



# FAMILY COURT AND BEYOND

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**A Guide For Survivors**

*December 2025*



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**Family Court and Beyond:  
A Guide for Survivors of Intimate Partner Violence Navigating Family Court**

Text by the Journey Project and Luke's Place Support and Resource Centre for Women and Children

The material contained in this guide is legal information only and not legal advice. Only a lawyer who is aware of the facts of your situation can provide you with legal advice. We strongly encourage you to obtain legal advice whenever possible before you make any major decisions about your case, or agree to any suggestions made by your ex-partner or your ex-partner's lawyer.

## Acknowledgements

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The Journey Project also thanks and recognizes Luke's Place Support and Resource Centre for Women and Children for making this workbook possible. A significant amount of content within this resource has been adapted, with permission, from Luke's Place. The Journey Project adapted content from two resources: 'Family Court and Beyond: A Survival Workbook for Women' and 'The Law and Parenting Arrangements After Separation Under the Divorce Act: A National Toolkit of Legal and Safety Information for Women Leaving Abuse' to create this guide.



Luke's Place is a non-profit, registered charitable organization serving women in Durham Region, Ontario who have been subjected to abuse. Since 2003, Luke's Place has provided legal support services to women who have left abusive relationships and are engaged with the family law process. Luke's Place also works at the provincial and national levels, conducting research, developing resources, providing training and engaging in systemic advocacy.

For more information about Luke's Place, please visit: <https://lukesplace.ca/>



The Journey Project exists to strengthen justice supports for survivors of sexual violence and/or intimate partner violence in Newfoundland and Labrador. The Journey Project was founded in 2017 as a collaborative initiative of Public Legal Information Association of Newfoundland and Labrador (PLIAN) and End Sexual Violence Newfoundland and Labrador (ESVNL).

The Journey Project supports survivors of any age and gender who have experienced sexual violence and/or intimate partner violence and are thinking about their legal options. We are provincial in scope which means people living anywhere in Newfoundland and Labrador can access our services. It also means that anyone who lives outside the province and has experienced sexual violence and/or intimate partner violence in Newfoundland and Labrador can access our services.

If you would like to speak with a Legal Support Navigator (LSN), you can reach us through email, text, phone, or our social media pages. We are available Monday to Friday, 9:00 a.m. - 4:00 p.m. Newfoundland Time.

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# Introduction

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## Language

Language is important. It holds a lot of power. At the Journey Project, we may use different words to encompass the wide breadth of experiences of the individuals we work with. You may identify with the word “survivor,” “victim,” both, or neither. The legal systems you engage with may refer to you as a “victim,” “complainant,” “applicant,” or “witness,” even though you may not identify with any of these terms. This is the language used by different legal systems and may not align with your experience or identity.

Throughout this guide, we reference a variety of sources and pieces of legislation to provide accurate information. These materials sometimes use language that may differ from the words you prefer or identify with, including gender-specific terms found in legislation. Where possible, we have aimed to use inclusive and respectful language while still reflecting the wording of the original sources.

You may notice that the terms *partner* and *ex-partner* are sometimes used interchangeably throughout this guide. We understand that relationships can be complicated and that people’s experiences don’t always fit simple labels.

The terms *child* and *children* are also used interchangeably. The number of children involved varies in each situation and depends on individual family circumstances, parenting arrangements, and the specifics of any court orders. In some cases, the wording reflects how these terms appear in legislation and related legal materials.

## Gender-Based Violence

Gender-based violence (GBV) is any form of violence perpetrated against someone based on their gender, gender expression, gender identity, or perceived gender. GBV disproportionately affects women, girls, and gender-diverse individuals. GBV is entrenched in negative attitudes and stereotypes and can take many forms, including physical, sexual, societal, psychological, emotional, economic, and technology-facilitated violence.<sup>1</sup>

Intimate partner violence and sexual violence are forms of GBV in which women, girls, and gender-diverse individuals are targeted at exceedingly high rates. Certain populations that are targets of GBV or underserved when they are subjected to these forms of violence include Indigenous women and girls; Black and racialized women; immigrant and refugee women; Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex and additional sexually and gender-diverse (2SLGBTQIA+) people; people with disabilities; women age 15 - 24; and women living in Northern, rural, and remote communities.<sup>2</sup>

GBV is rooted in gender inequality and is intensified by systemic inequalities, such as sexism, discrimination based on sexual orientation, gender identity and expression, colonialism, racism, ableism, classism, poverty, ageism and a collective history of trauma. GBV can have long-lasting negative health, social, and economic consequences, often

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1 Government of Canada. (2024). *Facts, stats and WAGE's impact: Gender-based violence*. <https://www.canada.ca/en/women-gender-equality/gender-based-violence/facts-stats.html#affected>

2 Government of Canada. (2022). *National action plan to end gender-based violence*. <https://www.canada.ca/en/women-gender-equality/gender-based-violence/intergovernmental-collaboration/national-action-plan-end-gender-based-violence/first-national-action-plan-end-gender-based-violence.html#toc0>

leading to intergenerational cycles of violence and abuse.<sup>3</sup> Canada's 2022 National Action Plan on Gender-Based Violence calls for a responsive justice system, recognizing that gender-based violence is a violation of human rights.

In this guide we use the term “survivor” to highlight the inherent strength and resourcefulness of the individuals we support, counteracting the inherent power imbalance that occurs when there is intimate partner violence and/or sexual violence. We know that not everyone who has had these experiences would identify as a survivor. We also know that how we identify and talk about our experiences can change with time, context, and circumstance. Sexual violence and intimate partner violence are forms of gender-based violence, which is predominantly perpetrated by cisgender men.<sup>4</sup> Women in heterosexual relationships are much more likely than men to be the targets of violence perpetrated by an intimate partner.<sup>5</sup> We also know that the rate of intimate partner violence among same-sex couples is comparable to or higher than that among heterosexual couples.<sup>6</sup> The term “survivor” is limited in that it does not articulate the gendered nature of who is subjected to IPV, nor does it acknowledge the heteronormative lens that is often associated with the types of relationships in which intimate partner violence occurs.<sup>7</sup> However you choose to name your experience and/or identity is valid and will be honoured.

## Is This Guide for Me?

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If you are being, or have been, subjected to intimate partner violence and want to know more about family law and the family court process, this guide is for you.

The legal information in this booklet is specific to Newfoundland and Labrador. These laws will be different in each province and territory, and outside Canada.

Knowing where to turn or what supports are available when navigating family court can feel overwhelming. The survivors we work with and those who are navigating legal systems have identified numerous barriers. Barriers include the lack of communication between criminal and family court, post-separation abuse, the lack of family court navigation support, and a general lack of understanding of the court process and legal rights.

Sorting out the many family law issues that come up at the end of a relationship, especially when you have an ex-partner who is abusive, can be overwhelming. The more information you have – about the law, court processes, the people you will encounter on your journey – the better you will be able to manage your way through the system.

People who engage in abusive behaviours often seek out new ways to exert control over

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3 Government of Canada. (2024). *Facts, stats and WAGE's impact: Gender-based violence*. <https://www.canada.ca/en/women-gender-equality/gender-based-violence/facts-stats.html#affected>

4 Conroy, S. & Cotter, A. (2017). *Self-reported sexual assault in Canada, 2014*. Canadian Centre for Justice Statistics; Ramsawakh, D. (2025). *Rethinking Masculinities: Understanding diverse and intersecting masculinities to end Gender-Based Violence (GBV)*. *Learning Network Brief 46*. London, Ontario: Centre for Research & Education on Violence Against Women & Children.

5 Cotter, A. (26 April 2021). *Intimate partner violence in Canada, 2018: An overview*. Canadian Centre for Justice and Community Safety Statistics. [https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00003-eng.pdf?st=E\\_medytN](https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00003-eng.pdf?st=E_medytN)

6 Rollè, L., Giardina, G., Caldarera, A.M., Gerino, E. and Brustia, P. (2018). When intimate partner violence meets same sex couples: A review of same sex intimate partner violence. *Frontiers in Psychology*, 9(1506). doi: 10.3389/fpsyg.2018.01506

7 Kar, A., Das, N., Broadway-Horner, M., Kumar, P. (2022). Intimate partner violence in same-sex relationships: Are we aware of the implications? *Journal of Psychosexual Health*, 5(1), 13-19. doi:10.1177/26318318221134268

their partners or ex-partners, especially around the time of separation when they are starting to lose power in the relationship. In many cases, the family court system becomes one of the ways to maintain power.

By equipping yourself with information and understanding the tactics of abuse and how they relate to the family court system, you can strengthen your defences against this form of abuse. In this guide, we discuss abuse that continues after separation (post-separation abuse) and legal abuse, as well as strategies to help protect yourself.

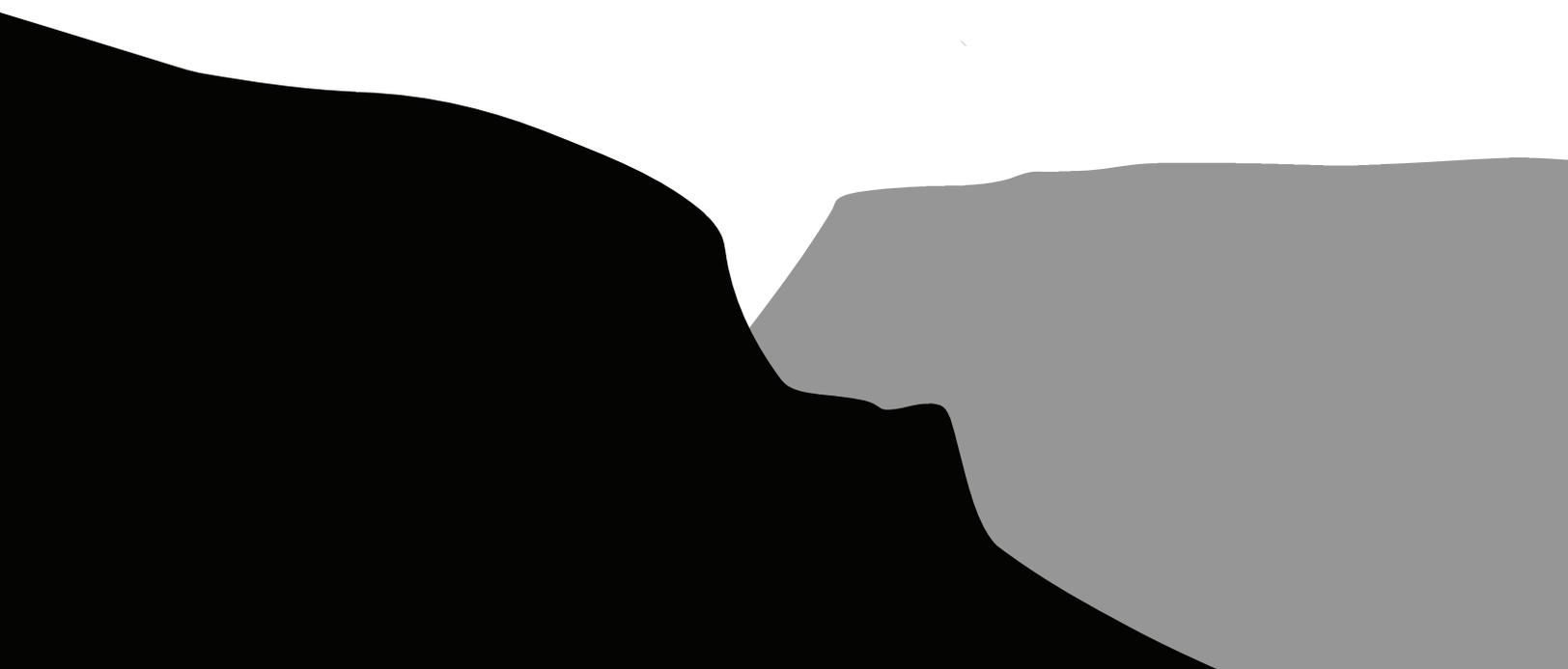
### **How Should I Use This Guide?**

The material contained in this guide is legal information only and not legal advice. Only a lawyer who is aware of the facts of your situation can provide you with legal advice. We strongly encourage you to obtain legal advice whenever possible before you make any major decisions about your case or agree to any suggestions made by your ex-partner or your ex-partner's lawyer.

The information in this guide is accurate and current to the date of publication (2025). Please be aware that laws, their interpretation and application, as well as services, change over time. We will do our best to update the online version of this guide as we become aware of changes; however, if you are using a printed version, please note the copyright date to determine how current it is.

# **Section 1**

## **SAFETY AND WELLBEING**





## What is Intimate Partner Violence?

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You may hear the terms “intimate partner violence,” “interpersonal violence,” “domestic violence” or “family violence” used by the legal system and service providers. Both domestic violence and family violence are typically used when the violence involves children or other members of the family or household. Intimate partner violence **only** refers to current or former romantic partners. Interpersonal violence refers to violence between any individuals.

### Intimate Partner Violence

Intimate partner violence (IPV) refers to multiple forms of harm caused by a current or former intimate partner. An intimate partner can include a dating partner, sexual partner, common-law partner or spouse. IPV impacts people of all genders, ages and socioeconomic, racial, educational, ethnic, religious and cultural backgrounds. However, women and gender-diverse individuals are subjected to this form of gender-based violence at much higher rates, most often perpetrated by men.<sup>8</sup>

Intimate partner violence is a pattern of behaviour that is used to gain or maintain power and control over a current or former intimate partner. It can include physical abuse, sexual violence, emotional or psychological abuse, financial abuse, spiritual abuse, reproductive coercion (sabotaging birth control, preventing someone from accessing abortion care), coercive control, and technology-facilitated violence (through social media, apps, smart devices)<sup>9</sup>. IPV can also include litigation abuse whereby an abuser intentionally misuses the court system to maintain power and control.

Intimate partner violence can include both criminal and non-criminal activity, however, the abuse is frequently intended to control, intimidate, and harm an individual which can mentally and physically impact the victim.

Some important characteristics of IPV to recognize are that it:

- Occurs in all ages and in all racial, socioeconomic, educational, occupational, and religious groups;
- Occurs within an intimate relationship or a dating relationship;
- Occurs online and through technology;
- Is a learned behaviour;
- Typically involves repetitive behaviour, including different types of abuse (e.g. physical and sexual, emotional, psychological, financial abuse, as well as use of children and pets);
- Is used to humiliate, intimidate and frighten the person in a systematic way in order to maintain power and control over them;
- Is never the fault of the survivor;
- Affects men, women and gender-diverse individuals differently. Women are subjected to more violence over a lifetime, more severe forms of violence and

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8 Burczycka, Marta. (2019). “Section 2: Police-reported intimate partner violence in Canada, 2018. *Juristat. Statistics Canada*. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00018/02-eng.htm>

9 Government of Canada (2021). *Fact sheet: Intimate partner violence*. <https://www.canada.ca/en/women-gender-equality/gender-based-violence/intimate-partner-violence.html>

- receive more serious injuries than male victims of intimate partner violence.<sup>10</sup>;
- Is likely to put the survivor and child at more risk at the time of separation;
- Typically leads to the survivor exhibiting behaviour that is about ensuring safety and/or survival (e.g. minimizing or denying the violence, taking responsibility for the violence, protecting the perpetrator, using alcohol and/or drugs, self-defence or seeking help to remain in the relationship).

## Family Violence

The definition of family violence in Canada's *Divorce Act* is:

"Any conduct, whether or not that conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person—and in the case of a child, the direct or indirect exposure to such conduct."

The definition includes the following:

- Physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- sexual abuse;
- threats to kill or cause bodily harm to any person;
- harassment, including stalking;
- the failure to provide the necessities of life;
- psychological abuse;
- financial abuse;
- threats to kill or harm an animal or damage property;
- the killing or harming of an animal or the damaging of property.

The *Divorce Act* only provides guidance to those who are legally married and in the process of obtaining a divorce. At time of publication, Newfoundland and Labrador's *Children's Law Act*, which governs many matters related to children and parenting, does **not** include a definition of family violence. The *Children's Law Act* is applied in situations that involve children when a married couple is separated, and in common-law and dating relationships.

Decisions about parenting arrangements often emphasize the importance of time with both parents over consideration of possible risks to children in cases where there is family violence.<sup>11</sup>

10 Burczycka, Marta. (2019). "Section 2: Police-reported intimate partner violence in Canada, 2018. *Juristat. Statistics Canada*. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00018/02-eng.htm>

11 Hrymak, H. & Hawkins, K. (2021). Why can't everyone just get along? How BC's family law system puts survivors in danger. *Rise Women's Legal Centre*. <https://www.womenslegalcentre.ca/publications/why-cant-everyone-just-get-along>

## Checklist: Abuse Behaviours

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People are subjected to and respond to intimate partner violence differently, and each experience is valid. You are the expert of your own life and hold valuable knowledge, skills, and strengths.

The following is a list of behaviours and tactics that a survivor may be subjected to when there is abuse. In isolation, they may not appear to be harmful, however these tactics are often used in combination for the purpose of maintaining power and control. They typically serve to reinforce fear, intimidation and coercion. When someone is being subjected to abuse, it often changes the way they view themselves, others, and the world around them. This checklist can be used as a guide to help you remember instances of abuse for your legal matter, but it is not a complete list. Add your own events as needed.

### ISOLATION

- Isolates you from your friends, family, or other people
- Tells you that you cannot do something
- Is jealous about who you see
- Monitors your time, makes you account for where you were or are
- Does not allow you to leave the house (physically or through tactics instilling fear)
- Restricts your use of the car/vehicle
- Alienates you from family/friends
- Keeps you from getting medical care/counselling
- Tries/threatens to turn children/people against you
- Deprives you of sleep

### ANGER AND INTIMIDATION

- Changes mood suddenly
- Gives silent treatment
- Shouts or yells
- Pounds fists on table
- Throws or kicks something
- Stomps out of the home
- Slams doors
- Says that they have “nothing to lose”
- Has criminal background/current activity
- Has third parties monitor/harass you

### PSYCHOLOGICAL ABUSE

- Blames you for their problems
- Blames you for miscarriages/termination of pregnancy
- Drives in a frightening way

- Threatens to:
  - Leave the relationship
  - See someone else
  - Take children away from you
  - Come after you if you leave
  - Have you committed to an institution
  - Hurt or kill you
  - Hurt or kill the children
  - Hurt or kill themselves
  - Hurt or kill pets
  - Have someone else kill you, your family, friends, etc.

### **ECONOMIC ABUSE**

- Makes you account for all the money spent/controls the money
- Keeps you short of money
- Makes you ask for basic necessities/money
- Undermines your attempts to improve your education
- Undermines your attempts to get or keep a job
- Makes you hand over all your earnings
- Chooses not to work, when capable of obtaining a job, and makes you be the sole earner
- Makes frivolous applications to the CRA to claim the CCB or other benefits, therefore stalling your payments.

### **MALE PRIVILEGE/ PATRIARCHY**

- Demands obedience like you're a servant
- Makes major decisions without your input
- Treats you like you're inferior
- Tells you that you can't cope without him
- Coerces you into marriage through threats and force

### **IMMIGRANT/CULTURAL ABUSE**

- Threatens to cancel sponsorship/have you deported
- Lies about your current status
- Provides false information about immigration laws/process
- Uses religion and cultural practices to threaten or isolate you from accessing supports
- Undermines you because of your race, religion or country of origin
- Makes false allegations to immigration officials

- Threatens/tries to remove children from Canada
- Makes threats about penalties in your country of origin
- Uses or glorifies patriarchal cultural practices
- Refuses to acknowledge divorce on religious grounds

### **SEXUAL ABUSE**

- Pressures you to have sex
- Makes you feel guilty if you don't have sex
- Forces sex against your will (sexual assault)
- Pressures you to have sex after being abusive
- Pressures/forces you into unwanted sex acts
- Treats you like a sexual object
- Threatens to share or does share intimate images of you without your permission
- Inflicts unwanted pain on you during sex
- Pressures you to engage sexually with someone else
- Uses sex and intimacy to control you
- Forces sex as a condition to keep children safe/allow you to see them/return them to you
- Exposes children to pornography
- Sexually abuses the children

### **PHYSICAL ABUSE**

- Throws things at you
- Pushes, grabs or shoves you
- Pulls your hair/twists your arm
- Pins you to wall, floor or bed
- Chokes you
- Kicks, hits or punches you
- Threatens you with a knife, gun or other weapon
- Tries to run you down with a vehicle
- Physically abuses the children
- Causes physical harm while you are pregnant

### **EMOTIONAL ABUSE**

- Insults you in front of others
- Puts down your physical appearance
- Treats you as though you are stupid
- Criticizes your care of children/home
- Calls you names and swears at you

- Calls you crazy/irrational
- Accuses you of having an affair
- Ridicules family or friends
- Goes through personal things, i.e. purse, drawers, pockets, phone or computer

### **HETEROSEXIST/TRANSPHOBIC ABUSE**

- Exploits societal homophobia
- Exploits internalized anxieties about your sexual orientation to control you
- Threatens to “out” you and reveal your sexual orientation to others
- Uses offensive pronouns  
Denies you access to medical treatment or hormones or coerces you to pursue medical treatment
- Tells you that you are not a “real woman” or “real man”
- Uses looks, actions, gestures to reinforce homophobic, biphobic or transphobic control
- Makes you feel bad about yourself
- Says no one will believe you, especially if you are lesbian, gay, bisexual or trans
- Says women can’t abuse women or men can’t abuse men and therefore it is just “fighting” and not abuse
- Threatens to tell your ex-spouse or authorities that you are lesbian, gay, bisexual or trans so they will take the children
- Threatens to tell your family that you are lesbian, gay, bisexual or trans in an effort to dishonour or shame you. This could also be a form of cultural abuse.
- Controls/defines each partner’s role or duties in the relationship
- Uses privilege or ability to “pass” to discredit you, put you in danger, cut off your access to resources or use the system against you

### **REPRODUCTIVE ABUSE**

- Prevents or disallows you to use birth control, including a condom, contraceptive pills, or other available options
- Intentionally exposes you to a sexually transmitted infection (STI)
- Sabotages or tampers with your birth control, including hiding, withholding, or destroying birth control.
- Pressures you to get pregnant when you don’t want to be pregnant; pressures you to continue a pregnancy when you want an abortion or pressures you to end a wanted pregnancy.
- Removes a condom during sex without your knowledge, or pokes holes in a condom. This is also a form of sexual assault.

