



BILL NO. 39

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

**An Act to Amend Chapter 160
of the Revised Statutes, 1989,
the Maintenance and Custody Act,
Respecting Dependent Children
and Their Best Interests**

CHAPTER 25
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 17, 2012**

The Honourable Ross Landry
Minister of Justice

*Halifax, Nova Scotia
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**An Act to Amend Chapter 160
of the Revised Statutes, 1989,
the Maintenance and Custody Act,
Respecting Dependent Children
and Their Best Interests**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 160 of the Acts of 1989, the *Maintenance and Custody Act*, as amended by Chapter 3 of the Acts of 1997 (Second Session) and Chapter 29 of the Acts of 2000, is further amended by

(a) striking out clause (c) and substituting the following clause:

(c) “dependent child” means a child who is under the age of majority or, although over the age of majority, is unable, by reason of illness, disability or other cause, to withdraw from the charge of the parents or obtain the necessities of life;

and

(b) adding immediately after clause (d) the following clause:

(da) “family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

(i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

(A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

(B) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal autonomy,

(C) stalking, or

(D) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

2 Subsection 18(5) of Chapter 160 is repealed and the following subsections substituted:

(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

(a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;

(g) the nature, strength and stability of the relationship between the child and each parent or guardian;

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child; and

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

(a) the nature of the family violence, abuse or intimidation;

(b) how recently the family violence, abuse or intimidation occurred;

- (c) the frequency of the family violence, abuse or intimidation;
- (d) the harm caused to the child by the family violence, abuse or intimidation;
- (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and
- (f) all other matters the court considers relevant.

(8) In making an order concerning care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

3 Chapter 160 is further amended by adding immediately after Section 54 the following Section:

54A The Minister of Justice on behalf of the Government of the Province, may, with the approval of the Governor in Council, enter into an agreement with the Minister of Justice on behalf of the Government of Canada for a child support service established by the regulations under this Act, to conduct the administrative recalculation of the amount of child support orders under the *Divorce Act* (Canada).

4 Subsection 55(1) of Chapter 160, as amended by Chapter 3 of the Acts of 1997 (2nd Session), is further amended by

(a) adding immediately after clause (ae) the following clause:

(aea) respecting the recalculation at prescribed intervals of the amount of child support orders under the *Divorce Act* (Canada);

and

(b) relettering clause (da) as clause (daa) and adding immediately preceding that clause the following clause:

(da) respecting the automatic review of child support orders under the *Divorce Act* (Canada), the timing of the review and the manner in which it is to be done;

5 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
