l'enfant, lequel agira dans l'intérêt supérieur de celui-ci.

MOTION

AN ACT TO AMEND
THE CHILDREN'S LAW ACT

That clause 43 of Bill 23 be amended by adding the following after proposed paragraph 84(a):

(a.1) prescribing circumstances that are likely to have a significant impact for the purposes of the definition "relocation" in subsection 15(1);

MOTION

LOI MODIFIANT LA LOI SUR LE
DROIT DE L'ENFANCE

Il est proposé que l'article 43 du projet de loi 23 soit modifié par insertion, après l'alinéa 84a) proposé, de ce qui suit :

a.1) prévoir les circonstances qui auront vraisemblablement une incidence importante pour l'application de la définition de «déménagement» au paragraphe 15(1);

MOTION

AN ACT TO AMEND
THE CHILDREN'S LAW ACT

That clause 14 of Bill 23 be amended by adding the following after proposed subsection 15(3):

References to relocation

(4) For the purposes of the definition "relocation" in subsection (1), circumstances that are likely to have a significant impact may be prescribed.

MOTION

LOI MODIFIANT LA LOI SUR LE
DROIT DE L'ENFANCE

Il est proposé que l'article 14 du projet de loi 23 soit modifié par insertion, après le paragraphe 15(3) proposé, de ce qui suit :

Mention de déménagement

(4) Pour l'application de la définition de «déménagement» au paragraphe (1), les circonstances qui auront vraisemblablement une incidence importante peuvent être prévues par règlement.

MOTION

AN ACT TO AMEND
THE FAMILY LAW ACT

That clause 9 of Bill 24 be deleted and the following substituted:

9. Subsection 8(1) is amended by striking out ", moral training or custody of a child, access" and substituting "or moral training of a child, decision-making responsibility or parenting time with respect".

MOTION

LOI MODIFIANT LA LOI SUR LE
DROIT DE LA FAMILLE

Il est proposé que l'article 9 du projet de loi 24 soit abrogé et remplacé par ce qui suit :

9. Le paragraphe 8(1) est modifié par suppression de «, à sa formation morale, à un droit de garde ou de visite» et par substitution d'«ou à sa formation morale, à la responsabilité décisionnelle ou au temps parental à l'égard de cet enfant».