### **TECHNOLOGY-FACILITATED ABUSE**

- Sends harassing messages through social media sites or via text messages  
Uses technology to stalk you

- Uses social media to talk about your case or slander your name  
Installs spyware on your devices
- Creates fake accounts to contact you or impersonate you
- Engages in unwanted sexting and image-based sexual abuse
- Consistently harasses you and forces you into unwanted contact
- Gifts the child a device to covertly stalk or monitor you

### **POST-SEPARATION ABUSE**

- Blocks access to money after separation
- Drains joint bank accounts or assets, hides assets
- Uses stalking behaviours (property damage, excessive phone calls, phone threats and verbal abuse, phones and hangs up, etc.), particularly if you take a stand against what they want
- Monitors your whereabouts and/or follows you
- Locks you out of the family home
- Increases threats and intimidation
- Escalates abusive behaviours when you have a new partner
- Threatens/causes harm to your new partner
- Makes false allegations to slander/undermine your new partner
- Destroys your/children's belongings
- Uses children to justify breaking no contact orders
- Disrupts children's routines (e.g. sleep, eating, sports, etc.)
- Withholds information about children
- Contradicts your rules for children
- Demands visitation schedules at your/children's expense
- Makes false accusations of bad parenting
- Makes "parental alienation" claims against you when you raise the issue of intimate partner violence/family violence
- Withholds child/spousal support, medical insurance, financial contribution to children's extra expenses (e.g. sports, daycare, school uniform/graduation costs)
- Neglects children during their parenting time
- Uses violence in front of children
- Degrades you to children/family members
- Uses children as spies/to monitor you
- Threatens to kidnap children
- Refuses to permit your travel with the children
- Refuses to sign for children's passports/provide you with them
- Threatens to call child protection and have the children removed
- Shows up to the children's school as an intimidation tactic or threatens to remove the children from school

## LEGAL ABUSE

- Denies the abuse
- Appears charming and conciliatory to the judge or other legal personnel, raising questions about the credibility of your story
- Has you counter charged by the police, complaining that you assaulted them
- Doesn't allow children to call you
- Acts as their own lawyer as a bullying strategy in which they cross-examine you as an intimidation tactic
- Makes endless interim applications over minor or inappropriate issues
- Uses intimidation and threats if you do not agree to financial arrangements that disadvantage you
- Pressures you to accept mediation and joint parenting arrangements even if you feel threatened and unsafe
- Coerces you to trade away some legal rights (e.g. the right to property or financial support) in exchange for others (e.g. child-related)
- If they have been criminally charged, pressures you to change bail conditions or have charges dropped
- Contacts you out of court under the guise of negotiating the case
- Uses delay tactics such as refusing to sell the matrimonial home or respond to legal offers, delaying providing financial information, etc.
- Repeatedly changes lawyers, slowing the process down
- Fails to show up to hearings, slowing down the process and driving up the cost
- Withholds information (such as financial disclosure) and then insists on unreasonable disclosure from you
- Threatens to take/keep the children if you insist on leaving
- Makes hostile, misleading, and/or false reports about you to the court and other officials (child protection authorities, police, housing personnel, school, etc.)
- Threatens harm/death if you pursue legal proceedings
- Attempts to interfere in the professional relationship you have with your lawyer in an effort to reduce your confidence in your own lawyer or make your lawyer reluctant to represent you
- Calls multiple law offices in an effort to conflict out any potential lawyers you may call
- Files frivolous complaints about your lawyer, social worker, support person, etc.
- Makes claims of "parental alienation" when you have been acting protectively as a response to abuse

## Identifying Risk

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Risk is subjective, and what might pose a risk to one person may be perceived differently by another. Risk is generally understood as the likelihood that violence will occur again. While there is no one-size-fits-all approach to assessing risk or safety, there are factors and circumstances that can impact risk and your safety. The following factors, often occurring in combination or as part of a pattern, are commonly associated with lethal violence:<sup>12</sup>

- pending or actual separation – the first three months post-separation are the most lethal;
- prior intimate partner violence, escalating in severity or frequency;
- access to weapons, particularly guns;
- perpetrator unemployment;
- the presence of children in the home, particularly children not biologically related to the perpetrator;
- death threats;
- attempted strangulation (choking) – prior non-lethal strangulation is strongly associated with homicidal domestic violence;
- perpetrator has suicidal tendencies and threats or attempts to suicide;
- stalking, monitoring;
- forced sexual acts and sexual abuse;
- the survivor has fear of being killed;
- controlling, obsessive forms of psychological bond (for example a pattern of coercive and controlling behaviour and inability to contemplate the possibility of life without the other, high levels of possessive jealousy);
- threats with weapons;
- violence during pregnancy; and
- significant perpetrator life changes.

The Barbra Schlifer Clinic developed the Risk Identification and Safety Assessment (RISA) tool for service providers working in the gender-based violence sector or those at risk of violence. The RISA framework is holistic, taking into account the survivor's unique identity factors and experiences of violence, as well as their experiences of structural and institutional harms. This framework can be helpful to use if you are at risk of violence, or with the support of a service provider. The three main components of the tool include 1) an interactive framework which outlines the social, institutional, and systemic factors that can impact risk and safety; 2) learning modules; and 3) the RISA questionnaire which screens and identifies any potential risk for future violence, informing a personalized safety and action plan.

For more information, please visit: <https://www.riseaboverisk.ca/>

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<sup>12</sup> Neilson, L.C. (2013). Enhancing safety: When domestic violence cases are in multiple legal systems (criminal, family, child protection): A family law, domestic violence perspective. *Department of Justice Canada*. <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/index.html>

## Safety Planning

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Preparing a safety plan is recommended for individuals who feel unsafe, are being abused, as they are getting ready to leave the relationship, and after they have left. Women who are subjected to violence are at the greatest risk of serious injury or harm around the time of separation. In fact, the risk of domestic homicide becomes the highest during the period of separation and the intensity of domestic violence escalates when the relationship ends.<sup>13</sup> While your ex-partner's behaviour may be unpredictable and beyond your control, you can make a safety plan to help increase your safety and plan for risk. Never minimize the safety concerns you may have. You know the situation better than anyone.

Creating a safety plan can be overwhelming. It is very helpful to work with a support person who can assist you with developing your plan as well as provide you with support and referrals to other services you might need, such as financial and/or legal assistance.

### What is a Safety Plan?

A safety plan is an individualized plan that aims to reduce the risks of further abuse for you and your children. It can also include strategies for basic needs like income, housing, health care, food, child care and education for the children.

The details of your plan will depend on your situation – whether you are living with or separated from your partner, whether you plan to leave or to stay with them, your financial resources, your housing options, whether or not you have children, and so on. The plan will also be affected by the resources that are available to you.

It is a good idea to update your safety plan as your circumstances change in order to make sure that it still meets your needs. You will know best what you need to do to stay safe. You probably already have strategies that keep you and your children safe. These will become part of your safety plan.

### Characteristics of a Safety Plan

Because every survivor's situation is unique, there is no one safety plan that fits all situations. A safety plan for someone living in a northern or remote community might look different from someone living in a major urban area. However, there are some characteristics that are common to most plans. An effective safety plan will:<sup>14</sup>

- Seek to reduce or eliminate the range of risks you face, including but not limited to physical violence
- Be helpful for any stage of the relationship
- Have short and/or long-term time frames
- Prepare you for many different scenarios
- Meet the needs that are important to you

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13 Spearman, K.J., Vaughan-Eden, V., Hardesty, J.L., Campbell, J. (2024). Post-separation abuse: A literature review connecting tactics to harm. *Journal of Family, Trauma, Child Custody, Child Development*, 21(2): 145–164. doi:10.1080/26904586.2023.2177233

14 Gosse, M., Crocker, D. & Mosher, D. (2021) *Safety planning among domestic violence service providers: A call for an intersectional approach* [PowerPoint slides]. Canadian Domestic Homicide Prevention Initiative. [https://www.cdhipi.ca/sites/cdhipi.ca/files/Day%202020\\_Safety%20Planning%20Among%20DV%20Service%20Providers.pdf](https://www.cdhipi.ca/sites/cdhipi.ca/files/Day%202020_Safety%20Planning%20Among%20DV%20Service%20Providers.pdf)

- Build on strengths and skills you already have

### **A safety plan could include:**

- How to get away if there is an emergency
- How to get help if leaving is not an option at that time or you choose not to leave
- Where to go if you leave
- How to be safe at a new place
- How to safely keep in touch with people who will help you
- How to keep your children safe
- How to protect your personal property (e.g. clothes, jewellery, family keepsakes, important documents, phone, etc.)
- How to stay safe in public and at work
- Anything else that you and your children need to feel as safe as possible

### **My Safety Plan**

An individualized safety plan is intended to reduce the risks of further abuse for you and your children. You may want to make a few copies of this blank chart so you can include different measures as your situation changes. For example, what you need to stay safe when you are still with your partner is different from what you need when you first leave. You may need additional measures in place when you start your family court case and when you move into your own home.

## Safety Planning Example<sup>15</sup>

### Safety Planning During a Violent Incident

Be aware of any weapons in the home or the person's access to weapons.

- Try to notice if there are any triggers for the aggressor of the violence. This can help you try to predict the next likely incident and give you a chance to prepare (e.g. by making plans for you and/or the children to go to family/friends in advance).
- Use your judgment and intuition. If verbal self-defence is a possibility, you may want to consider pretending to agree with the person in order to calm them down, so that you can buy yourself time to escape. Silence can be a powerful resistance strategy.
- Try to move to a space where you think the risk is the lowest. Avoid areas without a clear exit path or where there could be a weapon at hand (e.g. kitchen, bathroom, closet). Try to position yourself so that your back is facing the exit area (e.g. if you are in your bedroom, keep your back facing the door).

I can go to these rooms if I am in danger: \_\_\_\_\_

*(Think of rooms that have ways to escape and doors that lock, but don't have things like kitchen knives and power tools).*

- If you feel comfortable, make as much noise as possible (set off the fire alarm, yell "FIRE," break things, break a window) - to draw attention to the situation.
- Practise how to get out safely. What doors or windows will you use?

If I decide to escape, I can get out of the house by \_\_\_\_\_.

*(Decide on a safe place to go to when violence occurs.)*

I can go to \_\_\_\_\_

*(Decide this even if you don't think there will be a next time).*

<sup>15</sup> Women at the centre (n.d.). *Individualized safety plan: A step-by-step course of action*. <https://www.womenatthecentre.com/safety-plan/>

If I need to call for help, telephones are located at these places:

\_\_\_\_\_

(Use a code word with a person of choice so they can call for help.)

I am going to confide in \_\_\_\_\_. Our code word will be \_\_\_\_\_.

Pack a bag with essentials for you (and your children, if applicable) - change of clothing, important documents, toothbrush/toothpaste - and keep this bag somewhere safe (e.g. at work).

I will keep my packed bag at \_\_\_\_\_.

(Use a code word with a person of choice so they can call for help.)

### **Once You Are In a Safe Place**

- Once you are in a safe place, you may want to consider seeking medical attention for any physical injuries. If you have been sexually assaulted, and if you choose to seek medical assistance, you may want to choose not to bathe or shower. If you want medical assistance, SANE nurses will assist you at the hospital and will conduct a trauma-informed examination and can collect and store evidence on your behalf, if you choose.
- You do not need to report to the police. You may want to think about keeping the clothes you were wearing during the assault (don't wash them), as you can provide them for use as evidence if you choose to pursue charges against the person who committed the violence.
- When you leave your home, take your children if you can. If you try to get them later, the police cannot help you remove them from their other parent unless you have a valid court order.
- Document abuse patterns and the date and time of abusive incidents, and contact with your ex-partner. If you have been hit in the head or strangled, tell the first responder (e.g. police, ambulance, neighbour) and request medical attention. You may have a concussion and/or brain injury.

### **Safety Planning with Children:**

- The most important thing for children is to get away from where the violence is happening. Although children often try to help stop the violence, it is important to tell children that the best and most important thing for them to do is to keep themselves safe.
- Stress the importance of being safe, and that it is not the child's responsibility to make sure that their parent is safe.
- Have your child pick a safe room/place in the house, preferably with a lock on the door and a phone.
- Create a code word to use with your child so that they know when to run to safety and to call for help.

**Our code word is:** \_\_\_\_\_.

Teach your children how to call for help. It is important that children know they should not use a phone that is in view of the violent person. This puts them at risk. Talk to your children about using a neighbour's phone if they are unable to use a phone at home. Remember there is no cost when calling 911 from a cell phone. Typically, you can still make a successful call to 911 without a phone plan or even a SIM card, however you will still need to be within range of cellphone towers.

If you have a cell phone, teach your children how to use it. Ensure that your children know their full name and address.

**My address is:** \_\_\_\_\_.

Rehearse what your child/children will say when they call for help. Pick a safe (and age appropriate) place to meet your children, out of the home, so you can easily find each other after the situation is safe (e.g. neighbour, park, pond).

**Our safe place is:** \_\_\_\_\_.

## **If Law Enforcement Becomes Involved During a Violent Incident**

### **If Law Enforcement Becomes Involved:**

- If you have children, it will likely result in the involvement of child protection.
- There is a chance you may be charged. This often occurs because the police will charge the "primary aggressor," or may lay dual charges. This can happen even if you acted in self-defence.
- Ask the police officer to provide you with their name, badge number and telephone number for future contact and reference.

- The police may charge your aggressor(s). If this happens, find out if they will be held in custody or released. *Ask for a copy of the conditions of their release.*
- Call Victim Services within your region to get information on court information.
- Key things to identify to the police are whether there has been a pattern of abuse, whether your aggressor(s) owns weapons or has access to them.
- If the police do not assist you, you can make a complaint to the detachment in the jurisdiction where the violation occurred.
- Request the police to put a “hazard” on your address on file. This will provide additional information and security for officers responding to your call and alert them of a potentially hazardous history at the location.

**List of Important Documents / Items:**

- Passports
- Birth certificates
- Driver’s licence
- SIN card(s)
- First Nations status cards
- Citizenship papers
- Immigration papers
- Work permit
- Permanent resident papers
- Citizenship papers and cards
- Vaccination papers
- Court documents
- Health cards
- An extra set of keys
- Money
- Credit cards
- Medications and prescriptions
- A burner phone

**If and When Preparing to Leave**

- Make a photocopy of the documentation items listed above and store in a safe place, away from the originals. Hide the originals somewhere else, if you can.

\*Note: If you use your phone to copy important documents and/or evidence, send to a safe person you can confide in OR upload to a drive (e.g. Google Drive or OneDrive) that your partner does not have access to. Ensure you delete the original copy from your phone and any history of conversation with that contact person.

- Check in with those you have confided in to see if you are able to stay with them.

**I will check in with \_\_\_\_\_ and \_\_\_\_\_.**

- Open a bank account in your own name and arrange that no bank statements or other calls be made to you. Or, arrange that mail be sent to a trusted friend or family member. Or set up an online banking account.
- Leave cash, important documents, an extra set of keys, and your packed bag at a safe place in case you need to leave quickly.

**I will keep these at \_\_\_\_\_.**

**It is safer to leave when your partner is not home.**

### **In Survivor's Own Residence**

- If comfortable to do so, inform a neighbour that your aggressor no longer resides with you and that they should call the police if they are seen at your residence.

**I can inform \_\_\_\_\_.**

- Ensure that your aggressor does not have access to your locks/doors/windows.
- If you are able to, install security systems including additional locks, window bars, poles to wedge against doors, an electronic system, etc.
- Do not put your name in your apartment building directory or mailbox.
- Replace wooden doors with steel/metal doors.
- Install smoke detectors and purchase fire extinguishers for your home.
- If you are comfortable to do so, tell people who take care of your children which people have permission to pick up your children and that your ex-partner does not have permission.

**The people I will inform about this are:**

\_\_\_\_\_ (school)  
 \_\_\_\_\_ (daycare)  
 \_\_\_\_\_ (babysitter)  
 \_\_\_\_\_ (teacher)  
 \_\_\_\_\_ (others)

## Safety With An Order of Protection

- Peace bonds and Emergency Protection Orders are available through provincial court. Some abusive partners obey protective orders, some do not. Sometimes a protective order can escalate the violence the abusive partner uses when they learn that an order has been granted. You know your situation best and can make decisions about protective orders in a way that will be meaningful for you and your children. You can always talk to an advocate about your concerns with applying for a protective order.
- Keep a copy of your protection order near you at all times. If it feels safe, inform your friends, colleagues, or family that you have a protection order in place.

**I will keep my protection order \_\_\_\_\_ (location).**

- Should your protection order be lost or destroyed, you can obtain another copy from court.
- If your ex-partner violates the protection order or if they threaten you in any way, you can call the police to report the violation. A violation is called a breach, and is a criminal offence.

## Safety On The Job and In Public

If you are comfortable, you may choose to do any or all of the following:

- Show a picture of the person(s) and provide a description of their car, including the licence plate number if you know it, to colleagues, neighbours, and building security personnel to make them aware of your safety needs.
- Talk to your employer about family violence leave under the *Labour Standards Act* if you need to take any time off work to safety plan, move, or obtain an emergency protection order.
- Ask to have your calls screened at work or use voicemail to screen your calls. Document any unwanted calls from your aggressor(s). Block unwanted emails or document them by sending them to a folder where you do not have to read them.
- Use different grocery stores, shopping malls, and banks to shop and do business at hours that are different from those you used when residing with your aggressor(s).

When arriving at or leaving work:

- Let someone know when you will be home and when to expect you to arrive at work, and that you will call them when you have safely arrived.

- Consider carrying your keys in your hands so you are prepared to leave quickly or so that you can press the panic button to draw attention to yourself if you are in danger.
- Walk with someone to your vehicle and scan the parking lot when walking to your vehicle.
- If your aggressor(s) are following you, drive to a place where there are people who may support you (e.g. safe person, gas station, the police, etc.)
- If problems occur while you are driving, use your cell phone, honk your horn continuously, and drive directly to a well-lit, open, populated space or your identified safe place.
- Plan to take a route that is populated and well-lit.
- Change the patterns of when you arrive and leave work and the routes you take.
- If you see the person(s) on the street, try to get to a public place, such as a store, or call attention to yourself and ask for help.
- If you use public transit, you can choose to sit close to the front near the driver and have someone you know meet you at the bus stop to walk home with you. Consider changing your transit route if possible.
- Once you have arrived home/at work, call a friend or relative to let them know you have arrived safely.

## **Safety & Technology**

### Accounts and Access:

- Change your passwords regularly and avoid writing them down.
- Log out of your computer profiles and social media accounts before leaving electronics unattended.
- Clear browsing history for the duration of the time you were using the computer.
- Be aware of which social media interactions and settings are public and not private.
- Check whether the violent person can access your phone's incoming and outgoing call lists and/or access messages, e.g. through an iCloud account on multiple devices.
- Check to see if any of your devices and social media accounts have a tracking application or location services enabled and see websites below for information on how to remove or disable them.

Social Media:

- There are steps you can take to make it more difficult for someone to track your social media activities, however, your ex-partner may still find ways of tracking your activities through your social media accounts that are difficult to prevent. If they know a lot about social media platforms, it might be better for you to use an anonymous account/name and change all of your social media passwords and security answers.
- For various social media platforms, visit their privacy settings for ways to limit who sees your posts, photos, etc. or to block/remove and report someone.

## Self-Care

Being subjected to violence is exhausting and emotionally draining. The process of building a new life takes power, courage, and energy. It can be challenging to put yourself first, but every small step helps. Try getting enough sleep and eating regular meals and snacks. Take some time for yourself (e.g. read, draw, write, meditate, play music, do physical activity, spend time with friends, etc.)

Fulfil your spiritual, emotional, and physical needs in whatever way feels good for you.

**I enjoy doing the following:** \_\_\_\_\_.

Call someone you can confide in to talk about your feelings and experiences.

**I can call** \_\_\_\_\_ **and** \_\_\_\_\_.

## Safety Planning For Children

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The safety plan that you develop with your children will be aligned with your own. Children within the same family vary in age, needs and abilities, and may require different plans.

The goal of the safety plan is to empower your children by making sure they know how to get help when they need it.

*It is important for children to understand that they are not responsible or to blame for the violence or abuse they witness or are subjected to.*

### **PREPARING FOR EMERGENCIES**

- Teach children that, during a violent episode, their job is to get away from the violence, stay safe and, if it is safe for them to do so, get help.
- Create a code word. This will be a cue for them to find a safe place and/or get help.
- Teach your children how to call 911 or local police services in an emergency.
- Depending on the ages of your children, you may want to talk to them about the five-finger system. In this system, each finger represents a safe person for them to contact in an emergency and/or someone they can talk to about what is going on at home: the police, a trusted neighbour, their teacher, the parent of a friend, a close relative.

### **SUPPORTS FOR CHILDREN**

- Talk to children about who they can go to for help in their community (family members, friends, cultural supports, teachers, neighbours, police, etc.).
- Talk to supportive people involved in your child's life so that they know they are part of your child's safety plan.
- If child protection is involved with your family, consider speaking to your worker about the safety plan for your children.
- Connect with a counsellor who understands the dynamics of intimate partner violence and the impact on children. This person can help to formulate a safety plan and help children to emotionally deal with what is happening in their family.
- Use formal resources such as the family court, child protection and police to help ensure your children's safety. It can be very helpful to do this with the support of an advocate or counsellor.

### **CONTACT CHALLENGES**

- Keep a journal of the impact the time your children spend with the other parent has on them, recorded by visit dates.
- Remember that you can apply to court for an emergency order or to vary (change) a parenting order if you believe that your child is being mistreated or abused.

## **ONGOING**

- If your children have smartphones, tablets or other electronic devices, consider whether you should shut down any tracking functions. While these functions can be helpful to you and the police if the child is abducted or withheld by the other parent, they can also be used by the other parent to find you and/or your children. Check their devices from time to time to be sure no such functions have been installed by your ex-partner.
- Just as your safety plan will change as circumstances do, so will your children's. Identify increased risk factors such as: a difficult court date, special events in the children's lives, changes in their time with the other parent, threats from the other parent, etc., and update the safety plan as needed.

Safety planning with infants and toddlers is challenging, because they are too young to play a role in keeping themselves safe or even to understand what is going on. However, you can help a very young child feel safer and more secure by assuring them you will always come back if you leave, that things will be okay and that the situation is not one for them to worry about. If you do have to leave home, try to bring some of your child's special belongings (a blanket, toy or book) with you to help them feel more secure in your new location.

Even though safety planning with children means you need to discuss risks posed by the other parent, you can and should make sure your children know that it is okay for them to love the other parent and to want to spend time with them. Assure your children that you will support them in spending time with their other parent in a safe and comfortable way.

