

Merits of application for custody or access

24 (1) The merits of an application under this Part in respect of custody of or access to a child shall be determined on the basis of the best interests of the child, in accordance with subsections (2), (3) and (4).

2006, c. 1, s. 3 (1).

Best interests of child

(2) The court shall consider all the child's needs and circumstances, including,

- (a) the love, affection and emotional ties between the child and,
 - (i) each person, including a parent or grandparent, entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with the child, and
 - (iii) persons involved in the child's care and upbringing;
- (b) the child's views and preferences, if they can reasonably be ascertained;
- (c) the length of time the child has lived in a stable home environment;
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
- (e) the plan proposed by each person applying for custody of or access to the child for the child's care and upbringing;
- (f) the permanence and stability of the family unit with which it is proposed that the child will live;
- (g) the ability of each person applying for custody of or access to the child to act as a parent; and

(h) any familial relationship between the child and each person who is a party to the application. 2006, c. 1, s. 3 (1); 2009, c. 11, s. 10; 2016, c. 23, s. 7 (1, 2); 2016, c. 28, s. 2.

Past conduct

(3) A person's past conduct shall be considered only,

(a) in accordance with subsection (4); or

(b) if the court is satisfied that the conduct is otherwise relevant to the person's ability to act as a parent. 2006, c. 1, s. 3 (1); 2016, c. 23, s. 7 (2).

Violence and abuse

(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against,

(a) his or her spouse;

(b) a parent of the child to whom the application relates;

(c) a member of the person's household; or

(d) any child. 2006, c. 1, s. 3 (1); 2016, c. 23, s. 7 (2, 3).

Same

(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse. 2006, c. 1, s. 3 (1).

Section amendments with date in force (d/m/y)

1990, c. C.12, s. 78 (1) - no effect - see 2006, c. 1, s. 3 (2) - 23/02/2006

1999, c. 6, s. 7 (1) - 31/03/2000

2005, c. 5, s. 8 (1-3) - 09/03/2005

2006, c. 1, s. 3 (1) - 23/02/2006

2009, c. 11, s. 10 - 01/03/2010

2016, c. 23, s. 7 (1-3) - 01/01/2017; 2016, c. 28, s. 2 - 08/12/2016