## Safety Planning Before and After Court

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Developing a plan specifically for court can help you feel safer both physically and psychologically. Prepare for your court date by visiting the court beforehand to get a sense of what to expect and who the court officials are. You should also make sure you have support before, during and after court. Make plans ahead of time for transportation and child care.

### My Legal Safety Plan

I HAVE APPLIED FOR:

- An Emergency Protection Order
- A Peace Bond
- Exclusive possession of the matrimonial home through family court
- Emergency Interim Application
- Clare's Law Application

STAGE OF THE PROCEEDING:

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I HAVE A COURT ORDER:

- I have provided my children's school, daycare centre and/or other caregivers with a copy of relevant court orders such as a protection order and/or parenting order.
- I have provided others with a copy of the relevant court order, such as my workplace security, campus, landlord or home security.
- My ex-partner has been released on an undertaking, release order, or bail. These are the conditions:

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- I have a safe plan for telling my ex-partner that I have started a family court case. The plan is:

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- I have a safe plan for serving court documents on my ex-partner (e.g. your lawyer advises you when documents will be served, ensuring children are not with your ex-partner, or consider hiring a process server). That plan is:

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- I have made several copies of my safety plan. I carry one with me, have one in a safe place that I can get to if I need it, and I have given one to a trusted friend or family member.
- I have a calendar where I write down all contacts with my ex-partner.
- I have someone else at the house when my ex-partner picks up and returns the children.
- I have a system for managing my ex-partner's email and other contacts with me. It is to:

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## Checklist: Being Safe at Court

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I have a Victim Services Coordinator or legal advocate. That person is:

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I have a support person who is coming with me to court. That person is:

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I have visited the courthouse and know where to go on my court date.

I know how to find:

- Sheriff's Officer
- The Duty Counsel office
- Where I will meet my lawyer (this may be in a separate waiting area from the opposite party)
- Washroom
- The courtroom I have to be in

I have contacted the court's Sheriff's Officer and given them relevant information, including:

- My ex-partner's name
- The protection order against my ex-partner
- The peace bond order
- A copy of my ex-partner's release conditions
- A photograph of my ex-partner

This is what the Sheriff's Officer has said they can do to help me stay safe:

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I know what to do if/when I see my ex-partner:

- Ask a Sheriff's Officer or court staff for assistance
- Move away from where they are sitting
- Go to the nearest washroom
- Ask my support person for assistance
- Other:

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I have made arrangements to get to and from court as safely as possible. I am going to:

- Take a cab
- Use public transit with a friend or support person
- Bring my car and travel with a friend or support person
- Park in a safe place
- Have a friend or support person walk me from my parking spot or the transit stop to the courthouse
- Have a friend or support person meet me at the courthouse
- Bring a cell phone so I can call if there are any problems
- Get to court early
- Ask court security to help me leave safely
- Make sure all my documents are organized and ready for me to take to court
- Review court documents ahead of time
- Book time off work, or request Family Violence leave, if applicable
- Arrange for child care
- Have some snacks ready to take to court
- Have comfortable clothes ready
- Have plans for the evening after court so I can relax and feel safe. My plans are:

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## Checklist: Leaving Your Partner

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If you are preparing to leave your partner, it is a good idea to make a plan of what can be done before you leave and what you are going to take with you when you go. If it is safe to do so, you should take anything you need or think you may need when you go because you may not be able to return to your home safely, and your ex-partner may destroy or hide items they know you will want.

Create a 72-hour kit and put it in a safe location from which it will be easy to retrieve. Your kit should contain essential items (copies of identification and health cards for you and your children, changes of clothing for all of you, medication, etc.) to get you through a few days if you have to leave in a hurry.

Of course, if you leave in a hurry because it is not safe for you to stay, you won't take these steps, and that is okay. Everything can be sorted out later, when you and the children are in a safe place.

### Financial

You may wish to seek legal advice as you prepare to leave, or immediately after you have separated. Without financial protection, your partner could maliciously run up debt on joint accounts, drain your joint bank account, or hide assets. There are things you can do to protect yourself financially.

#### YOUR OWN BANK ACCOUNT

- Open a new bank account, at a different financial institution, in your name only. Use a new PIN that your partner will not guess.
- If you have direct deposit, tell your employer to deposit your pay in your new account, once it is safe to do so. It may not be safe if you are still in the home and your income is direct-deposited to a joint account.

#### UTILITY BILLS

- Photocopy utility bills for the previous several months and keep them somewhere safe.

#### RRSPs

- RRSP investments are considered matrimonial assets and may be divided in the division of property. There are a few points to consider:
- Do you need to update your RRSP's beneficiary designation?
- RRSP investments that pre-date the marriage are generally yours. You will need to provide proof of any pre-marriage investments.

#### YOUR FINANCIAL INFORMATION

- Take your tax returns, pay stubs and other financial documents from the past several years and store in a safe place: at work, with a trusted friend or family member or in a safety deposit box at your new bank.
- You could download digital copies of important documents, to a secure USB drive or

separate hard drive that you can keep in a safe place, or to a secure cloud that is not accessible by your partner.

- Make sure you know your passwords to your own online banking, Canada Revenue Agency account, and any other applicable passwords and keep them private.

### **YOUR EX-PARTNER'S FINANCIAL INFORMATION**

- If you can do this safely, look through your ex-partner's financial documents (bank statements, pay stubs, tax returns, mortgage documents, investment reports, etc.) and make photocopies or scan the documents to your phone. These may come in handy if your matter goes to court and your ex-partner does not provide financial disclosure.
- You could download digital copies of important documents to a secure USB drive or separate hard drive that you can keep in a safe place, or to a secure cloud that is not accessible by your ex-partner.

### **JOINT ACCOUNTS - MORTGAGE/LINE OF CREDIT/BANKING**

A mortgage, line of credit, or any type of loan is a contract/agreement between a financial lender and a borrower (you and your partner). Borrowers are liable for making payments, and if you don't pay back what you owe there can be financial consequences. Depending on the type of line of credit you have, assets like your house or car can be used as collateral if you do not repay your loan. This means the bank could take possession of those assets.

It is a good idea to check with your bank before making any changes to joint accounts. The bank determines whether you are able to make a change to a joint account. Some banks may permit you to close a joint account after separation, while others may not. The bank may want two names from whom they can collect any debt. A joint line of credit is where there is big risk of debt being run up.

Below are suggestions of different safeguards you can put in place if you have concerns your partner may increase debt post-separation:

- Advise the bank (ideally in writing) of your separation and any concerns that debt will be incurred in your name
- Save a statement of the line of credit balance on the date of separation. This helps to establish which debts incurred after separation are joint and which are individual debts.
- If possible, stop using the joint accounts, and note the date you stopped using them.
- Talk to your bank or mortgage broker to ensure your partner cannot add to the mortgage/line of credit without your in-person consent.
- Ask the bank to take your name off the joint accounts, if the bank's policy permits.
- Ask your bank to prevent any further withdrawals from your line of credit, to prevent your partner from running up a debt that could impact your credit rating. However, be aware that banks do not always agree to do this unless the other party agrees.
- If your line of credit balance is zero, ask the bank to close the joint account to prevent the other party running up debt in your name.

- When possible, any changes to joint accounts should be made with the other account holder's knowledge.
- If either account holder makes changes to the account post-separation (for example, increasing the credit limit, making a large withdrawal or purchase), they will likely be held legally responsible for repaying that money.
- Either account holder may withdraw money from a joint line of credit at any time. If you withdraw money to help with your transition after separation, be aware that you will be held responsible for that debt in the division of your matrimonial property.
- Save a copy of your mortgage statement that includes the account details and the balance at the time of your separation.
- Get a new credit card in your name only from a different credit card company than any cards you have now. Use a new PIN that your partner will not guess.

### **CANADA REVENUE AGENCY (Federal taxes)**

The Canada Revenue Agency (CRA) administers tax, benefits and related programs for the federal government and most provinces and territories. You need to be a Canadian citizen or permanent resident to get the benefits of most programs.

If you are being subjected to abuse, you will never need to contact an abusive person to provide any information to the CRA or apply for and get your benefits. Your spouse or common-law partner's signature is not required on any benefit-related forms.

Make sure to do your taxes every year to keep getting benefits and credit payments. Even if you have no income or if your income is tax-exempt, the CRA will use information from your tax return to calculate the amount of money you will get for benefit and credit payments. When you do your taxes, the CRA automatically determines if you are eligible for GST/HST credit and provincial benefits.

- Contact the CRA as soon as you have a new address or any updated information.
- You are required to update the CRA when you are separated (for more than 90 days) or when you get a divorce. To change your marital status, complete [Form RC65, Marital Status Change](#)
- To change your custody information, complete [Form RC66, Canada Child Benefits Application](#)
- Canada Child Tax Benefit:
  - If the child lives with you at least 40% of the time or on an approximately equal basis with you and another individual at a different address, then both individuals are considered to have **shared custody** for the purposes of the CCB and can apply.
  - If the child lives with you more than 60% of the time, you are considered to have **full custody** for the purposes of the CCB. The other parent is not eligible to apply.
- GST/HST Credit:<sup>16</sup>

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16 Canada Revenue Agency. (2025). *GST/HST Credit: including related provincial and territorial credits and benefits for the*

- A tax-free quarterly payment that helps individuals and families with low and modest incomes offset the GST or HST that they pay. The amount is calculated based on your marital status, the number of eligible children you have registered for GST/HST credit and your adjusted family net income.
- Parents in a shared custody situation may be eligible for half of the GST/HST credit for that child.
- If, however, a child welfare agency is legally, physically, or financially responsible for a child, you are not generally eligible for the GST/HST credit for that child.
- Newfoundland and Labrador Income Supplement (NLIS):<sup>17</sup>
  - A non-taxable amount paid quarterly to low-income individuals, families, seniors, and persons with disabilities to help reduce the impact of additional tax measures.
  - It is calculated based on your family situation and your adjusted family net income.
  - Your NLIS payment may include a Newfoundland and Labrador disability amount (NLDA).
- Newfoundland and Labrador Seniors' Benefit<sup>18</sup>
  - This benefit is a refundable tax credit that may be paid to low income seniors (64 years of age or older by December 31st of the taxation year). Whether single or as a couple, eligibility is based on family net income. To receive the benefit, the individual must ensure their annual income tax return is filed.
- If your ex-partner is falsely claiming benefits or credits, you can report them to the CRA.

If the CRA contacts you to confirm information or provide supporting documentation, but the abusive situation prevents you from getting the requested documents or information, you can send the following explaining your situation:

- A letter from a trusted third party such as:
  - a band council
  - a shelter
  - a resettlement office
  - a member of the clergy or an Elder
- A copy of a restraining order or an order of protection
- A copy of a police report

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2024-2025 payment period. <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4210/rc4210-24e.pdf>

17 Canada Revenue Agency. (2025). *GST/HST Credit: including related provincial and territorial credits and benefits for the 2024-2025 payment period*. <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4210/rc4210-24e.pdf>

18 Ibid.

## Legal

- Submit an application to Legal Aid. Legal Aid provides a range of legal services to low income individuals in Newfoundland and Labrador in the area of family law. Those who are eligible can access the service of one of Legal Aid's lawyers located throughout the province of Newfoundland and Labrador.
- If you have been sponsored to come to Canada by your partner, meet with an immigration lawyer to find out how leaving your partner will affect your immigration status.
- If you live on a reserve, find out what rights and protections are available after the end of a marriage or common-law relationship.

## Evidence

- If you have a safe place to keep it where your partner won't find it, begin making a list of the history of abuse in your relationship.
- If it is safe to do so, print text messages, emails, etc. of the history of abuse and keep your documents in a folder somewhere safe, or with a trusted person.

## Court Orders

- If any court orders – family, criminal, immigration – are in place, either remove the originals or make photocopies and keep them in one of the safe places we have suggested in this checklist.

## Work

### TRANSPORTATION

After you leave:

- If you drive to work, consider using a new route that your partner will not be familiar with. Talk to your employer about safe parking
- If you use public transit to get to work, find an alternate route that your partner won't expect you to use.
- If you have a car and are concerned about your partner stalking you, get it checked for a GPS tracking device.

### SAFETY AT WORK

- Let your employer and key co-workers, as well as security staff, know that you are planning to leave your partner and are concerned that they may visit your workplace.
- Under the *Labour Standards Act*, if you have been employed for 30 continuous days with an employer, you are entitled to 3 days paid family violence leave and 7 days unpaid family violence leave.
- Develop a work safety plan.

## Children

### COUNSELLING

- Consider setting up counselling for your children so they will have emotional support when you leave. You may need to get the other parent's consent or a court order for this.

### PHOTOS

- Carry a recent photo of your children with you and/or have one on your phone in case you need emergency assistance to find them.

### SAFETY

- Develop an age-appropriate safety plan with your children so they know what to do in an emergency.

## Communication

- Update your contact information to include the names of your children's school/ daycare centre, your doctor, bank manager, lawyer and anyone else you may need to reach quickly after you leave.
- Create or change the password on your phone.
- Back up any important information you keep on your phone to a secure location. Update your password if needed.
- If you can afford it, buy a new phone and plan that are with a different company than the one your partner uses after you leave.

## Documents

### PASSPORTS – YOURS AND YOUR CHILDREN'S

- If it is safe to do so, remove passports from the home and leave them at work, with a trusted friend or family member, or in your safety deposit box that your ex-partner cannot access.
- If it is not safe to do this before you leave, keep them all together somewhere you can grab them quickly when you leave.

### IMMIGRATION/CITIZENSHIP PAPERS

- Photocopy these documents and keep them in one of the safe places we have suggested.

### INDIGENOUS DOCUMENTATION

- Photocopy your status card and keep in one of the safe places we have suggested.
- If it is not safe to do this before you leave, you can request a Temporary Confirmation of Registration Document if there has been an emergency, if it is lost or stolen.

### **MARRIAGE CERTIFICATE**

- Photocopy and keep in one of the safe places we have suggested.
- If you were married in Canada, you can request an official copy of your marriage certificate from the Department of Vital Statistics in the province in which you were married.
- If your marriage certificate is in a language other than English or French, you will need to have it officially translated for any court proceedings.

### **VEHICLES**

- Find and copy vehicle-related documents (registration, insurance, loan) and store in a safe place.
- After you leave, if you take a car with you, contact the insurance company to change the policy into your name only and to remove your name from policies for any other vehicles.

### **CHILDREN'S REPORT CARDS**

- Remove the originals from the home or, if that is not safe, make photocopies and store in one of the safe places we have suggested.

### **DRIVER'S LICENCE, BIRTH CERTIFICATES, SOCIAL INSURANCE NUMBER**

- Make photocopies of these documents and keep them in one of the safe places we have suggested. This will be helpful if your partner takes your wallet or you have to flee without it.

## **Health**

### **MCP/PROVINCIAL HEALTH CARDS – YOURS AND YOUR CHILDREN'S**

- If you don't normally carry these in your wallet, do so now, if you can safely.
- Even if you have the health cards with you, make photocopies of them and keep them in one of the safe places we have suggested. This will be helpful if your partner takes your wallet or you have to flee without it.

### **DRUG CARD/MEDICAL AND DENTAL INSURANCE PLAN CARDS/WORKPLACE HEALTH BENEFITS INFORMATION - YOURS AND YOUR CHILDREN'S**

- Photocopy any of these documents and keep them in one of the safe places suggested.

### **MEDICATIONS**

- If you can, obtain extra prescription medication so you can keep a supply away from your home in case you are not able to grab medication when you are leaving.
- Let your pharmacy know your new address as soon as you move.

### **DOCTOR**

- Let your doctor know you are planning to leave your partner in case they have any health care-related suggestions for you.

## **Personal Items**

### **JEWELLERY**

- If you have jewellery that you can put away without your partner noticing, put it in your safety deposit box, or leave it at work or with a trusted friend or family member.

### **TOILETRY SUPPLIES AND CLOTHES**

- Buy extra toiletry supplies for you and your children. Store these and a change of clothes as well as nightwear in a bag. Keep the bag somewhere your partner won't find it or in one of the safe places we have suggested.

### **KEYS**

- Have copies made of all your keys – house, office, cars, cottage – and keep sets away from the house in safe places that you can access quickly. If your partner has a key to your car, consider having the car rekeyed.

## Can I Change the Locks?

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If you are married, the home the two of you shared is called the **matrimonial home**. Under the *Family Law Act*, each spouse has an equal right to occupy that home, regardless of whose name is on the deed or the lease unless you have a court order or a legal agreement saying otherwise. This means you cannot legally change the locks on the house just because your partner has moved out. This also means that your partner cannot prevent you from entering the home.

If you have been living in a common-law relationship, occupation of the home you have been sharing legally belongs to whichever one of you has your name on the deed or lease. If both of your names are on either of these documents, then you both have a legal right to remain in the home. Even if your name is not on the deed or lease, you may be able to remain in the home through a court order.

## Court Orders to Keep Your Ex-partner Out of the Home

### CRIMINAL COURT

If your ex-partner has been charged with a criminal offence as a result of the abuse, they may have conditions placed on them that prevent contact with you or prevent them from being at your shared residence. These conditions may be listed on an Undertaking or a Release Order. You should obtain a copy of these conditions so you know if there is any attempt to breach them. You can request a copy of these conditions from the police or from the court registry.

You should note that once the criminal case is over, the conditions may come to an end. If the charges are dropped or your partner is found not guilty, they may have the right to come back to the family home.

### FAMILY COURT

You can apply for an order for exclusive possession of the matrimonial home in a couple of ways. To get this order, you have to prove to the court that there is a good reason for this, so you will have to talk about the abuse you have been subjected to and why you are fearful that your ex-partner might try to come back into the home.

If you have children, you have to explain to the court why it is in their best interests that they and you remain in the home.

Getting an exclusive possession order has no impact on your ex-partner's property rights to the home if it is owned. In other words, if you are married or if you live common-law and both your names are on the deed, your ex-partner still has a right to an equal share of the value of the home when you divide up all your property. An order for exclusive possession of the matrimonial home can allow you to live in the home for a short-term or for a longer period.

## I have a Court Order in Place

Once you have an order that says your ex-partner cannot enter the family home, you may have the locks changed.

If you rent your home, changing the locks should be the landlord's responsibility. Show them your order and ask that the locks be changed immediately. If your landlord is not prepared to do this, you can change the locks yourself, but make sure you leave the landlord with a copy of the court order to protect yourself.

If you are concerned that your ex-partner will call a locksmith and try to get back into the house, the locksmith will likely require a letter from a lawyer or a court order before they get involved.

## Legal Options for Safety Planning

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### Emergency Protection Order

An Emergency Protection Order (EPO) is a type of court order that can be granted by a Judge of the Provincial Court of Newfoundland and Labrador in response to an EPO application. Judges can issue an EPO in situations where family violence has occurred and where the situation is serious or urgent, meaning that there is a need to issue the order without delay to ensure the immediate protection of the person who applied for the EPO.

For additional information please visit: <https://journeyproject.ca/epo/>

### Peace Bond

A peace bond is a court order that places specific conditions on a person's behaviour. These conditions may include: to keep the peace; not to communicate with you in any manner; or not to possess a firearm. You can apply for a peace bond if you fear another person may do you or your family some personal injury; and/or if you fear another person may damage your property.

For additional information visit: <https://www.court.nl.ca/provincial/courts/peace-bonds/peace-bonds-forms/>

### Clare's Law Application

The Interpersonal Violence Disclosure Protocol Act (Clare's Law) gives people who feel at risk of intimate partner violence a way to get information about their partner so they can make informed choices about their safety.

For additional information or to apply online, visit: <https://www.gov.nl.ca/claresslaw/>

## Checklist: Setting Boundaries with an Ex-partner

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- Open a new email account just for communication with your ex-partner.
- Adjust social media settings to ensure privacy. Consider who is on your “friends” list or can access your social media postings to ensure that no one will pass on sensitive information.
- Be clear and direct with your ex-partner about behaviour that is unacceptable. Keep a written record of all communication so that if your ex-partner continues you can take action by involving authorities.
- Try to get a court order that is as specific as possible about all aspects of contact with the children: when it is permitted, by telephone or video call, how exchanges are to be handled, etc. The more specific the order, the less chance there is for your ex-partner to manipulate arrangements.
- Monitor the children’s phone/email/text/social media contact with the other parent and end exchanges that become inappropriate (for example, if the other parent begins questioning the children about you, sharing inappropriate information about your case, etc.). Remember to document these instances.
- Use caller ID so you can screen calls and only answer calls from your ex-partner when the children are available to talk to them.
- Limit what can be spoken about when the children have phone calls with the other parent, and end the call if it becomes intrusive or abusive.
- Do not respond to every text, phone call or email immediately. Most responses can wait 24 hours if it is not an emergency. This will give you time to plan your response and help you to set boundaries with your ex-partner.
- If telephone contact becomes challenging, limit contact to email or a co-parenting website or app. This creates a record of your exchanges.
- Arrange exchanges of the children away from your home and in public places like the children’s school or daycare. For example, one parent does drop-off at school or daycare and the other does pick-up.
- Let the other parent receive information about the children’s health, education and general welfare directly from the children’s care providers, or through an agreed upon communication platform.





## **Section 2**

# **FAMILY LAW INFORMATION**





## Family Law in Newfoundland and Labrador

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Family law is a broad area that includes many issues related to family matters. This includes, but is not limited to, common law relationships, marriage, separation, divorce, parenting, division of property, child and spousal support, and family violence.

### Family Laws in Newfoundland and Labrador

#### ***The Family Law Act***

The *Family Law Act* is a provincial law in Newfoundland and Labrador that governs matrimonial property, including the matrimonial home, matrimonial assets, family support, and domestic contracts. It applies to people who are married, and does not apply to common law spouses. As it is a provincial law, the Family Law Act only applies in Newfoundland and Labrador. The *Family Law Act* can be found online here: <https://www.assembly.nl.ca/legislation/sr/statutes/f02.htm>.

#### ***The Children's Law Act***

The *Children's Law Act* is a provincial law that governs matters relating to children including parenting, access to, and guardianship of children in Newfoundland and Labrador. This Act sets out who is a parent to a child, who may apply for parenting time, and governs parenting time with a child, as well as guardianship. This legislation applies to separated parents and caregivers who are either common law spouses (not legally married) or are choosing not to divorce at the present time. The *Children's Law Act* can be found online here: <https://assembly.nl.ca/Legislation/sr/statutes/c13.htm>.

#### ***The Divorce Act***

The *Divorce Act* is a federal law that governs divorce in Canada. This Act sets out the requirements for applying for a divorce. It also governs parenting, relocation, contact with children, child support and spousal support for spouses who are legally married. The *Divorce Act* can be found online here: <https://laws-lois.justice.gc.ca/eng/acts/d-3.4/>.

#### **Other Laws and Procedures**

There are other laws and regulations that address specific family law issues in Newfoundland and Labrador. The rules of the Supreme Court of Newfoundland (Family Division) and the Rules of the Provincial Court set out the procedure for how family matters are addressed.

- For the Rules of Supreme Court (both General and Family), please visit the following website:

<https://www.assembly.nl.ca/legislation/sr/regulations/RulesSc/rc86PartIV.htm>

- For the Provincial Court Family Rules, please visit the following website:

<https://www.assembly.nl.ca/legislation/sr/regulations/rc070028.htm>

Other relevant laws:

*The Family Violence Protection Act*

*The Child Youth and Family Services Act*

*The Family Relief Act*

## Family Law Courts in Newfoundland and Labrador

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Family law cases in Newfoundland and Labrador are heard in either Provincial Court or Supreme Court depending on where the parties involved live. It is strongly suggested that individuals speak with a family law lawyer if they are unsure which court should be handling the case. Filing documents with the wrong court can lead to significant delays. Both the Supreme and Provincial Court of Newfoundland and Labrador hear family matters dealing with parenting time, child support, and spousal support. However, *only* the Supreme Court has the authority to deal with divorce and division of matrimonial property. It should also be noted that *only* the Supreme Court can hear applications to vary parenting and support orders issued as part of, or after, a divorce proceeding. The Provincial Court *cannot* vary a parenting or support order that was issued in the Supreme Court.

### Supreme Court (Family Division)

The Supreme Court Family Division has exclusive authority to deal with all family law matters in the geographic areas that it covers (called its “judicial area.”) This means any family law applications in these areas of the province must be made to the Supreme Court of Newfoundland and Labrador Family Division. The Provincial Court in these areas does not accept family court applications. The geographic region coming under the jurisdiction of the Supreme Court Family Division includes the following:

- East Coast: The Avalon Peninsula, as far as Holyrood and including the St. John’s metropolitan area and Bell Island.
- West Coast: The area from Grey River west along the South Coast of the island portion of Newfoundland and Labrador to Channel-Port aux Basques, then north to include the whole of the Great Northern Peninsula and west to the turnoff of the Trans-Canada Highway to routes 420 and 421 to Jackson’s Arm and the Beaches respectively, to include all of the communities along both routes 420 and 421.
- Expanded Service Area: Communities from Holyrood to Port Blandford, including the Bonavista Peninsula, fall within the “expanded service area” of the Supreme Court family law applications (such as custody, access, child support, and spousal support) with the Supreme Court Family Division or with the Provincial Court since the two Courts have concurrent jurisdiction in these communities. Please note that there is no expanded service area on the West coast of the province.

### Areas of Newfoundland and Labrador not Covered by Supreme Court Family Division

In all other areas of the province that are not located within the “judicial area” or “expanded service area” of the Supreme Court of Newfoundland and Labrador Family Division, an application for custody of or access to a child, and an application for child and/or spousal or partner support may be filed in either the Provincial Court or the Supreme Court of Newfoundland and Labrador General Division. However, only the Supreme Court of Newfoundland and Labrador General Division has the authority to deal with divorce and the division of matrimonial property. As was stated earlier, only the Supreme Court can hear applications to vary custody and support orders issued as part of, or after, a divorce proceeding.

## **Provincial Court**

Provincial Court has jurisdiction to hear many matters falling outside of the geographic regions of the Supreme Court (Family Division). However, there are certain types of applications that cannot be made at Provincial Court. This includes divorce applications and division of matrimonial assets such as the family home. If you are unsure of which court you should apply to, it is best to contact either the Provincial Court or Supreme Court (Family Division).

## **Intimate Partner Violence Intervention Court**

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Intimate Partner Violence Intervention Court (IPVIC) is a specialized criminal court. It follows the same laws as traditional criminal court; however, it is administered in a way that promotes rehabilitation and accountability of offenders. It is a voluntary process, in which the accused can be referred directly from their first court appearance, or request it through an application. Currently, the IPVIC is only available in St. John's, Grand Falls-Windsor and Stephenville.

For additional information, please visit:

<https://www.court.nl.ca/provincial/courts/intimate-partner-violence-intervention-court/>

## Before You Start a Family Court Proceeding

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When a relationship ends there are usually decisions that must be made about property, children, and finances. Often, people are able to sort out for themselves how things will be divided, or how decisions will be made about the children. This can be done outside of court through a separation agreement or mediation. Some of these decisions may have already been made through an agreement that was signed during the relationship. We have included information on these options below.

### Marriage Contract or Cohabitation Agreement

Marriage contracts and cohabitation agreements are called domestic contracts under the *Family Law Act*. These agreements create certain rights and obligations between the partners, including property rights and financial obligations during the relationship, and they give specific instructions should the relationship end.

A marriage contract, commonly referred to as a prenuptial agreement or a “pre-nup” is a contract/agreement between two people who are married or intend to marry. A cohabitation agreement is a contract/agreement between two people who live together in a common-law relationship, or intend to live together.

Like other types of legal documents, domestic contracts must meet certain requirements to ensure their validity. If one partner was tricked, forced or coerced into signing an agreement, it could make the agreement invalid. However, this type of coercive and controlling behaviour can be challenging to prove in court without evidence.

### Separation

Separation occurs when a couple, married or common law, either stops living together, or lives together with the knowledge that they are no longer a couple. You become separated as soon as you and your spouse/partner start living “separate and apart” from each other with the intention of separating.<sup>19</sup> Legally, you do not need permission or approval from the other person to separate.

People are often concerned that they need something legal to establish that they are “legally separated.” You do not need anything to be legally considered separated. Sometimes “legally separated” refers to having a Separation Agreement that addresses the legal aspects of separation, but this Agreement is not required for you to be considered separated. For many survivors, we recognize that cultural beliefs and values about marriage, family, separation, divorce and family violence can impact or influence your decision-making if you are thinking about leaving an abusive partner. The legal process in Canada, gender norms and/or roles may also be different from that of your culture or country of origin.

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<sup>19</sup> Supreme Court of Newfoundland and Labrador. (n.d.). *Frequently asked questions*. <https://www.court.nl.ca/supreme/info-parties/frequently-asked-questions/>

## **Separate and Apart**

You can be living “separate and apart” while under the same roof. This may be for financial reasons or for the stability of any children involved. Each case is different - depending on the circumstances of the case, a couple living under the same roof may be considered living “separate and apart” if they put an end to joint activities. Living separate lives can include sleeping in different rooms, no sexual intimacy, not sharing meals or household chores, not sharing social activities, and living separate lives generally. The court typically considers the entire context. This might include:

- The degree to which the parties were intimate with each other.
- Whether the parties have been involved romantically with other people.
- Whether the parties have continued to discuss family issues/problems and communicate about daily issues.
- Whether there have been any changes in expectations regarding their accountability to each other for daily activities.
- The extent and nature of their contact with each other (e.g. participating in joint social activities, rare moments of civility vs. an ongoing relationship).
- Whether the parties have continued to share in each other’s daily routines (e.g. eating meals together, sharing household chores).
- Whether they have celebrated special occasions together, exchanged gifts or tokens of affection.
- Whether they have supported each other through difficult times with each other’s personal issues.
- Documentary evidence respecting their relationship status is also relevant (e.g. tax returns, whether they claim benefits).
- Whether the parties have continued to share use of assets.

There must be intention on the part of one or both to live separate and apart from the other. Unlike the decision to marry, the decision to separate does not need to be mutual. Once one person has decided to permanently separate and has acted on it, the other person has no ability to stop the process or object to it.

## **Date of Separation**

The date of separation is important in determining claims for spousal support, child support, and property division. It is used to determine which debts and assets are joint and which are not, the end date of entitlement for pension division, and the beginning of the 12-month separation period, after which you are eligible to be divorced.

The date of separation may become a contentious issue when separating, especially if there has been abuse. To determine, or “prove” the date of separation, you can look at when you started to:

- live in separate homes or live separate lives while still in the same home
- separate your money and finances, close joint accounts
- tell people you were separated

You can also look at documents like:

- letters, emails, or messages in which you or your partner talk about separating
- documents that say you're not living as a couple. For example, if your income tax return says your marital status is "separated."

For the purpose of divorce, the one-year separation is interrupted if cohabitation resumes for a period of, or periods totalling, more than 90 days.

### **Common Law & Separation**

People often refer to common law relationships in which two people have formed a marriage-like relationship and lived together for a certain amount of time. However, in Newfoundland and Labrador, common law relationships do not exist as a legal relationship. This means that common law couples do not have the same rights as married couples. For example, a common law partner is not automatically entitled to half ownership of the home when the relationship breaks down (if the house is only in one person's name). Provincial and federal laws often recognize a common law partner at different times, and common law couples may have rights or obligations under federal laws, such as federal income tax, pension plans, or other federal programs.

Cohabitation agreements can be entered into during the relationship. These agreements can include property rights, and/or financial obligations to each other during or after the relationship.

Like married couples, the date of separation may be used when common law relationships end to determine:

- Child support
- Partner support
  - Common law couples can apply for partner support upon separation if they have lived together for at least two years, or if they have lived together for at least one year and are the biological or adoptive parents of a child.
- Property division
  - Unlike married couples, common law partners are *not* automatically entitled to half ownership of the home.
  - When common law couples separate, there is a presumption that each person owns only the things they brought into the relationship, purchased, or have registered in their name.
  - To support a claim of property division in a common law relationship, records should be kept of who purchased which pieces of property, who contributed to work and effort to the purchase and upkeep of the property. This is usually a significant contribution.
  - The longer the relationship has been ongoing, the greater the chances are that the court will consider dividing the assets.

## Separation Agreement<sup>20</sup>

A Separation Agreement is a written legal document between you and your former spouse/partner setting out what you have agreed on the key issues such as parenting, child support, spousal support and/or division of property. It is a contract that both parties may enter into once the relationship has ended. Both parties must agree to it and enter into it freely. It is a legally binding document, and it can be incorporated into court orders if you do go to court, for example, by attaching a copy of the Separation Agreement to any court orders that are filed.

Under the *Family Law Act*, a Separation Agreement, also called a domestic contract, can include rights and obligations respecting:<sup>21</sup>

- Ownership in or division of property;
- Child support obligations;
- Spousal support obligations;
- Parenting decision-making (including major decisions about the health, education or spiritual well-being of the children) and the schedule of parenting time;
- The appointment of liability for debts; and
- Other matters in the settlement of their affairs.

A Separation Agreement must be made in writing, signed by both parties, and witnessed by a lawyer or a Commissioner of Oaths. The same person can witness both signatures.

## Independent Legal Advice

It is strongly recommended that you get Independent Legal Advice before you sign your Separation Agreement, especially if there has been abuse in the relationship. Survivors of abusive relationships may not be thinking clearly or be able to protect their own interests at the time of signing a Separation Agreement. There is a high risk of escalation of abuse at the time of separation.<sup>22</sup> An abusive ex-partner may attempt to threaten or coerce you into signing a Separation Agreement that is not in your best interests. A lawyer has a duty to advise you of your best interests. A Separation Agreement that has been signed with Independent Legal Advice is more difficult for a court to set aside. Once the agreement is signed and witnessed, it may be filed with the court. It may be enforced as a Consent Order under the *Family Law Act*, the *Children's Law Act* or the *Support Orders Enforcement Act*, and the *Divorce Act*. You file your Separation Agreement when you apply for divorce and it will be enforced as a Consent Order with your Divorce Judgment.

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20 Canadian Judicial Council. (n.d.). *Family law handbook for self-represented litigants*. [https://cjc-ccm.ca/sites/default/files/documents/2021/Family%20Handbook%20-%20EN%20MASTER%202021-10-19\\_0.pdf](https://cjc-ccm.ca/sites/default/files/documents/2021/Family%20Handbook%20-%20EN%20MASTER%202021-10-19_0.pdf)

21 Family Law Act, RSNL1990 CHAPTER F-2. [https://www.assembly.nl.ca/Legislation/sr/statutes/f02.htm#61\\_](https://www.assembly.nl.ca/Legislation/sr/statutes/f02.htm#61_)

22 Spearman, K., Hardesty, J.L., Campbell, J. (2022). Post-separation abuse: A concept analysis. *Journal of advanced nursing*. 79, 1225–1246. DOI: 10.1111/jan.15310

## Mediation

Mediation is a process to resolve family law disputes outside of court with the help of a mediator. A mediator is a trained legal professional who is a neutral third party who facilitates negotiation. A mediator helps families talk to each other and negotiate terms of a Separation Agreement or a Consent Order. A mediator does not give you legal advice or tell you what you should do. They help families come to agreement on a parenting plan, property division, spousal/partner support, and child support.

Mediation can be accessed for free through NL Family Justice Services to negotiate issues of parenting and child support, and through private practice mediation law firms to negotiate issues of division of property and spousal support as well as parenting and child support.

### Is Mediation Appropriate When There Is Abuse?

Traditionally, mediation has been avoided where there has been a history of intimate partner violence or family violence because of presumed power imbalances. NL Family Justice Services does not provide mediation services for family cases where there are no-contact orders in place, if there has been intimate partner violence (IPV), if there are safety concerns, or if there are child protection issues.

However, certified family mediators in private practice may offer mediation in these circumstances. They are required to be trained in screening for issues of IPV and to have the knowledge and skills related to identifying, assessing and managing power imbalances including family violence.

The Family Dispute Resolution Institute Atlantic (FDRIA) notes that mediators are working with parties at a time of high emotion, personal crisis, and a higher risk for family violence (including murder and murder-suicide), mental illness, substance abuse and other harmful coping mechanisms. Separations tend to create or exacerbate various forms of power imbalance, which can negatively impact a survivor's ability to exercise self-determination.

Mediators should incorporate, as part of their intake processes, screening questions designed to identify family violence and power imbalances. A well-trained and skilled mediator can assess and manage the identified risks when working with separating people in a dispute resolution process.

Where a party appears to be acting under coercion or fear, or without capacity to comprehend the process and make decisions, the mediator shall explore these concerns with the party in an individual, confidential meeting to assess the risks of proceeding and whether there are issues of capacity or volition.

Where the mediator assesses that there is a risk to the safety of a party, child or third party, they should conduct the appropriate form of safety planning.<sup>23</sup>

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23 Family Dispute Resolution Institute Atlantic. (2025). *FDRIA standards of practice*. <https://fdria.ca/fdria-standards-of-practice/>

## Why Would I Mediate When There is Abuse?

When considering whether to try to negotiate with an abusive partner in mediation, it is important to look at it in the context of the traditional family court system. The traditional family court process is designed as an adversarial system. It can be the most appropriate process for high conflict cases, however it is important to be aware of the risks associated with it:

- An abusive partner may attempt litigation abuse, which drags the process on.
- Cases often take years to reach a final decision in Family Court.
- You may find the time spent in litigation to be re-traumatizing.
- The judge may not accept your description of the abuse or coercive control as fact.
- The judge makes the final decision. You do not have control over the outcome.
- You may not be happy with the outcome.

Some advantages of mediation where there is abuse:

- Mediation can occur on a faster timeline than litigation.
- You have a voice, and more control in the process.
- The process can be customized by a trauma-informed mediator to address the power imbalance.
- You can try mediation at any time – even during the litigation process.
- You have control over whether to proceed with the mediation process and you can end the process.
- It is private and confidential. The abuser may not wish the allegations to go through the public system, so they may be motivated to settle privately.
- You decide the final outcome.
- You avoid the traditional adversarial court process which can drag on for a long time and be re-traumatizing.
- You do not need to mediate all the issues. You could mediate your most pressing issue, such as an arrangement for support or parenting, and litigate other issues like the division of matrimonial property.

The risks of mediation where there is abuse:

- The abuser must agree to participate in the process. The abuser may see the mediation process as an opportunity to exercise coercion and control.
- It may not be possible to safely design a mediation process to equalize the power imbalance.
- You may feel pressured by the abuser to make an agreement that is not in your best interests.

## Questions for Your Mediator

We know that the use of family violence screening tools is inconsistent among both lawyers and family dispute mediators.<sup>24</sup> If you have been in a relationship in which you have been abused and have concerns that the abuse is continuing post-separation, there are some questions you can ask the mediator to make sure mediation is the right fit for your matter:

- What, if any, screening tools do you use to screen for family violence or power imbalances?
- What is your understanding of intimate partner violence? Coercive and controlling behaviour? Family violence?
- Can you accommodate culturally specific needs?
- What training have you completed in assessing or identifying risk?
- If you become aware of power imbalances during mediation, how do you address them?
- How will you protect my privacy and confidentiality? Is there anything that cannot be kept private?
- Are you willing to safety plan with me if needed?
- What is your follow-up to the screening process? (e.g. connecting me with resources, referrals, etc).

## What Your Mediator Needs to Know

For many valid reasons, survivors often downplay or are reluctant or fearful to disclose their experiences to their lawyer or a mediator. Survivors often report feeling embarrassed, afraid, distrustful, or that they have been coerced by their ex-partner to do meditation. It is up to you what you decide to share with a mediator, however to accurately screen for intimate partner violence/family violence, a mediator will need to know:

- The history of abuse, frequency of abuse, and type of abuse you and/or your children were subjected to.
- If there are any past or present court orders (e.g. protection orders), arrest records, medical records related to the abuse.

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<sup>24</sup> Milaney, K. and Williams, N. (2018). Examining domestic violence screening practices of mediators and lawyers. *Calgary Domestic Violence Collective*. <https://www.butterfieldlaw.ca/wp-content/uploads/2020/07/ExaminingDomesticViolenceScreeningPracticesofMediatorsandLawyersFinalReport-FINAL.pdf>

## **Family Justice Services**

Family Justice Services (FJS) is a division of the Supreme Court of Newfoundland and Labrador. It offers services that assist families in resolving parenting and/or child support issues.

FJS focuses on the needs of children and promotes dispute resolution outside of the courtroom. Dispute resolution/mediation occurs when parties talk to a neutral person to explore ways to resolve their family law problems.

FJS offers free services to residents of Newfoundland and Labrador that are involved in family law matters. Some of their services include:

- Parent education sessions on family law and parenting after separation;
- Dispute resolution in cases of parenting and child support issues;

All family court applications with claims for child support or parenting are automatically sent to Family Justice Services for mediation. You can access FJS by either sending a "Request for Service" directly to FJS or by filing an "Originating Application" form for a parenting order or a child support order with the Supreme Court.

**Request for Service:** when both people want to resolve their problems outside of Court, they can access dispute resolution service through FJS. Both parties must complete and sign a Request and forward to the nearest FJS office. This form is available at all Court locations, all FJS locations, and can be found online.

### **Intake Meeting**

An intake meeting will be scheduled with both parents, and will happen either in-person or over the phone. The purpose of the intake meeting is to determine if your matter is suitable for mediation. Family Justice Services may not be suitable in all situations, for example if there are no-contact orders in place, if there has been intimate partner violence, or if there are safety or child protection concerns.

### **The Process**

Generally, mediation through FJS takes about three months. However, if mediation proves to be unsuccessful at any time, the matter can be sent to family court. Likewise, a judge can order that a family court matter be sent back to mediation at any time during proceedings. For more information, please visit: <https://www.court.nl.ca/supreme/family-division/family-justice-services/>

## Starting a Family Court Case

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When one partner is abusive in the relationship, you may need to go to court to get an order if mediation or dispute resolution has not been successful. Family court can be adversarial, and it requires both parties to “actively work towards the resolution of their proceeding” and “good faith participation” in at least one dispute resolution program or process.<sup>25</sup> If your ex-partner engages in legal bullying, this can slow down your case and impact the length of time you spend in court.

A family court case unfolds in a series of steps, which *may* lead to a trial. At each step of the process, you will have a number of options, one of which is to settle your family law issues with your ex-partner without going any further in the formal process. Many family court matters are settled before ever going to trial.

Your family court case starts by filing initiating court forms. These are sometimes called “pleadings” and are the documents that start or respond to an action. These forms contain facts and specific information about what your position is and what you want.

You need to determine whether you should file your Application in the Provincial Court or the Supreme Court. Filing documents in the wrong court can lead to significant delays. It is strongly suggested that individuals speak with a family law lawyer if they are unsure which court should be handling the case.

If you have a lawyer, they will prepare all the documents for your case based on the information you provide to them and the outcomes that you have told them you want. It is important to give your lawyer detailed information about your family, the history of abuse, parenting responsibilities, and your family’s financial situation, so that they can include it in your court documents.

The court needs this information to make its decisions. Your ex-partner may lie or misrepresent things in their documents, so your documents need to paint a truthful picture of your family, with enough details to show the judge that your evidence is credible and should be believed.

## Family Court Support Resources

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### Public Legal Information Association of Newfoundland and Labrador

Public Legal Information Association of NL (PLIAN) has family law publications that may be helpful as you initiate your family law matter and figure out which court forms you need. These documents can be found here:

Family Law Guide: <https://publiclegalinfo.com/wp-content/uploads/2023/01/Family-Law-Guide-Current-to-January-2023.pdf>

Divorce in Newfoundland and Labrador: <https://publiclegalinfo.com/wp-content/uploads/2021/06/Divorce-Guide-PLIAN-2020.pdf>

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<sup>25</sup> Supreme Court Family Rules. (2025). *Section 7 - Facilitated Resolution of Claims*. <https://www.assembly.nl.ca/legislation/sr/regulations/RulesSc/rc86PartIV.htm#39>

Child Protection in Newfoundland and Labrador: <https://publiclegalinfo.com/wp-content/uploads/2021/04/PLIAN-Child-Protection-Publication-2020-Final.pdf>

## **Family Law Court Form Builder - Family Division of Supreme Court**

PLIAN's Family Law Form Builder helps you prepare forms for use in the Family Division of the Supreme Court of Newfoundland and Labrador. This easy-to-use interface will guide you through the required form(s) you will need to file your Family Law Application and help you with gathering the information required. Upon completion, you must print your forms and present them to the Court as required for your proceedings.

You must have access to an email address to complete the registration process. If you are concerned for your safety or fear that your email is being monitored, we suggest creating a new email account or reaching out to a support person for assistance.

To access the Family Law Form builder, please visit: <https://publiclegalinfo.com/builder/>

## **Supreme Court of Newfoundland and Labrador Website**

The Supreme Court of Newfoundland and Labrador has a Family Court website that contains links to most of the information and resources that you will need as you navigate your family court matter:

<https://www.court.nl.ca/supreme/family-division/>

Here you will find:

- Location and contact information (including inquiries email);
- Family Court Forms (these are the documents you need to fill in and file with the court);
- Legal information on family law issues including parenting and child support;
- Videos;
- Links to family laws and legislation;
- Family Court docket – listed by file number;
- Fees for filing documents;
- Family law Information Sessions.

## **Duty Counsel**

Legal Aid provides the services of lawyers (Duty Counsel) in the Family Division of the Supreme Court in St. John's to assist people appearing in Court who do not already have a lawyer. Duty Counsel can give basic advice about legal matters that are before the court. They can explain your legal rights and obligations and provide information, including:

- How to respond to a court application;
- What the terms of a proposed agreement would mean to you and your family, and the possible consequences;
- What should be included in a court application and what documents you need to

- file with the court;
- Time limits for filing documents with the court.

Duty Counsel can appear on your behalf on simple matters before the court on the day of your court appearance. They can:

- Speak on your behalf on some matters, depending on the complexity of the matter;
- Ask the court to postpone a matter for you;
- Tell the court that you are in agreement with what the other person is asking for;
- Speak to the other person or their lawyer to see if an agreement can be reached and/or advise the court whether or not an agreement has been reached;
- Appear at the request of other lawyers to seek postponements by consent, or to file consent orders when an agreement has been reached.

Duty Counsel cannot conduct trials or appear on contested matters.

The Duty Counsel office also has a Client Services Officer who can provide basic information about the court process, can help parties apply for a lawyer and can help you fill out some of the court documents. The Client Services Officer can be reached at (709) 753-4614.

## **Legal Aid NL**

Legal Aid NL is a program available to provide legal services to people with serious legal problems who are in financial need and cannot afford private counsel. You must qualify financially for representation by a Legal Aid lawyer and the merit of pursuing your legal issue must be approved.

Legal Aid offers highly experienced lawyers who can represent you for free. Legal Aid covers family law matters that include parenting, child support, spousal support, division of matrimonial property, divorce, and child protection matters. Legal Aid may cover your legal services if you are a parent whose child has become subject to an application from the Director of Child, Youth, and Family Services.

The office you apply at will decide, based on your individual circumstances, whether or not Legal Aid will cover such a matter.

You can apply online here: <https://www.legalaid.nl.ca/online-application/>

## **Family Law Handbook for Self-Represented Litigants**

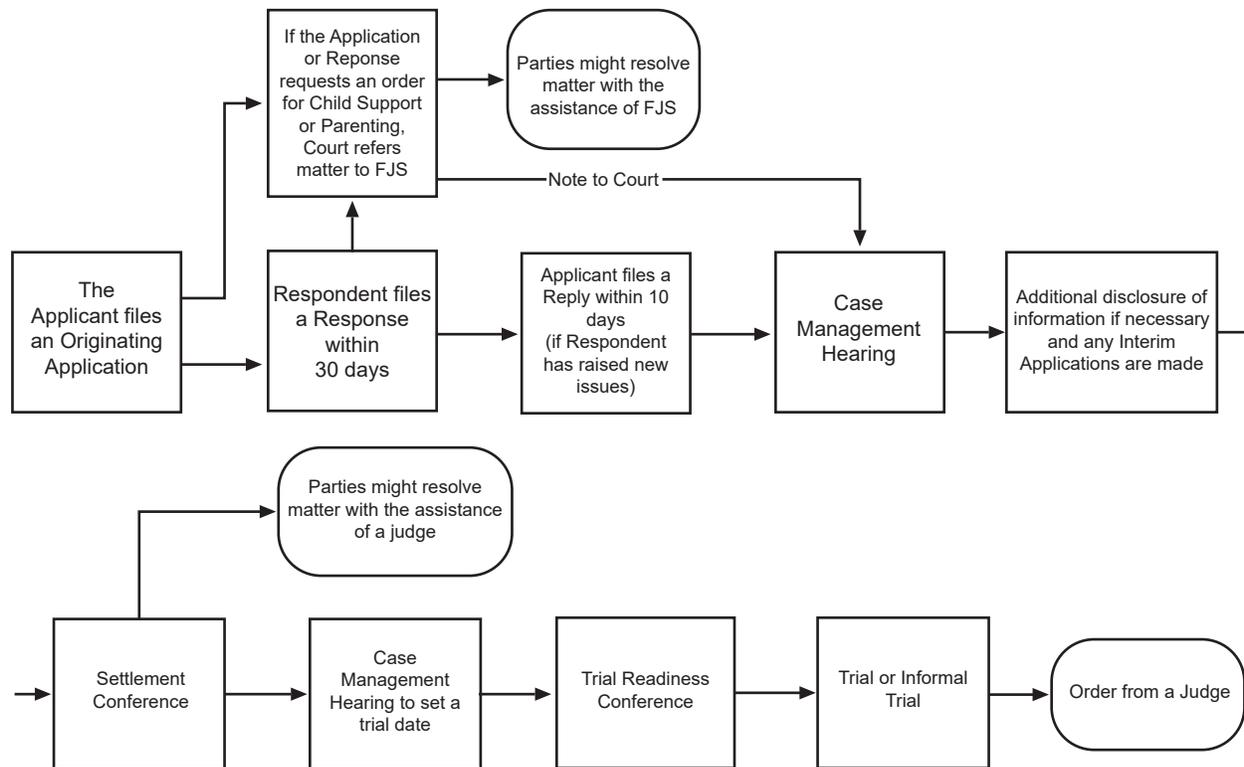
This handbook is intended as a helpful guide for people who are navigating the legal system without a lawyer to prepare and present their legal case. It is important to note that while this handbook cannot anticipate all of the possible situations that may arise, it provides a starting point that will assist and guide litigants. The Handbook does not provide legal advice and is not a substitute for the advice that a lawyer may provide. The Handbook provides general information only.

Family Law Handbook: [https://cjc-ccm.ca/sites/default/files/documents/2021/Family%20Handbook%20-%20EN%20MASTER%202021-10-19\\_0.pdf](https://cjc-ccm.ca/sites/default/files/documents/2021/Family%20Handbook%20-%20EN%20MASTER%202021-10-19_0.pdf)

## Steps in a Family Court Proceeding - Supreme Court

The procedures to be followed in a family law proceeding are set out in the Supreme Court Family Rules, found here: <https://www.assembly.nl.ca/legislation/sr/regulations/RulesSc/rc86PartIV.htm>

The steps in a family law proceeding in Supreme Court Family Division can be found below:<sup>26</sup>



## Starting A Court Matter in Supreme Court (Family Division)

If you have never been to court for your family matter you, or your lawyer, must file an “Originating Application.” This application will begin your court matter in the Supreme Court (Family Division).

**Form F4.03A: Originating Application:** <https://www.court.nl.ca/supreme/files/F4.03A-Originating-Application-2022-07.pdf>

26 Supreme Court of Newfoundland and Labrador, Family Division. (14 April 2025) *Family Law Information Session* [PowerPoint slides].

## Starting a Court Matter in Provincial Court

If you have never been to court for a family matter you, or your lawyer, must file a “Form 1 Application” and a “Supporting Affidavit.” These forms will begin your court matter in Provincial Court.

**Form 1: Application** - [https://www.court.nl.ca/provincial/files/Com\\_FORM1.pdf](https://www.court.nl.ca/provincial/files/Com_FORM1.pdf)  
**Supporting Affidavit** - <https://www.court.nl.ca/provincial/files/SupportingAFFIDAVIT.pdf>

For information on family law legal proceedings, including the filing and serving of court documents, please visit Public Legal Information Association of NL's *Family Law Guide for Newfoundlanders and Labradorians*: <https://publiclegalinfo.com/wp-content/uploads/2023/01/Family-Law-Guide-Current-to-January-2023.pdf>

### What Happens Next

After the Originating Application has been filed with the court and served on the other party (your ex-partner), they will be given 30 days to file their Response to your Application. You have 10 days to file a Reply to their Response. This means your ex-partner will have an opportunity to tell the court what they want.

When one partner has been violent or abusive, the strategies and tactics they use to maintain power and control over you may show up through the legal system. Anticipate that your ex-partner may try to paint a very different picture of your relationship and parenting history. Even if you have been the stay-at-home or primary parent taking on most of the child-rearing responsibilities, your ex-partner may try to convince the court that they have been the primary parent. They may also present an unrealistic plan for how they intend to parent in the future.

You may think it is obvious that you have been the main parent to your children. Unfortunately, it is not uncommon for abusive partners to make misleading claims about their role as a parent, so you need to be ready to prove what you know to be the truth.

It is also important for you to be honest in terms of your ex-partner's role. If they have been an active parent, say so. If they were not so active but were really good at one particular activity with the children, say so. Don't use the legal case to be vindictive, however angry you are with your ex-partner. It is not fair to your children, and it can make you look bad to the court. Always keep in mind that the court is looking for information and evidence that supports the best interest of the child. For this reason, make a list of where you can go to find evidence to support the information you have provided to the court. You can find more information in the section on evidence.

## Case Management Hearing<sup>27</sup>

If the parties do not resolve their family law issues with the assistance of Family Justice Services or if the matter does not involve parenting or child support issues, the matter will be scheduled for a Case Management Hearing (CMH). Case management meetings are intended to resolve matters in a timely and cost-effective manner.

All parties and their lawyers MUST attend an initial CMH in person, unless the judge permits otherwise. After the first hearing, a judge may schedule additional Case Management Hearings, or a party may request them.

There may be more than one CMH – you can request one by filing a Request for Case Management in Form F14.04A. A CMH is a 15 minute appearance before a judge. The purpose of a Case Management Hearing is to:<sup>28</sup>

- explore the chances of settling the case;
- identify the issues that are in dispute and those that are not in dispute;
- explore ways to resolve the issues that are in dispute;
- identify relevant evidence which must be disclosed;
- identify facts which, if admitted, would simplify the case;
- set the date for the next step in the case;
- agree to a specific timetable for the steps to be taken in the case before it comes to trial; and
- discuss whether a settlement conference is appropriate.

The judge has limited powers at a case management hearing. It is not like a trial. The judge cannot make a final order or an interim order on a key issue, except with the consent of both parties. The judge can make procedural orders including, but not limited to:

- Order a party to file updated or additional pleadings;
- Make an order for document disclosure, questioning, evidence;
- Make an order for appraisal of the value of property;
- Make an order to have a child interviewed which may specify how the interview is to be conducted, the purpose of the interview, and how the interview will be paid for;
- Make an order to refer an issue to mediation at any stage of the proceeding prior to trial (however a judge must consider if there are any allegations of domestic violence that would make mediation inappropriate);
- Make a temporary order for child support;
- Make a temporary parenting order;
- Grant permission to apply for a contempt order.

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<sup>27</sup> Supreme Court of Newfoundland and Labrador Family Division. (n.d.). *Family Rules, Practice Notes and Forms – General*. <https://www.court.nl.ca/supreme/rules-practice-notes-and-forms/family/general/>

<sup>28</sup> Supreme Court of Newfoundland and Labrador Trial Division. (2015). *PRACTICE NOTE P.N. (TD) No. 2015-01*. [https://www.court.nl.ca/supreme/files/2015\\_05\\_01\\_Case\\_Management\\_Meetings.pdf](https://www.court.nl.ca/supreme/files/2015_05_01_Case_Management_Meetings.pdf)

## Who can attend court?

Canadian courts generally operate on the principle of open access, meaning the public can attend most hearings and access court documents. However, family law proceedings are an exception to this general rule. The privacy of children and families involved in these cases is often prioritized, leading to restrictions on public access. This means that you may need to request the permission of the judge to have a support person present in court with you.

## Privacy

As noted, privacy of children and families is prioritized in family court. Your name and your ex-partner's name will not be used on the docket that is publicly available online. Your case will be identified online by its court file number. However, the initials of the parties are used on the daily docket that is posted inside the courthouse. Child Protection proceedings will always refer to the parents by their initials.

## Disclosure of Information and Interim Application<sup>29</sup>

After a case management hearing, one or both parties may be required to disclose additional information to the Court and the other side. This disclosure of information may be required to ensure that the judge has sufficient information to decide the matters in dispute.

At that time, both parties will also be able to make any required interim applications. Interim orders are often used for urgent or time sensitive matters. For example, if you need child support payments, but do not have a trial date for a long time, you can ask for an interim order requiring temporary payment until the final judgement can be made at trial. It is also used to get orders to move the process along. For example, if the other person is not giving you their financial documents, you can apply to court for an interim order for disclosure. It is also possible to make an interim application *before* the first case management hearing is held, but only with permission from the judge. For example, if:

- access is being unreasonably withheld;
- there is an urgent need for child support based on the applicant's significant lack of ability to maintain their child;
- there is an urgent need to preserve property of the parties' relationship where such property is in danger of being sold, leased, damaged, dissipated, or otherwise affected such that a parties' interest in it may be irreparably impacted;
- there is an urgent need and legal basis for spousal support;
- there is an urgent need and legal basis for an order for exclusive possession of the matrimonial home;
- the applicant is seeking an order requiring the respondent to stop damaging, destroying, neglecting to care for, or disposing of property;
- there is an urgent need to obtain disclosure;
- there is a need for the applicant to apply to the court to have the respondent's

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29 Supreme Court of Newfoundland and Labrador Family Division. (n.d.). *Family Rules, Practice Notes and Forms – General*. <https://www.court.nl.ca/supreme/rules-practice-notes-and-forms/family/general/>

- access to a bank account or another asset restricted or denied;
- there is an immediate need for access to property;
- not allowing the application to be heard would have immediate and serious consequences.

Form F16.03A: Interim Application for a Procedural Order (Family Law):

<https://www.court.nl.ca/supreme/files/Form-F16.03A-Interim-Application-for-Procedural-Order.pdf>

Form F18.03A: Interim Application (Family Law):

<https://www.court.nl.ca/supreme/files/F18.03A-Interim-Application-2022-07-1.pdf>

## Emergency Interim Application

In some situations, you may need an order from the court immediately, for example: your ex-partner has the children and tells you they are taking them out of the country, or you have an immediate and serious concern for your safety or the safety of your children. Emergency Interim applications can be made at *any* time, but only if it is a true emergency. Unlike every other process in family court, this order can be granted by a judge without notice to your ex-partner.

You can **ONLY** make an Emergency Interim Application if at least one of these emergency situations applies to you:

- There is an immediate danger of a child's removal from the jurisdiction;
- There is an immediate danger to the physical, emotional or psychological safety and security of a child or another person; or
- Not granting an order would have immediate and irreversible consequences;

AND a judge is satisfied that notice to the other person is NOT required for one of the following reasons:

- The delay caused by providing notice would (or might) cause serious harm to you or your children;
- There is urgency for another reason; or
- The circumstances make notice unnecessary.

A judge will review the material and decide whether to grant the order you have requested. You do not go into the courtroom and do not speak directly to the judge. For this reason, the quality of your written material is crucial and must contain all of the relevant information. If you have a lawyer, your lawyer will advise you about whether or not there is enough evidence to support the emergency interim application.

Form F17.03A: Emergency Interim Application (Family Law): <https://www.court.nl.ca/supreme/files/Form-F17.03A-Emergency-Interim-Application.pdf>

## **Settlement Conference**

As part of the court process, the parties may attend a settlement conference with a judge. A judge has the discretion to order a settlement conference at any time. Alternatively, the parties may request a settlement conference at a case management conference. The purpose of a settlement conference is to settle all of the issues in dispute or to resolve as many issues as possible with the assistance of a judge before proceeding to a trial. The parties can request that their settlement conference be binding with respect to one or more issues or claims.

A settlement conference is usually a three-hour meeting of the Applicant, the Respondent and their lawyers with a judge. You must file a settlement conference brief 10 days in advance, outlining the legal issues in dispute, and your proposal for settlement. The settlement conference will be held by a judge who will not hear your matter at trial, if it proceeds to trial. The judge reviews the court file and the briefs, and works with the Applicant, the Respondent, and their lawyers, to determine a fair resolution to which both parties agree. The judge might tell the parties their legal opinion and the decision they would make if they were the judge hearing the case. A judge cannot make an order at a settlement conference unless both parties consent. If the parties reach an agreement on all the issues, it forms a final consent order.

## **Another Case Management Conference**

If the parties are unsuccessful in resolving all of their issues at a settlement conference, you must file an application to schedule a case management hearing to set a trial date.

## **Trial Readiness Conference**

When a trial date has been scheduled, a judge will order a trial readiness conference to be held. A trial readiness conference is a short 15-minute proceeding that is held within 45 days of the trial, unless the judge orders otherwise. The parties and their lawyers must attend in person, unless the judge orders otherwise. The purpose of this appearance is to ensure that appropriate preparations have been taken and that the parties are ready for trial. At the Trial Readiness Inquiry the judge will confirm that both parties have provided:

- the names of all witnesses to be called;
- a brief description of the testimony expected from each of the witnesses to be called;
- all disclosure required for trial;
- a full list as well as copies of documents and other exhibits to be tendered at the hearing;
- an estimate of the time required for each party's case to be heard;
- any expert reports to be tendered during the hearing; and
- communication as to whether settlement discussions are occurring and the likelihood as to whether all, or any, issues will be resolved prior to the hearing.

## **Trial or Informal Trial is held**

The matter will then proceed to trial. Depending on which court your matter is in, and how busy that court is, the time between filing your initial application and having a trial could be years.

In the Supreme Court of Newfoundland and Labrador, the parties have the option to attend an informal trial, instead of a traditional trial. Informal trials were designed for self-represented persons. These trials use a simplified process with relaxed rules of evidence. In an informal trial, the judge will decide what is relevant and what should be considered during the trial. Parties will be able to speak directly to a judge without objections or being wary of difficult cross-examination. If your matter is suitable for an informal trial, it will allow your case to proceed to trial faster and may be less costly. Note, though, that an informal trial is only available when both parties consent to this method of trial at a case management conference and the judge agrees that the matter is appropriate to proceed as an informal trial. Parties can request an informal trial by filing a Request for an Informal Trial - Form 31.02A Request for an Informal Trial – Form F31.02A. <https://www.court.nl.ca/supreme/files/F31.02A-Request-for-Informal-Trial.pdf>

## **At the Trial or Hearing**

There are formal rules of practice and procedure that guide how a trial is conducted. At the beginning of the trial or hearing, the Court Officer will call the court to order. Everyone who is able to do so must stand when the judge enters the courtroom.

Evidence is presented in a certain order. The Applicant's lawyer or the Applicant if they are self-represented (the person making the application) will present their case first. If the hearing involves witnesses, then the Applicant's witnesses are called first. The Applicant's lawyer will ask questions of a witness. Only open-ended questions are allowed. This is called direct examination. Then the Respondent's lawyer, or the Respondent if they are self-represented (the person responding to the application) will have the opportunity to ask questions of that same witness, which is called cross-examination. If questions arise for the Applicant on new topics that arose on cross-examination by the Respondent, the Applicant may ask a few extra questions, which is called re-direct.

After the Applicant has called their witnesses to the stand, the Respondent will also be able to call their own witnesses. The Respondent's lawyer will examine (ask questions) of the Respondent's witnesses and then the Applicant's lawyer will have the opportunity to cross-examine that same witness. If further questions arise for the Respondent as a result of the questioning by the Applicant, the Respondent may ask a few extra questions on re-direct if necessary.

The Applicant and Respondent will usually testify as well as part of a hearing in which witnesses are called.

## **Order**

The judge will make an Order based on the information presented during the trial, taking into consideration the nature of the evidence. The judge may accept or reject evidence based on factors such as the credibility of the witnesses and the reliability of the evidence, including whether it is direct evidence or hearsay evidence. The judge makes a finding

of fact based on the evidence, then applies the law to the set of facts, and arrives at a decision, which will include a final order with specific terms.

## **Appeals**

If you get a decision in a family matter that you believe is based on an error of fact or an error of law, you have 30 days to file an appeal at the next level of court. It is recommended that you get legal advice on the merit of your appeal. If your matter is in Provincial Court you would appeal to the Supreme Court. If your matter is in the Supreme Court, you would appeal to the Court of Appeal.



# **Section 3**

## **FAMILY LAW SUPPORT**





## Arrangements for the Children After Separation

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Once a relationship ends, parents must decide:

- When the children will spend time with each parent, and
- Who has decision-making responsibilities about important things that affect the children.

### What laws govern arrangements for children in Canada and Newfoundland and Labrador?

Both the federal *Divorce Act* and the *Children's Law Act* set out how parents are to manage making decisions about their children.

- The *Divorce Act* applies to anyone in Canada who is married and applying for a divorce.
- The *Children's Law Act* applies to anyone in Newfoundland and Labrador who is trying to make plans for children, usually after a relationship ends. This includes married people who are separated, people who lived common-law and people who are not in a relationship but have children together.

### Decision-Making Responsibility

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The court can order that one parent has all the decision-making responsibilities or that you and your ex-partner share this responsibility. (In some situations, another person who has played a significant role in your child's life—for example, a grandparent or other family member—may be given decision-making responsibilities.) This used to be referred to as custody, however the *Divorce Act* was updated in 2021 to emphasize the best interests of the child.

Decision-making responsibility means the responsibility for making significant decisions about your child in four key areas:

1. Health;
2. Education;
3. Culture, language, religion and spirituality;
4. Significant extracurricular activities.

At time of publication, the provincial *Children's Law Act* has not been updated and uses custody/access language.

### Best Interests of the Child

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Courts are to consider only what is best for children when making parenting decisions. The best interests of the child (BIC) principle appears in both the federal *Divorce Act* and the provincial *Children's Law Act*. It contains a number of factors that the court must take into account, including family violence.

Under the *Divorce Act*, the judge will consider the following 11 factors in the BIC test in making decisions about the children:

1. The child's needs based on their age and stage of development;

2. The nature and strength of the child's relationship with each parent, sibling and grandparents and any other person who plays an important role in the child's life;
3. The parent's willingness to support the child's relationship with the other parent;
4. The history of care of the child;
5. The child's wishes, depending on the child's age and maturity;
6. The child's heritage, including Indigenous upbringing and heritage;
7. Any plans for the child's care;
8. The ability and willingness of each parent to meet the child's needs;
9. The ability and willingness of each parent or person with a contact order to communicate and co-operate on matters affecting the child;
10. Any family violence and if it affects: the ability and willingness of the person who perpetrated the violence to care for and meet the child's needs; the need for different approaches to making safe and appropriate arrangements for parenting and dispute resolution. These arrangements may vary according to the need for restrictive parenting time.
11. Any court proceeding, court order or condition (e.g. a bail condition) that is relevant to the safety, security and well-being of the child.

- Under the provincial *Children's Law Act*, the judge will consider the following factors in making decisions about custody and access: the love, affection and emotional ties between the child and:
  - each person entitled to or claiming custody of or access to the child, and
  - other members of the child's family who live with the child, and
  - persons involved in the care and upbringing of the child;
- the views and preferences of the child, where the views and preferences can reasonably be ascertained;
- the length of time the child has lived in a stable home environment;
- 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 the special needs of the child;
- the ability of each parent seeking the custody or access to act as a parent;
- plans proposed for the care and upbringing of the child;
- the permanence and stability of the family unit with which it is proposed that the child will live; and
- the relationship by blood or through an adoption order between the child and each person who is a party to the application.
- In assessing a person's ability to act as a parent, the court shall consider whether the person has ever acted in a violent manner towards:
  - his or her spouse or child;
  - his or her child's parent; or
  - another member of the household,

otherwise a person's past conduct shall only be considered if the court thinks it is relevant to the person's ability to act as a parent.

# Worksheet: Best Interests of the Child

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## 1. BIC Factor: Child's Needs, Given Age and Stage of Development, Especially the Need for Stability

My child's age and stage of development:

Needs specific to my child to address allergies, medications, learning issues, mobility issues, issues of neurodivergency, personality traits:

What is important to my child?

Steps I have taken to maintain as much stability for my child as reasonably possible (i.e. keeping them in the same school, finding ways for them to remain connected with friends and extended family, maintaining extracurricular activities and family traditions):

Other:

**2. BIC Factor: Child’s Relationship with Siblings, Grandparents and Other People Who Play An Important Role in Their Life**

Instruction: When you answer these questions, it’s important to include enough information for the court to be able to really understand your family’s situation, so you should include specific details in your notes. If the child’s relationship with the person is good, provide some information about why, and give examples of what the child does with that person, how often they see them, whether they get emotional support from the relationship, and so on. If the relationship is not good, explain why, with examples.

My child’s relationship with me:

With my ex-partner:

With siblings, half- or step-siblings (e.g. half-sibling from my or my ex-partner’s previous relationship):

With my parents:

With my ex-partner’s parents:

With my new partner, if applicable:

With my ex's new partner, if applicable:

With other extended family on my side:

With other extended family on my ex's side:

With Elders and other important community members:

Other:

**3. BIC Factor: Each Parent's Willingness to Support and Encourage the Child's Relationship with the Other Parent, Regardless of Their Personal Feelings About the Other Parent.**

The court expects both parents to understand that it is in the best interest of the child to not expose the child to negative personal feelings about the other parent. How willing and able do I honestly feel about doing this?

Do I have major concerns about my child's relationship with my ex? Do I have reason to believe that the other parent's involvement in my child's life would be unsafe or damaging for my child? What are those concerns?

What steps can I take to help myself put my (understandably) negative feelings about the other parent aside, at least temporarily, for the sake of my child?

What steps have I taken to show that I can do this for my child's sake?

How willing and able do I think the other parent is to do this?

Has the other parent engaged in behaviours you feel are intended to negatively impact your child's relationship with you? And/or have they accused you of negatively impacting the child's relationship with them? What are those behaviours?

Has the other parent said/done anything to suggest that they are unwilling and/or unable to do this? Have they asked my child to spy on me for them, said mean and/or untrue things about me to them, interfered in their relationship/time with me, threatened to make sure I never see them again, shared inappropriate information with them, such as details about the breakup or the court case?

Other:

#### 4. BIC Factor: History of the Child's Care

Historically, who stayed home with the child when they were sick?

Who changed their diapers?

Who scheduled appointments, took them to the doctor and dentist?

Who helped with homework?

Who picked them up from school/day care/extracurriculars?

Who attended parent-teacher conferences? Volunteered for field trips?

Who shopped for holiday and birthday presents?

Who arranged the child's social life, such as play dates and birthday parties? Who drove them to social activities? Knows the child's friends and friends' parents? Picked them up from a slumber party at 2:00 a.m. because they wanted to come home?

Who packed school lunches?

Who did their laundry?

To whom did they go for help or advice?

When the child needed comforting, was one parent loving and supportive and emotionally available while the other ignored them or said things like “grow up” and “stop crying”?

If applicable, who taught them how to drive? Paid for driver’s education classes?

Who played with them?

Who spent the most time with them?

Who made sure the children were ready for school on time? Walked them to the bus stop? Tucked them into bed? Made sure they brushed their teeth? Went to the school to drop off the homework they forgot?

Was there one parent who was largely uninvolved while the other was responsible for a disproportionate amount of child care and housework?

Was either parent a stay-at-home parent?

Other:

**5. BIC FACTOR: Child's Views and Preferences, Weighed on the Basis of the Child's Age and Maturity**

Is my child old enough to form and express a consistent opinion?

Is my child notably mature or immature for their age?

Has my child expressed a strong preference about the parent they want to live with or how often they want to see the other parent?

Does my child refuse/not want to see either me or my ex-partner?

Other:

**6. BIC FACTOR: Child’s Cultural, Linguistic and Religious/Spiritual Background, Including Indigeneity**

Does one parent share a cultural/linguistic/religious/Indigenous background with the child that the other parent does not?

What steps am I going to take to uphold my child’s ties to their culture/language/religion/heritage/ Indigeneity?

How important is my child’s background/identity to them?

Are there relevant cultural factors that the judge should be aware of and take into account?

Has my ex-partner failed to be supportive of these factors in the past? For example, have they not allowed the child to participate in religious activities, forced them to participate in such activities when they did not want to or made racist/negative comments about the group they identify with?

Other:

**7. BIC FACTOR: Each Parent's Future Plans for the Care of the Child**

Do I have a clear and detailed parenting plan based on the BIC test?

What are my child care plans for my child, especially if I was previously a stay-at-home parent but now need to work outside the home?

What about education and extracurricular activities?

Health/medical care?

Culture, language, religion?

Other important parts of my child's life?

Has my ex-partner failed to demonstrate the same?

Other:

**8. BIC FACTOR: Ability and Willingness of Each Parent to Meet the Child's Needs**

How have I demonstrated that I'm able to meet my child's needs?

How have I demonstrated that I'm willing to meet my child's needs?

Has my ex-partner said/done anything to suggest that they aren't? For example, have they refused to allow the child access to counselling or medication, failed to provide the child with a car seat or use seat belts? Have they failed to feed the child during visitation?

Other:

**9. BIC FACTOR: Ability and Willingness of Each Parent to Cooperate and Communicate on Matters Related to the Child**

All things considered, is it realistic and appropriate to expect my ex-partner and me to successfully do this? Why or why not?

Have I made attempts to be cooperative and to communicate with the other parent? Have I suggested the use of a co-parenting app, emailed updates about the child to keep the other parent informed and connected, asked the other parent for permission even when I'm not legally required to do so, maintained civility when they are not civil and might even have tried to provoke me?

Has my ex failed to be cooperative and communicate about the child with me? Has my ex failed to respond to emails about important child-related issues, unreasonably refused to sign consent letters for the child's activities or travel, purposely undermined my parenting, sworn at me or called me names, blocked me to prevent me from being able to contact them?

Other:

**10. BIC FACTOR: Any Civil or Criminal Proceeding that is Relevant to the Child's Security and Well-Being**

Has your ex-partner ever been arrested, charged or sued in relation to the abuse?

Have the police ever been called about the abuse by me, my ex-partner, the child, a concerned neighbour, the child's teacher, our family doctor or anyone else?

Has my ex-partner ever been arrested/charged/sued for something that might be considered relevant to this? For example, for drunk driving, any crime of a violent or sexual nature or any crime involving any child or a vulnerable person?

Other:

### 11. BIC FACTOR: Impact of Any Family Violence

Do I know or have reason to suspect that my child knew/knows about the abuse to which I was subjected? Did they overhear verbal abuse, see the aftermath of physical abuse or ask me about injuries?

Was/is my ex ever abusive to me in front of the child? Did they hit me, yell at me, point a gun at me, throw things or intentionally frighten me or the child?

Has my ex damaged our family home or possessions that the child was aware of?

Has my ex involved a child in their abuse of me? Have they asked the child to spy on me or encouraged the child to treat me disrespectfully?

Has my child ever tried to intervene on my behalf or prevent my ex's abusive behaviour?

Do I know or have reason to suspect that my ex has ever been abusive to the child in any way?

Do I know or have reason to suspect that my ex has ever been abusive in any way to another family member, a current or former romantic partner other than me, a pet and/or any child?

Has my ex taken (or failed to take) steps to stop their abusive behaviour? Have they shown sincere remorse, participated in therapy/counselling, anger management, parenting classes or substance-use cessation programs?

Has my ex's abuse of me made it more difficult for me to parent? This could include things like the impact of fear or trauma on me, such as lowered self-esteem and self-confidence, depression or anxiety.

Other:

## Factors Relating to Family Violence

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The *Divorce Act* sets out guidelines that the court must take into account when determining the best interests of the child when there has been family violence. These include:

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

In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

## Parenting Plan – Tip Sheet

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A parenting plan is a written document that sets out the details of how your child or children will be raised after you and your partner separate, including how you will make major decisions and day to day decisions about the children, the regular parenting schedule, holiday schedules, and travel. The *Divorce Act* website has a free Parenting Plan Tool to guide you as you prepare your proposed parenting plan. The Parenting Plan Tool helps you think through options and what you want your parenting plan to look like.

You can access the tool here: <https://www.justice.gc.ca/eng/fl-df/parent/ppt-ecppp/form/form.html>

A clear and detailed parenting plan will minimize your ex-partner's ability to find loopholes to exploit in order to exercise power and control over both you and the children. This will help to keep you and your children safer.

Family courts use parenting plans, in accordance with the best interests of the children, to help determine the most suitable parenting arrangements. While preparing and presenting a proposed parenting plan is not required by law, including one that is clear, detailed and

thorough is helpful to the court.

A Parenting Plan that is agreed to by both parents, or that is ordered by the court, will form your final parenting order.

Luke's Place created this tip sheet to help you think about what you might want to include in your parenting plan. If you work with a legal advocate, they can assist you in the preparation of your parenting plan.

## **General considerations**

A parenting plan needs to be:

- Clear, concise and written in plain language. The judge will respond positively if yours gets to the point and is accessible. Use a clean, easy-to-read font, and consider using headings to separate the sections that deal with different issues/ considerations.
- Specific and detailed. You don't want to leave room for confusion or loopholes, especially if the other parent was/is abusive in any way.
- Child-focused. Demonstrate that your primary goal is the best interests of your child.
- Honest and realistic. Don't try to impress the judge by making big promises. Don't say that you're happy to be in constant communication with your ex-partner or that you think it will be easy to cooperate with each other if that isn't truly how you feel.
- Reviewed by a lawyer if possible.

## How will you and the other parent communicate?

- What specific things will you and the other parent need to communicate with each other about?
  - For example, do you need to share the child's report card or medical information with the other parent? Does your ex need to inform you when they start dating someone new?
- What method will you use to communicate with the other parent?
  - It could be email, phone, text message, a video conferencing app such as Zoom or Skype, social media apps, a communication book or a co-parenting app.
- How often will you and the other parent communicate?
  - For example, will your ex-partner only be allowed to text you once a week or under specific circumstances?
- How will the parents communicate with the children?
  - Will there be communication between the child and the other parent while they are with you, and vice versa? How and when? Does there need to be a schedule? For example, "Dad/other parent is not allowed to call or text the children while they're at school" or "Mom/other parent can talk to Jane on the phone for up to one hour every day when Jane's at Dad's/other parent's house."
- Emergencies
  - How will parents communicate in the event of an emergency, such as the child has been hospitalized? How will the children contact each of you in an emergency?

Notes:

## Was there family violence?

- Has there been any violence or abuse within the family? Who did what?
- Are you concerned for your safety or your child's safety because of the family violence?
  - Note that even in family violence cases, courts generally think it is in children's best interests to have a relationship with both their parents, so it is unusual for a parent to be awarded no parenting time. If no parenting time is the outcome you want, you need to present very strong and compelling evidence that the child having any relationship whatsoever with the other parent would be dangerous and damaging to the child.
  - Where you have concerns about your child's safety or the other parent's parenting ability as a result of family violence, you need to include information about this in your Application, as well as a realistic plan for how the child will spend time with the other parent.
- Given a history of violence, is it appropriate, realistic and reasonable to expect you and the other parent to cooperate and communicate?
- How does family violence affect your ability to co-parent with your ex?
- Do special safety measures need to be put in place, such as third-party supervision of child exchanges and/or parenting time?
- Does the child need to be exchanged through a third party?
- Does there need to be an arrangement that doesn't involve face-to-face interaction between you and the other parent?

Notes:

## What parenting time arrangements do you recommend?

- Where will the child live? Will they primarily live with one parent and have visits with the other parent, or will they spend roughly equal time with both parents?
- Will they spend time with one parent during the other's parenting time?
- What is the parenting-time schedule?
  - Will the child spend one week with you, then one week with their other parent, then come back to you again? Will they live primarily with you and see their other parent every weekend? Will they live primarily with their other parent but, for instance, come to you every Wednesday after school until 8:00 p.m. and overnight every other weekend from Friday after school until Monday at 7:30 a.m.?
  - Will you include a right of first refusal? This means that when a parent can't be there during their scheduled parenting time, they must offer the other parent the chance to enjoy parenting time before they make other arrangements.
- Is there any flexibility for emergencies and/or special occasions such as Mother's Day, Father's Day, birthdays, graduation, religious/cultural/spiritual celebrations or rituals?
- How will you incorporate the child's social life into the parenting-time schedule? Who will pay for related expenses, such as bus tickets and birthday presents? Who transports the child to and from social events?
- What child care arrangements are needed, and who will pay for what?
- When, where and how will child exchanges take place?
  - Will the exchanges be supervised?
  - Will you and your ex do the exchanges, or will grandparents or others be involved? If you are concerned that your ex-partner may bring other people along in order to harass and intimidate you, make sure the parenting order is clear about who can accompany them or whether they must arrive alone.
- How will the child be transported between your homes? Who will pay for transportation expenses? Will you drive the child to and from the other parent's house while they chip in for gas? Will the child take the bus or taxi? Who will pay the fare?
- What should be provided during the exchange? For example, who is responsible for bringing the child's car seat, stroller and/or snacks?
- Will the child's belongings move between your homes, or will they have what they need at each home? Who pays for what?

Notes:

## **What are the children's relationships with other family/ community members?**

- If you have more than one child and more than one parenting arrangement, how will you support the siblings' relationships? Will your parenting time make room for them to spend time together? For example, if Moe is at your house and Mariam is with the other parent, do Moe and Mariam get a scheduled visit with each other during that time?
- How will you support and encourage the child's relationship with their grandparents? For example, do they see your parents when they are with you and the other grandparents when they are with your ex?
- How will you support and encourage the child's relationship with other family members who play a significant role in their life? For example, if the child is very close with their cousins on the other parent's side, how will you ensure they get to spend time with those cousins?
- Are there other members of the community who play an important role in your children's lives? If so, how will you support and encourage those relationships?

## **What will happen during vacation time?**

- Can the parenting schedule be altered so that each of you can take the child on vacation?
- Under what circumstances can each of you travel with the child?
- Are there any specific restrictions? For example, is the other parent allowed to take the child to other parts of the province to visit extended family but not *out* of the province or country?
- Can you take the child to your cabin where there is no cell service?
- How much notice is required for these trips?
- Who will manage the child's passports and other documents? Where will they be stored? Who can apply for them?
- Who will be responsible for basic travel costs, such as plane tickets?
- Who will be responsible for additional travel costs, such as travel insurance or unforeseen expenses due to a delay/disruption/emergency?

Notes:

## **What about the children's schooling?**

- Who makes decisions about things like where the child goes to school and whether they enrol in special programs, such as gifted education or French immersion? Will it be you, the other parent, or will it be a collaborative decision?
- Who pays for school-related costs such as tutoring, calculators, binders, pencils, pens, erasers and field trips?
- Who can access school records and report cards? When and how? Are there special conditions? For example, do you need to keep your address confidential?
- Who attends parent-teacher conferences? Will both parents go together? Will you take turns?
- Who picks up/drops off the child?
- Who can authorize absences and under what circumstances?
- Who signs permission slips for activities such as labs and field trips?
- Who attends/volunteers at school events such as plays, field trips and bake sales?
- Who will the school call in an emergency?
- Does there need to be a special arrangement for homework, such as a requirement that the other parent ensures that homework gets completed on time during their parenting time?

## **What about the children's extracurricular activities?**

- Will decisions about extracurricular activities be made by you, by your ex-partner or by both of you?
- Who pays for what?
- Who transports the child to and from extracurricular activities?
- Who attends events such as recitals, games and plays? Can you both go? Will you take turns?

Notes:

## **What about the children’s religion, culture, language, and/or Indigeneity?**

- Will decisions about religion be made by you, your ex-partner or both of you?
- How will each parent’s religious and cultural beliefs and customs be accommodated and respected? For example, if you are a vegetarian because of your religion and want to raise the child as a vegetarian as well, does the other parent have to agree not to serve them meat?
- Can the parenting schedule be modified to accommodate things like church services, temple, mosque, and cultural festivals?
- What language(s) will be spoken in each home?
- Is it important to address issues related to Indigeneity in the parenting plan? Should each parent make an effort to ensure that the child stays connected to their Indigenous culture? If either parent lives on a First Nation, are there restrictions/factors that could cause challenges in the parenting schedule? For example, there may be a lack of public transportation, or non-Indigenous persons may not be allowed to visit. Will an Indigenous community organization, Elder or other Indigenous-specific resource be consulted about the parenting plan?

Notes:

## What about the children's health and medical care?

- Who makes healthcare decisions in relation to the child? When and how?
- What will you do if there is a major disagreement about health care? For example, what if you want the child to be vaccinated, but your ex-partner does not? What if you feel that the child needs counselling, but your ex-partner won't sign the consent forms?
- Who selects the child's doctor, dentist, counsellor, specialist, and so forth?
- Who transports the child to medical appointments? Who pays for these costs?
- Who pays for health-related fees such as dentist appointments, counselling, braces or glasses/contacts?
- During a health emergency such as a broken tooth or an anaphylactic reaction, who makes medical decisions? Will these situations allow for exceptions to the usual rules or schedule? How will the other parent be notified? Who notifies other people, i.e. who calls the child's school to inform them that the child is in the hospital and therefore won't be in class?
- Who can access medical records? What, when and how?
- Where will the child's health card be stored? Will it move between homes with the child?
- Whose health/dental insurance will the child be on? Who submits claims?
- Who pays for any necessary extra insurance?
- How will medications be coordinated? Who picks up prescriptions and when?
- Who is in charge of making sure the child takes their medication? Will the child have a set of medication at each home, or will the medication travel with them?
- What happens if either parent has a health emergency?
- Does the child's other parent have a mental health and/or a substance use problem that may affect safe parenting? How can this be taken into account? Are special restrictions needed (e.g. no alcohol or other drug consumption around the child; regular drug or alcohol testing and supervised parenting time if the results are positive; mandatory counselling; a requirement to take prescription medication properly)?

Notes:

### **What if one parent needs to relocate?**

- How will proposed moves, with or without the child, be handled?
- Are there any additional requirements beyond what is laid out in the *Divorce Act* and the *Children's Law Act*? How would you incorporate a potential move into the parenting schedule?
- How will you continue to support and encourage the child's relationship with the other parent after a move? For example, would you offer to pay for the child's travel costs to visit the other parent once a month?

### **Might there be special considerations related to a parent's occupation?**

- Does one parent have rotational, seasonal or shift work? How will the parenting schedule accommodate this in a manner that is best for the children?
- Does one parent have a job that requires them to travel a lot or for a long time? How will the parenting schedule be adjusted to accommodate this? Will the child travel to see the parent?
- If the parent is in the military, how would deployment be handled?

### **What will happen if one parent has a new partner?**

- Does the other parent need to inform you about new partners and vice versa? Under what circumstances?
- When and how will new partners and their children be introduced to the child?
- How will moving in with a new partner be handled?

Notes:

## Are there any other issues you want to include?

- How will conflicts be resolved? For example, will you consult with a mediator? A family therapist? A religious leader? An elder? Who will pay for these consultations if there are costs involved?
- How will proposed changes to the parenting plan be handled?
- Health and safety requirements: For instance, at what age is the child allowed to be home alone and under what circumstances? At what age is the child allowed to use ATVs? Is the child allowed to take public transportation alone? Are both parents required to ensure the child wears a helmet when riding a bicycle, a seatbelt in the car, sunscreen at the beach?
- Who will pay for large purchases, such as a new laptop?
- Technology and media: Which media and technology may the child use and under what circumstances? Are the parents expected to monitor the child's social media or electronic use? Are the parents allowed to post pictures of the child on social media? Are there limits on how much time the child can spend using social media, playing video games, watching television, etc.? Are there specific things the child is not allowed to do (e.g. use chat rooms, use video chat, watch a certain TV show, play violent video games)?
- Discipline, lifestyle, boundaries and rules: When is the child's curfew? Are they allowed to date? Are there specific rules about dating? Are they allowed to wear makeup, nail polish, certain clothes, choose their own hairstyles, use hair dye, get piercings? Do they receive an allowance? What chores are they expected to do? What happens if they break the rules or don't do their chores? Can they have a part-time job, and if so, how will that affect the parenting schedule? What sort of diet will the child have?
- How will pets be handled after separation? Will they live with one parent or move between homes with the child? If the pet lives with one parent and the child is very attached to the pet, will you make arrangements for the child to spend time with the pet? Are there any rules about pets? Who pays for pet-related expenses such as food, grooming and vet appointments?
- Are there other relevant considerations?

Notes:

## Parenting - Frequently Asked Questions

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At what age can children decide for themselves where they want to live?

There is no set age at which children can decide which parent they would prefer to live with. The *Children's Law Act* states that the child is entitled to be heard in court, and when possible, the court shall take into consideration the views and preferences of the child.<sup>30</sup>

### What is a Voice of the Child Report?

A Voice of the Child Report, typically referred to as a child interview or the child's views, is a relatively speedy and inexpensive way of informing courts, lawyers, and parents about children's perspectives when considering parenting arrangements.<sup>31</sup>

The purpose of interviewing the child is to allow the child to speak frankly to a qualified neutral third party, usually a legal or mental health professional, without the child being pressured to say things that the parents want to hear. There are two different kinds of reports - evaluative and non-evaluative. Evaluative reports contain professional opinions that can become the source of high conflict - so much so that the Supreme Court Family Division keeps it sealed in the file and does not allow the parents to have copies. Non-evaluative reports are non-therapeutic and do not usually contain the professional's opinion or assessment of the child's wishes.

The *Children's Law Act* mandates that a court, in assessing the best interests of the child, pursuant to subsection 31, is directed to find out "the views and preferences of the child, where the views and preferences can reasonably be ascertained." It is at the discretion of the judge to consider the views and preferences of a child. As a general rule, courts give little effect to the wishes of young children, believing that younger children should not be expected to determine their own custody. When assessing the child's views and preference, the court considers the intelligence, ability to understand the circumstance, and the detail and consistency in the expression of their wishes.

Typically, if a judge orders a child interview, Family Justice Services will conduct the interview. If a parent requests that their child be interviewed, it must be approved by the court and the parent will be required to pay for it.

### Investigations and Reports

A judge has the authority to order, at a case management hearing, an investigation and report for the resolution of issues between the parties. This includes matters related to parenting, child support, spousal support, partner support, or property.

A judge, at case management, may also order testing or an assessment related to issues of parenting. This includes the parenting ability, which is an opinion as to what parenting plan would be in the best interest of the children. The court has the authority to appoint, by court order, a person to investigate, assess and report to the court on the needs of the

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30 Birnbaum, R., Bala, N. & Boyd, J-P. (2018). *The Canadian experience with Views of the Child Reports: A valuable addition to the toolbox?* International Journal of Law, Policy and the Family, 30, 158-178. doi: [10.1093/lawfam/ebw004](https://doi.org/10.1093/lawfam/ebw004)

31 Saini, M. (2019). *The voice of the child in family law: Exploring strategies, challenges, and best practices for Canada*. Department of Justice Canada. [https://justice.canada.ca/eng/rp-pr/jr/vcfl-pvedf/docs/RSD\\_2019\\_Saini\\_Voice\\_of\\_the\\_child\\_in\\_family\\_law\\_EN.pdf](https://justice.canada.ca/eng/rp-pr/jr/vcfl-pvedf/docs/RSD_2019_Saini_Voice_of_the_child_in_family_law_EN.pdf)

child and the ability and willingness of the parent(s) to meet the needs of the child.

### **I Want to Relocate With My Child - Am I Allowed?**

The Supreme Court of Canada has set out principles that apply to relocation applications. A relocation generally means the parenting time schedule for the child will no longer work because of the move. When one parent wants to relocate, whether that be for safety reasons, employment opportunities, or to be closer to their supports, there is a process that must be followed. If this process is not followed, a judge can potentially order you to return with the child.

When you have a court order under the *Divorce Act* or *Children's Law Act* for parenting responsibilities for a child (which means that you have an order giving you custody, access, parenting time or decision-making), you will have to give written notice to the other parent at least 60 days before you relocate. You can give notice through email, mail or courier, in person, or through a process server.

You can use the Notice Relocation form found here: <https://www.justice.gc.ca/eng/fl-df/divorce/nrf-fad.html>

There are some situations in which giving notice might not be appropriate or safe, like when there is a risk of family violence. A court can make an order that says that you don't have to give notice or change what you have to do.

If you are planning to relocate your child, anyone with parenting responsibilities for your child can object to the move.

Once a Notice of Relocation has been given to the other parent, the other parent has 30 days to submit an Objection to Relocation form or a court application opposing the relocation.

The Objection to Relocation form is found here: <https://www.justice.gc.ca/eng/fl-df/divorce/orf-fod.html>

When one parent is requesting that the child relocate, the court will consider the best interests of the child and the reasons for the relocation;<sup>32</sup>

- the impact of the relocation on the child;
- the amount of time spent with the child by each person who has parenting time and the level of involvement in the child's life of each of those persons; and
- the reasonableness of the proposal of the person who seeks to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses.

Every family court case is different, and the court must determine the relocation request in the context of the particular children and the particular case.<sup>33</sup> The burden is generally on the relocating parent to bring sufficient evidence before the court to support relocation of the child.

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32 T.O. v M.L., 2024 NLCA 5 (CanLII), <https://canlii.ca/t/k2nh4>

33 Barendregt v. Grebliunas, 2022 SCC 22 (CanLII), [2022] 1 SCR 517, <https://canlii.ca/t/jpbbg>

## Evidence

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Before you initiate any court applications (sometimes called pleadings), it's helpful to understand what type of information the court is looking for, and how the court assesses the strength of your information. Family courts have not always responded well to cases involving family violence, especially for families from economically marginalized, racialized or Indigenous communities. If you have a better understanding of how to collect and present your evidence, it may ensure you get the best possible outcomes for you and your children.

### Why Evidence Is So Important

The outcome of your court case will depend significantly on the evidence you provide to the court. This is true in every family court case, but it is especially true in cases involving abuse, because the impact of abuse is still misunderstood by many in the family law system.

The paramount concern of the family court is the best interests of the child. Therefore you should focus your evidence of family violence on the abuse or pattern of abuse that impacts the best interests of the child. Violence and patterns of abuse can be complex, with a range of impacts on you and those around you, including your children. It is important to remember that it is not your fault, while focusing on collecting and providing evidence to best support you and your child. Evidence is not limited to abuse directed at the child or that affects the child directly. Your safety, both physical and emotional, also impacts the best interest of the child. Children who witness, hear, are told about, or see the aftermath of abuse are negatively affected.<sup>34</sup>

Whether you are preparing your own paperwork or working with a lawyer who will prepare the court documents, you have an important role in providing as much detailed information as possible.

In the vast majority of cases involving intimate partner violence, the person causing harm will deny or minimize the abuse. The court has the daunting task of trying to determine which version of the facts is more believable: yours or your ex-partner's.

You need to be able to present persuasive evidence to the court so that details about the violence you have been subjected to are exposed. This can be challenging. There are not often witnesses to intimate partner violence. In most families, it takes place behind closed doors where there is no one but you and possibly the children to see and hear what is happening.

### Standard of Proof in Family Law

The standards of proof in family and criminal court are different. In criminal law, before an accused person can be found guilty, the Crown Attorney must prove beyond a reasonable doubt that a crime has taken place and that the accused is the person who committed it.

In family law, the standard of proof is somewhat more relaxed: To get the outcome that is

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<sup>34</sup> Jaffe, P., Bala, N., Medhekar, A. & Scott, K.L. (2023). *Making appropriate parenting arrangements in family violence cases: Applying literature to identify promising practices, 2023*. Department of Justice Canada. <https://www.justice.gc.ca/eng/rp-pr/jr/rib-reb/mpafvc-capcvf/index.html>

in the best interests of you and your children, you must prove your case “on a balance of probabilities.” In other words, when weighing the evidence, the judge needs to find what you say to be more believable than not.

This distinction between family law and criminal law is important to remember because even if your ex-partner is found not guilty in criminal court, your evidence about that abuse is still relevant in family court.

## What Kind of Evidence Can You Enter?

### ***Relevant and Material Evidence***<sup>35</sup>

Only evidence that relates directly to your case is permitted.

#### ***Relevant***

- Evidence that relates directly to the issues in your case. For example, if you are arguing that you should have the majority of the parenting tiRelevant evidence: Evidence showing the history of the children’s care, evidence of parenting styles, and the wishes of the older children.
- Not Relevant Evidence: Evidence of your ex-partner’s personal failings that are not connected to or don’t affect the best interests of the children.

#### ***Material***

Evidence that either proves or disproves facts at issue that are directly relevant to your case. For example, If you are divorcing and are only in court to divide assets:

- Material Evidence: When you purchased your home.
- Not Material Evidence: Evidence that your spouse cheated on you.

#### ***Credibility***

All evidence presented will be assessed as to whether it is credible evidence, with equal consideration given to both sides of the case, the Applicant and Respondent. This means the judge finds it trustworthy and believable. A judge assesses the credibility of evidence by evaluating the witness testimony for:

- the witness’s demeanour;
- their personal characteristics;
- the overall probabilities and consistency with other evidence.

The judge will consider internal inconsistencies, prior inconsistent statements, and the witness’s motive or bias.

Credibility is usually tested when a witness is cross-examined. When a witness is cross-examined, the examining lawyer scrutinizes the credibility of the witness’s testimony, usually by questioning its consistency. It is important that your evidence is credible and consistent with other statements you have made. If there are any inconsistencies in your

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35 Canadian Judicial Council. (2021). *Family law handbook for self-represented litigants*. <https://cjc-ccm.ca/en/what-we-do/initiatives/representing-yourself-court>

evidence, you should be able to provide a credible explanation, with evidence to support your explanation.

Meeting the criteria of credibility is often a barrier for survivors of gender-based violence because the law and the dynamics of abuse are incompatible. The courts do not account for the fact that the dynamics of abuse and the impact of trauma or brain injury on the survivor can impact behaviours and statements. How survivors recall abuse may be inconsistent or non-linear, there may be gaps in memory, or assumptions may be made about their behaviours or responses to the abuse.

## **Types of Evidence**

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### **Documentary Evidence/Exhibits**

This can be any physical or electronic record that provides information. This might include a marriage certificate, assessment of property value, copy of protection order, email communication, contracts, receipts, pictures of injuries or property damage, videos, etc. The veracity of these documents must be proven. This means the accuracy, truthfulness or authenticity of the document must be proven in some way, such as:

- Whenever possible, file an original document.
- Photos - it must be established who took it and exactly when. The person who took the photo may be required to testify before it is entered as evidence.
- Screenshots of messages - These should include the date, time, phone numbers of sender and recipient.

### **Oral Evidence/Witness Testimony**

Testifying in court means witnesses give spoken evidence under oath or affirmation. This means that they swear the information to be true.

### **Physical Evidence**

An actual object relevant to your case (e.g. jewellery, etc.).

### **Affidavit Evidence**

A sworn statement of a witness's evidence, in a form prescribed by the court. Affidavit evidence is used in interim hearings and child protection matters, and may be accepted at trial as well. The witness may be required to be available to be cross-examined on their affidavit evidence.

### **Hearsay Evidence**

One type of evidence that is generally not allowed in most courts is "hearsay" evidence. It is a statement made out of court that is offered in court to prove the truth of its contents. Hearsay generally refers to statements made by someone other than the witness testifying in court. The witness learned or heard it from someone else, but the witness does not have firsthand knowledge.

For example, if you want to prove that a neighbour witnessed family violence:

- “The neighbour told me that she saw John hit Jane in the driveway last March,” is hearsay because you learned this from the neighbour. It is secondhand knowledge. The neighbour should testify to what she saw herself.
- “I observed John hitting Jane in the driveway on March 13th,” is not hearsay because the witness observed this herself and she has firsthand knowledge.

### Exceptions to Hearsay

Sometimes, hearsay can be introduced as evidence under the rules of exception. The exception is that the evidence is both *reliable* and *necessary*. For example, a third-party report from a social worker may be admitted because it is considered both reliable and necessary for a comprehensive assessment of the best interests of the child.

A hearsay statement may be admitted to prove the fact that the statement was made, and not to prove the truth of what was actually said.

Family court is more liberal than criminal court in allowing hearsay evidence to be admitted under the rules of exception. The evidence may be admitted, but then the judge will decide how much weight to give it based on the judge’s assessment of whether it is reliable and necessary. Ultimately, it is up to the judge to decide what evidence the court will accept, taking into account the context, the best interests of the child, and the unique factors of the case.

### What Evidence Should I Gather?

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If you are afraid of your ex-partner, let the court know, and give **specific** examples. Keep a journal or calendar and record any signs of distress or abuse you observe in your children, especially as it relates to any time they spend with the other parent. Although it is not essential, independent third-party witnesses can verify your evidence if they are available and willing. This could include counsellors, child protection social workers, teachers, etc.

### Focus on Facts

Present facts and let the judge draw their own conclusions. Avoid judgement and opinion. Do not exaggerate or distort evidence. Prepare detailed descriptions, exact quotes where possible, photographs of physical injuries or items your partner has damaged and any evidence of violence towards others, including animals. You can provide information such as:

- Medical Facts (for both you and your children) Hospital records (especially emergency room reports). You can request your personal records by calling the hospital or clinic.
- Counsellor reports.

### Child-related facts

- Child protection reports that are related to your ex-partner’s abuse of you and/or the children, any action child protection has taken and any steps that you and/or your ex-partner are expected to take, along with evidence to show what steps you have taken to follow through. This might include a copy of a safety plan, a Family Centered Action Plan (FCAP), any programming you have completed.

- If you have called child protection to report your concerns, make sure to keep note of when you called, who you spoke to, and the concern that you reported. This might be helpful for family court.
- Evidence to support any special needs of your child, such as a learning disability, a diagnosis of ADHD or of autism.
- Evidence of any supportive services that are required to meet the needs of your child, and how the cost of such services is being addressed.
- School report cards (evidence of children's grades or attendance).
- Information from any extracurricular activities the children are involved in that speaks to signs of or responses to the abuse.
- Letters of support from counsellors/therapists the children are seeing that can speak to the impact of the abuse on the children.
- If your partner refuses to allow the children to see a counsellor/therapist, this is important evidence to include.

### Criminal facts

- Gun records (evidence your ex-partner is keeping firearms in the home, threatening to use them against you, proof that the weapons are there illegally or that they are stored within reach of the children).
- 911 transcripts or police incident reports
  - You can apply to the police detachment in the area where the incidents occurred.
- Past criminal charges and/or convictions (if available)
  - You can apply for a copy of a person's criminal record at the Provincial Court Registry if you provide their full name and date of birth. Tell them you need a certified copy to enter into evidence at a court proceeding.
- Bail or probation conditions
  - You can obtain a copy from the Police Detachment or from the Court Registry for the area where the charges were laid.
- A copy of the Court's "Information" which is an official document that lists the charges laid against your ex-partner.
- A copy of a statement you have made to the police about abuse.
- Copy of Peace Bond (current or past) and/or the Peace Bond Application (under s.810 of the Criminal Code). If you tried to get one but were denied - make note of the date, court location, and court clerk or judge who denied your application.
- Copy of Emergency Protection Order (current or past) and/or Application. If you tried to get one but were denied - make note of the date, court location, and court clerk or judge who denied your application.
- Speeding tickets or proof of car accidents/drunken driving (evidence of risk-taking behaviours).

### Technology abuse facts

- Email exchanges, SMS texts and voice recordings, social media posts (collect only the information pertinent to the issue at hand);
- Phone records/call logs (especially if your ex-partner is harassing you by calling frequently);
- Photographs or videos of physical or verbal assault;
- Home surveillance cameras (evidence your ex-partner is visiting the home when you are not there);
- Proof that your ex-partner is using technology to monitor you;
- Evidence that your ex-partner is involving the children in using technology to harass and/or monitor you (e.g. having the children show your home during video conference visits, using the children's devices to track your location).

### Financial facts

- Proof of being cut off from joint accounts and financial control by your ex-partner;
- Proof of joint account being drained by your ex-partner without permission, or of significant debt being accumulated on the joint account by them after the date of separation;
- Cancelled credit cards;
- Bankruptcy;
- Failure to pay child support and proof of garnishment or child support arrears;
- Evidence that you have given or have been bullied to give all your earnings to your ex-partner;
- Tenancy agreements/housing and utilities contracts, unpaid bills or late fees;
- Receipts showing extravagant and frivolous spending by your ex-partner, when there is no money for necessities like diapers or food.

### Workplace facts

- Evidence from your co-workers or supervisors about your ex-partner's behaviour;
- Any order prohibiting your ex-partner from coming near you or your workplace;
- Workplace records and/or security footage of your ex-partner's calls/visits/harassment;
- Evidence your ex-partner has lost their job or been disciplined for anger issues;
- Any complaints filed about your ex-partner at their workplace;
- Impact of the abuser's job on their parenting (e.g. extended absences from home, erratic work schedules that interfere with scheduling regular parenting responsibilities).

## Community facts

- Evidence from neighbours about your ex-partner's behaviour;
- Evidence from religious or spiritual leaders (including evidence that you have attended pastoral or couples counselling);
- Evidence from other community representatives or institutions;

## Miscellaneous

- Calendars or other evidence of unreasonable visitation schedules that disrupt the children's routines or of your ex-partner arriving for visitation when they are intoxicated or otherwise not in an appropriate condition to be with the children;
- Evidence of abusive behaviour from previous partners of your ex-partner;
- Veterinarian reports about harm inflicted on animals by your ex-partner;
- Proof your ex-partner has changed locks on the car or house to unfairly remove your access;
- Evidence that someone else has filed a lawsuit against your ex-partner.

## How Should I Gather Evidence?

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### Stay safe

Safety is always the number one consideration. A legal support navigator, staff at a shelter or transition home, women's centre staff or counsellor can help you document the abuse and gather evidence in a way that is safe and effective.

Many shelters also have legal advocates or family court support workers who are highly experienced in supporting survivors in family, child protection and criminal court proceedings, and they can likewise assist you in putting your case together and creating a safety plan.

### Create a timeline

Keep a journal and a record of events, at the same time as the events whenever possible. Focus on the most recent events and go chronologically backwards in time. This task is easier if you keep detailed records and journals that track dates and times. Your ex-partner may use tactics to make you doubt yourself. Having recorded details of exact quotes and actions all laid out in front of you can help validate your understanding of events.

Using a calendar to record dates, times, breaches of court orders, not following the parenting schedule, missed visits, incidents of harassment, etc. is a helpful way to document the timeline and incidents of abuse. You can use this calendar for your case and include it as evidence.

### Find witnesses

- Independent third-party witnesses can verify your personal evidence. The more independent these witnesses are, the better. For instance, the testimony of a

schoolteacher would be considered to be more objective than that of your sister, and the court will give it more weight. Keeping in mind the examples below, take time to make a list of all of the people who might have seen signs of family violence against you and your children. This could be:

- Community religious leaders
- Co-workers and/or your supervisor
- Neighbours
- Schoolteachers
- After-school sports coaches
- Daycare workers
- Health care providers
- Social workers
- Babysitters, etc.

## **Keep your evidence safe**

Keep backup copies of any written evidence. If you are still living with your ex-partner or if they have access to your house, keep a copy of your evidence stored in a locked safe box somewhere away from your home. Whenever it is possible to do so safely, create backup disks of electronic files and communications, or store them digitally.

## **Find tech support**

With so much of our personal data shared online and subject to potential hacking and harassment, it can be especially useful to have help documenting digital evidence of abuse and monitoring/threats. Creating backups, encrypting data, changing passwords and protecting yourself from technology monitoring may require specialized tech support. It is important to know how to collect digital evidence about your ex-partner in a way that is both ethical and safe.

## **Your ex-partner may try to collect evidence about you**

Your ex-partner may attempt to install spyware or other forms of surveillance apps or devices (such as drones, air tags) to track and monitor you and your children. Attempting to remove a surveillance app will alert your former partner, and they may increase their abusive behaviour. Contact the police or a women's organization for help about what to do if you think that your ex-partner is monitoring you. It may result in criminal charges against them.

## **How Do I Present Evidence?**

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Some of your evidence at trial may be in the form of written affidavits, which is considered the same as giving oral testimony. Just as it is when you swear an oath or affirm to tell the truth in court, when you or any of your witnesses write an affidavit, that person swears or affirms that the contents are true to the best of their knowledge. A person who has provided affidavit evidence may be cross-examined on their affidavit.

## Create a picture in the judge's mind

Present evidence in a way that helps the judge see the full picture. It is not enough to simply say that your ex-partner was abusing you, you need to provide specific examples, with details.

Your case will be stronger if you show the court what things were like both during the relationship and since you and your ex-partner separated, as well as how your ex-partner's abuse has affected your plans for the future. Provide the court with a brief chronology of the abuse. In cases of intimate partner violence, when a decision is being made about the future care of the children, it is important for the pattern of violence to be properly understood, and future risk of physical or emotional harm assessed.<sup>36</sup>

It is important to connect your ex-partner's abuse to the issues you want the court to decide:

parenting arrangements, financial and property issues, and safety concerns. In parenting cases, allegations of violence will be relevant to the determination of the "best interests of the child," for determination of both parenting time and decision-making (custody and access).

With respect to parenting time, for example, present evidence about how the abuse affects your ex-partner's parenting, your ability to co-parent and how it affects the children. Explain why this means you are the more appropriate primary parent. Always tie what happened to you to what is best for the children.

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<sup>36</sup> Jaffe, Johnston, Crooks & Bala. (2008). Custody disputes involving allegations of intimate partner violence: The need for differentiated approaches to parenting plans. *Family Court Review*, 26, 500-522.

## Connect the dots for the court

This chart provides examples of how a survivor could connect their ex-partner's abusive behaviour and its impact on the child to requests for child-centred responses.

Legal Issue	Abuse Tactic/ Behaviour Pattern	Impact on Family	Child-Centred Planning and Responses
Decision-making	Example: In the past, when the ex-partner did not like the survivor's decision about an extracurricular choice for the child, the ex yelled at them in front of the child and refused to pay for it or to allow the child to participate.	Example: The survivor makes decisions about the children out of fear for themselves and to protect the children.	Clear and detailed guidelines in the court order about how decision-making is to occur.
Safety	Example: The ex-partner sits in a car outside the family home and the other parent's workplace and threatens to abduct children from school.	Example: The survivor and children live in fear; the children are afraid to go to school; the survivor's employer is annoyed.	Detailed restraining order that includes the children as well as the survivor.
Safety during exchanges of children	Example: During exchanges, the ex-partner yells at and threatens the survivor in front of the children.	Example: The children are afraid of the other parent and concerned that they are going to be taken away from the protective parent.	Supervised exchanges or exchanges by a designated third party.

## Guidelines for Preparing an Affidavit

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You will likely prepare several affidavits throughout your family law case. If you have legal representation, you will provide your lawyer with information to go into the affidavit. An affidavit is a legal document that tells your story. It must be clear, organized, and factual. Affidavits are often used as evidence to support your case when you are applying for interim orders. Even if you have a lawyer, knowing how to prepare your own affidavit evidence can save you time and money.

Affidavits can be prepared by other people, such as your doctor, employer, religious leader, your child's teacher or daycare worker. In these affidavits, people who are aware of the abuse can describe what they know.

There are strict rules on what you can write in your affidavit. Affidavits must provide information that is true and relevant.

How to Organize Information in an Affidavit:

- Use numbered paragraphs;
- Stick to one fact per paragraph;
- Set facts out chronologically so that the judge finds it easy to follow;
- Do not include opinions - be factual;
- If you must cite hearsay evidence to support your case, state that "I do verily believe that..." and indicate why it is reliable evidence.

Format for Affidavits in Supreme Court:

- An affidavit must be in form F32.02A: Affidavit (Family Law);
- The affidavit must be no more than 12 numbered, single-sided pages with 12-point font and line spacing of one and one-half (1.5) or more;
- The total number of pages attached to affidavits cannot exceed 10 pages.

Supreme Court Family Rules section **F32.03** (1) states that the information in the affidavit must only be facts in which you have personal knowledge. However, the affidavit may contain hearsay evidence (information that was learned from someone else) in two instances: if it is for an interim application, or for a matter that will not determine the final outcome of the proceeding. If using hearsay evidence, you must identify the source of the information and state that you believe the information is true, and why it is reliable evidence.

If the affidavit contains information that is irrelevant, that may delay the trial or make it difficult to have a fair trial, or that is unnecessary or an abuse of the court process, a judge may, at the request of either you/your lawyer or your ex-partner/their lawyer, or by the judge's own discretion:

- Disregard all or part of the affidavit;
- Make an order the judge considers appropriate;
- Award costs.

## Post-Separation Abuse

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Post-separation abuse can be defined as the ongoing, wilful pattern of intimidation of a former intimate partner that includes legal abuse, economic abuse, threats and endangerment to children, isolation and discrediting and harassment and stalking.<sup>37</sup>

The abuse and risk of being killed by an ex-partner often escalates upon separation.<sup>38</sup> Since your ex-partner no longer has immediate access to you, the tactics and behaviours used to maintain power and control may change and become more intense, or your ex-partner may use new strategies. They may manipulate systems to prevent you from accessing help or support services, force contact through the legal system and financially burden you or interfere with economic opportunities.

## Legal Bullying

Legal abuse, sometimes referred to as litigation abuse or legal bullying, is often used within the family court structure by the abusive party to continue exercising power and control after a relationship has ended.<sup>39</sup>

## Common Legal Bullying Strategies

Your ex-partner may:

- Make it difficult for you to find a lawyer by “consulting” with all the family law lawyers in your community before you have a chance to call one. This creates a situation of conflict for lawyers so they cannot represent you.
- Engage in stalling tactics such as not finding a lawyer, making it difficult for you to get your case started or to move it along.
- Miss the required intake session with Family Justice Services.
- Fail to complete court documents on time.
- Try to file incomplete court documents.
- Ask for repeated adjournments.
- Refuse to provide complete financial disclosure (e.g. by not completing the financial statement fully or honestly).
- Try to divert your attention away from what they are doing legally.
- Seek repeated delays for no real reason.
- Repeatedly change lawyers.
- Fail to show up for scheduled mediation sessions.
- Change their mind repeatedly after you have agreed on something.
- Make malicious and unfounded allegations about you to child protection.
- Make official complaints about their lawyer, your lawyer, the judge and anyone

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37 Spearman, K., Hardesty, J.L., Campbell, J. (2022). Post-separation abuse: A concept analysis. *Journal of advanced nursing*, 79, 1225–1246. DOI: [10.1111/jan.15310](https://doi.org/10.1111/jan.15310)

38 Hrymak, H. & Hawkins, K. (2021). Why can't everyone just get along? How BC's family law system puts survivors in danger. *Rise Women's Legal Clinic*. <https://www.womenslegalcentre.ca/publications/why-cant-everyone-just-get-along>

39 Rezey, M. L. (2020). Separated Women's risk for intimate partner violence: A multiyear analysis using the National Crime Victimization Survey. *Journal of Interpersonal Violence*, 35(5–6), 1055–1080. <https://doi.org/10.1177/0886260517692334>

else who is involved with your case.

- Lie in court documents.
- Harass you at court, in the days leading up to court appearances, when you are coming and going from court.
- Bring family members and/or friends to court to create an intimidating atmosphere in the waiting area.
- Bring repeated motions on issues that have already been decided or on very small issues that can be resolved without a motion.
- Refuse to follow court orders (child support payments, parenting time, etc).
- Appeal decisions even when there is no possibility of success.
- Self-represent even though they would qualify for a legal aid certificate or could afford to pay for a lawyer.
- Run up your legal bill or eat up the hours on your legal aid certificate by using up your lawyer's time with unnecessary correspondence, phone calls, etc.

## **Managing a Legal Bully**

Unfortunately, much of the responsibility for managing your ex-partner's legal bullying will fall to you. While both family law and court processes offer some solutions, judges are often reluctant to get involved, especially early in the case before they have heard all the evidence. Here are some tips to help you manage a legal bully:

### **Keep records**

Keep detailed records and notes about your case as well as your ex-partner's behaviour and actions. These should include:

- Court dates and their purpose.
- All your documents. This means everything you and your ex-partner file with the court, correspondence with your lawyer, reports that are prepared for court, court orders and, if you and/or your ex-partner are unrepresented, any correspondence between the two of you.
- The notes you take while you are at court.
- Details about any contact between you and your ex-partner, including printouts of emails, records of text messages, and copies of letters and notes about any verbal exchanges you have.
- Information about contact between your ex-partner and the children.
- Details about any instances when you have not followed the terms of a court order or agreement, including the reasons you did (or didn't).
- A list of any of your ex-partner's breaches of orders or agreements.

### **How to protect yourself in mediation**

If you are using mediation, spend some time before the first session considering the tactics you think your partner might use to try to intimidate you. Then work with your lawyer or a support person to develop responses you can call on if you need them. For example:

- Do you need to have someone accompany you to and from court so your ex-

partner can't harass you as you come and go from the mediation session?

- Do you need to ask the mediator to do shuttle mediation so you don't have to be in the same room with your ex-partner? This means you are in different rooms, and the mediator moves back and forth between you.
- You might want to document all your ex-partner's contact with you outside the mediation sessions so you can demonstrate to the mediator any harassing or intimidating behaviour.
- You may need to limit your contact with your ex-partner immediately before mediation sessions so they can't try to intimidate you.
- Be ready to end the mediation session or the entire process if you are feeling bullied by your ex-partner.

### **Get legal advice about court rules**

Whether you are representing yourself or have a lawyer, it is important to know your rights and get legal advice about how the courts can protect you.

- Your ex-partner might bring unnecessary motions (interim orders) just to harass you and force you to come back to court. Once they have done this more than a couple of times, you can ask the judge to make an order that they pay your costs every time they bring an unnecessary motion or that they not be permitted to bring any more motions without prior approval from the court:
  - The Supreme Court Family Rules, section F33.03, authorizes the judge to make an order that the other party pay your costs if they have behaved unreasonably or have acted in bad faith during a proceeding.
    - Unreasonable behaviour includes, but is not limited to, conduct which delayed the proceedings or unnecessarily increased the expense of the proceeding, failing to comply with an order, steps in the proceeding that are frivolous, improper, vexatious, or unnecessary.
  - The Supreme Court Family Rules, section F15.04, authorizes the judge to make an order prohibiting further interim applications if the party unnecessarily delayed or added to the cost of a proceeding, made numerous interim applications without merit, or in any way abused the court's process.
- Even when you have an interim order in place, your ex-partner may continue with their bullying tactics by manipulating the order. For example, if you have an interim order about arrangements for the children, your ex-partner might skip their time without letting you know, arrive early or late to pick up the kids, return them early or late or "forget" to bring their clothes, schoolwork or toys back with them.
- The best way to deal with this kind of bullying is to follow the interim order closely yourself and then document in detail every time your ex-partner does not follow it. Limit communication to what is absolutely essential and follow any communication terms set out in the interim order.
- Ensure that orders for disclosure contain specific "due dates."
  - Section F9.04(1) of the Supreme Court Family Rules permits a judge to make a contempt order against a party who fails to provide information or a document as required.

- You and your ex-partner are likely to bring motions from time to time during your case. A motion is the court process that lets you get an interim (temporary) order while you wait for your case to move ahead. Your ex-partner can use this process to try to harass and intimidate you. If you can anticipate what your ex-partner might do, you can raise your concerns in your court documents and ask the judge to make an order to address them.

### **Inform your lawyer**

- Instruct your lawyer about how to communicate/respond to your ex-partner to avoid inflating your bill through repetitive or harassing contact.
- Your ex-partner may decide to self-represent so they can intimidate and harass you. If this is your situation, make sure your lawyer is aware of your concerns. Let your lawyer manage your ex-partner; avoid getting drawn into direct contact with your ex-partner if at all possible.

### **Know your rights if neither of you have legal representation**

- If your ex-partner is self-representing and you don't have a lawyer, you will have to manage things very carefully. Your ex-partner may try to convince you that you have to see them to exchange court documents and that you have to talk to them to discuss your case. THIS IS NOT TRUE.
- You can, and should, use a third party to deliver court documents to your ex-partner. This could be a friend or family member, if they feel confident about dealing with your ex-partner and will behave professionally. This person needs to understand the importance of your privacy, so you can rely on them not to give away information about your whereabouts or legal plan. This person should have a safety plan and should stay in touch with someone else while they are serving your ex-partner.
- If you can afford it, you can hire a professional process server to serve your documents on your ex-partner.
- Your ex-partner does not have to know where you live to serve you with court documents. They can use another address as long as it is somewhere they can deliver the documents: your workplace, if that is safe for you, or a friend or family member's home or work address.
- If your ex-partner is self-representing, you should check in with the staff at the court filing office regularly to be sure that you have been served with complete documentation.
- If you have to have conversations outside court with your ex-partner, insist that they happen by email or by telephone so you don't have to deal with them in person. Try to never meet with your ex-partner in person by yourself.





# **Section 4**

## **IMMIGRATION ISSUES**





If you are a newcomer to Canada, immigration issues may arise when you and your partner separate. Immigration status can have an impact on your family law case, and your family law case can have an impact on your immigration status. There are federal and provincial laws that apply in family law matters. The laws and the processes involved may be different from laws and procedures in your country of origin.

Family violence experienced by newcomer women can include being forced to sign documents they do not understand, being threatened with deportation or being blocked from seeking Canadian citizenship, being unable to access supports due to language barriers, control and threats of violence, isolating them from their family and community, forcing or coercing them to work and hand over earnings, and reproductive violence.<sup>40</sup>

## **Do I Need a Lawyer?**

Immigration law is complicated, so if possible, find a lawyer who specializes in this area of law. Ideally, your family and immigration law lawyers will be familiar with both areas, so they can watch for the implications of what happens in one area on the other.

Immigration status is often used as a way to maintain power and control. You should find out what your immigration status in Canada is as soon as possible. Do not rely on your partner to tell you the truth. Your partner may try to get you to stay in the relationship by threatening to have you deported if you leave, but if you already have permanent status in Canada, you will not be deported for leaving the relationship. Or, your abuser may tell you that you have permanent status when you do not.

## **What Happens If My Ex-partner Sponsored Me?**

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In some cases, a Canadian citizen or permanent resident will sponsor their foreign spouse to live in Canada. The spouse who acts as the sponsor must have signed an undertaking outlining their responsibilities. That undertaking remains in effect for three years after the person becomes a permanent resident, even if the couple divorces or separates during that period. The sponsor is responsible for the basic needs of their sponsored spouse for the full period of the sponsorship undertaking, including any provincial social assistance the sponsored family members get during the undertaking. If you are a permanent resident you cannot lose your permanent residency because of a divorce.

The federal government department responsible for newcomers to Canada, known at time of publication as Immigration, Refugees, Citizenship Canada (IRCC), is extremely careful with what is and is not disclosed to the identified abuser. Any documentation that can substantiate the abuse is not required, but can greatly assist in quickly moving to support the survivor.

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40 Giesbrecht, C. J., Kikulwe, D., Sato, C. L., Este, D. C., Watkinson, A. M., & Falihi, A. (2024). "I felt like I was a puppet - He's the master, and he's playing with my life": Newcomer women's experiences of intimate partner violence. *Violence Against Women*, 30(5), 1226-1254. <https://doi.org/10.1177/10778012231158108>

## Family Violence

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### Temporary Resident Permit (TRP) for Victims of Family Violence

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If you are experiencing family violence, waiting for a decision on your Permanent Residency (PR) application and currently live in Canada, you are eligible to apply for a Temporary Resident Permit (TRP) for Victims of Family Violence. This will give you temporary resident status in Canada so you can escape your situation and think about next steps. You do not have to testify against your abuser to get temporary resident status. Things to know about TRPs include:

- TRPs are processed quickly due to the urgency.
- The first TRP can be issued for 12 months.
- You do not have to pay fees for your first TRP, or for a new TRP if you apply for one.
- If you get a TRP, you can also get coverage for trauma counselling and health care benefits.
- You may also be eligible for an open work permit. This application should be made at the same time as the TRP and included in the same envelope.
- Supporting evidence on your application can include police records, criminal or family court documents (court orders, no-contact orders, protection orders), letters, statements or reports from shelters or legal support staff, victim services, counsellors, hospital or medical records, photos of injuries, copies of emails or text messages, affidavits from witnesses, etc.
- If mailing your application, the envelope must be clearly marked (as large as possible) with "FV" to indicate that it is an application made on family violence grounds.

If your ex-partner falsified any documents or applications, or forced you to falsify any information, it is extremely important to speak with an immigration lawyer. If there are any inconsistencies between the information on your original immigration paperwork and your TRP application or any subsequent applications, you could be at risk of misrepresentation. Misrepresentation is lying or hiding information on any application may constitute misrepresentation, for which you are at risk of:

- Being forbidden from entering Canada for at least 5 years;
- A permanent record of fraud with the federal government's IRCC department;
- Revocation of your status as a permanent resident or Canadian citizen;
- Being charged with a crime; or
- Being removed from Canada.

For additional information, please visit: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/fees-permits-victims.html>

## Humanitarian and Compassionate Grounds Application

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If your relationship breaks down and you are facing the risk of removal from Canada or other challenges that impact your status in Canada, you should seek help from an immigration lawyer immediately and explore the options that are available to you to remain in Canada. Depending on your unique situation, you may be eligible to apply for permanent resident status based on Humanitarian and Compassionate (H&C) grounds. An H&C application is a request for permanent residence outside of regular immigration programs. Applying for H&C consideration is an exceptional measure – it is not simply another way of applying for permanent resident status in Canada. It is not very common that a Humanitarian and Compassionate application succeeds, and the processing time can take exceedingly long.

For additional information, please visit: <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/humanitarian-compassionate-considerations.html>

## Divorce

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If you were married outside of Canada and you do not have a copy of your marriage certificate, contact the government where you were married to get a copy.

Ask to have your original marriage certificate or a certified copy sent to you.

If your marriage certificate isn't in English or French, you **must** have it translated by a certified translator. In situations where the translation cannot be provided by a certified translator, it must be accompanied by an affidavit swearing to the accuracy of the translation and the language proficiency of the translator.

## Affidavit<sup>41</sup>

An affidavit for a translation is a document that states that the translation is an accurate version of the original text. The translator swears that their translation is an accurate representation of the contents of the original document.

The translator does this in front of a commissioner authorized to administer oaths in the country where they live. The commissioner or notary public must be proficient in English or French in order to administer the oath.

All stamps and seals that are not in English or French must also be translated.

Who can take an affidavit

In Canada

- A notary public
- A Commissioner of Oaths
- A commissioner of taking affidavits

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<sup>41</sup> Government of Canada. (n.d.). Translation of supporting documents for applications. *Immigration, Refugees, Citizenship Canada*. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/translation.html>

Outside Canada:

- A notary public, or equivalent

For all applicants (in or outside of Canada), affidavits must **not** be done by the applicants themselves, nor by members of the applicant's family. Any member of the applicant's family who may be a lawyer, notary or authorized translator is also **not** permitted to prepare affidavits. This includes a parent, guardian, sibling, spouse, common-law partner, conjugal partner, grandparent, child, aunt, uncle, niece, nephew and first cousin.

## **Interpretation Support in Court Proceedings**

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If you require court services for a family proceeding in a language other than English or French, you may apply for a procedural order to appoint an interpreter. The court may also appoint an interpreter when appropriate.

## **Public Legal Information Association of NL - Legal Rights for Newcomers Project**

Public Legal Information offers specialized legal support for newcomers to Newfoundland and Labrador. This support includes one-on-one legal support, lawyer referrals, specialized legal clinics, and the development and delivery of plain language and translated legal information publications and presentations on different areas of the law.

Through this project, newcomers can access legal support in the areas of immigration law, family law, labour and employment law, human rights, criminal law, residential tenancies and other housing issues, civil litigation, and other areas of the law they may encounter. All newcomers in Newfoundland and Labrador can access support as part of this project, including immigrants following various pathways and programs towards permanent residency, international students, refugees, temporary foreign workers, and other newcomers living anywhere in the province.

For more information on this project or to access legal information and support, please contact the Legal Rights for Newcomers Project Coordinator at [newcomers@publiclegalinfo.com](mailto:newcomers@publiclegalinfo.com) or call the Legal Information Line at 1-888-660-7788.

<https://publiclegalinfo.com/newcomers/>





## **Section 5**

# **INDIGENOUS SURVIVORS AND FAMILY COURT**





If you are an Indigenous survivor leaving a relationship in which you have been subjected to violence, you will likely deal with all the issues faced by any survivor leaving an abuser: ensuring safety for yourself and your children, finding housing, making safe arrangements for your children, sorting out financial and property issues with your ex-partner, and so on. However, you may face additional issues because of the ongoing impacts of colonialism, the residential schools system and systemic racism.

Indigenous women, girls and two-spirit individuals are disproportionately targeted at high rates of violence, especially intimate partner violence and sexual violence.<sup>42</sup> Overt systemic racism, ongoing colonialism, police violence and mistrust, and lack of culturally safe services contribute to barriers that prevent Indigenous women, girls and two-spirit individuals from seeking, accessing and/or receiving resources and support.

Even though you may want your partner to stop their abusive behaviour, you may want to preserve your family rather than leave your partner. In that case, you may choose to work with elders and others in your community who know you and your family to try to find a way for all of you to heal and move on from the abuse.

## **Court Process**

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If you decide to leave your partner, you may turn to family law/court to resolve child-related issues, support and the division of property. You may value alternative approaches to dispute resolution. If you want to use mediation or other alternative dispute resolution strategies, it is important for you to prepare for this experience. This may include working with a legal advocate to make a safety plan that fits with your approach to dispute resolution.

If you become involved in a court proceeding that involves testifying in court, you will be required to swear or affirm to tell the truth. The Provincial Court of Newfoundland and Labrador has the option to take an affirmation or oath with a sacred eagle feather. A feather will be available for taking an affirmation in the same way that a Bible is available to swear an oath. Those testifying in court can choose to use the eagle feather while affirming to tell the truth.

## **Child Protection**

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There are several pieces of legislation and policies that govern services for Indigenous children and youth who are in need of protective intervention or who are involved with child protection.

*An Act respecting First Nations, Inuit and Métis Children, Youth and Families* is federal legislation that applies to all child, youth and family services matters involving Indigenous children, regardless of Indian Act status and/or residency. It states that First Nations have the authority and jurisdiction to determine their own governance structure in relation to child and family services. Indigenous governing bodies can include a Band Council, Tribal Council, Government.<sup>43</sup>

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42 Heidinger, L. (2021). Intimate partner violence: Experiences of First Nations, Métis and Inuit women in Canada. *Canadian Centre for Justice and Community Safety Statistics*. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>

43 Qalipu First Nation. (2021). *Flip facts: Understanding the Act Respecting First Nations, Inuit and Metis children, youth and families*. <https://qalipu.ca/qalipu/wp-content/uploads/2021/05/children-youth-and-families-act-proof.pdf>

All children and youth in Newfoundland and Labrador are protected by the *Children, Youth and Families Act (CYFA)*. Under the *CYFA*, the child or youth's identity and cultural and community connections are to be considered when assessing the best interest of the child. The *CYFA* further notes the importance of preserving an Indigenous child's or Indigenous youth's unique cultural identity.

The *CYFA* contains provisions that require the Act also be applied in conjunction with the *Labrador Inuit Land Claims Agreement Act*. In situations where the *CYFA* is inconsistent or conflicts with the *Labrador Inuit Land Claims Agreement Act*, the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the *CYFA*.

## **Cultural Connection Plan**

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When an Indigenous child or youth has been removed from a parent's care under the *CYFA*, a cultural connection plan shall be made. A "cultural connection plan" means a description of the arrangements made or being made to foster an Indigenous child's or Indigenous youth's connection with his or her culture, heritage, traditions, community, language and spirituality to preserve the Indigenous child's or Indigenous youth's cultural identity.

<sup>44</sup>The Cultural Connection Plan shall be reviewed at a minimum every six months, and is attached to the Plan for the Child.

When assessing placements for Indigenous children and youth, the social worker shall first consider placing the Indigenous child or Indigenous youth with kin within their community. If this is not in the best interest of the child, the social worker should consider placing the child or youth with a non-relative foster parent with the same cultural background within the Indigenous child or youth's community, or with kin outside the Indigenous child or youth's community. If any of these placements are not in the best interest of the child or youth, they shall be placed in a foster care placement that supports the Indigenous child's or Indigenous youth's connection with his or her culture, heritage, traditions, community, language and spirituality.

For an Indigenous child or youth in care who belongs to an Indigenous government or organization, the respective Indigenous representative will be invited to be a part of the in care planning team.

## **Newfoundland and Labrador Family Information Liaison Unit (NL FILU)**

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The NL Family Information Liaison Unit provides specialized services to families of missing and murdered Indigenous women and girls and 2SLGBTQIA+ people. As a frontline Victim Services unit, it works directly with family members to coordinate information gathering from a wide range of federal, provincial, and territorial government agencies and services, including:

- The criminal justice system (police, prosecutions, corrections)
- Social services
- Coroners
- Child protection

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44 Children, Youth and Families Act, SNL2018 CHAPTER C-12.3 [https://www.assembly.nl.ca/Legislation/sr/statutes/c12-3.htm#10\\_](https://www.assembly.nl.ca/Legislation/sr/statutes/c12-3.htm#10_)

- Health services
- Other Family Information Liaison Units across the country.

For additional information, please contact [FILUvictimservices@gov.nl.ca](mailto:FILUvictimservices@gov.nl.ca)

## Property Division

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The *Family Homes on Reserves and Matrimonial Interests or Rights Act* provides basic rights and protections to individuals on a Reserve during a marriage or common-law relationship breakdown. It governs the division of family property, the right of parties to remain in the matrimonial home and emergency protection orders for people living on reserve.

Unlike the *Family Law Act* provisions dealing with the division of property, which apply to married spouses only, this legislation applies to both married and common-law spouses who live on reserve. There are three reserves in Newfoundland and Labrador: Sheshatshiu, Natuashish and Miawpukek. Rights Protected Under the Act:<sup>45</sup>

- Spouses or common-law partners are entitled to a fair division of matrimonial real property, interests, or rights.
- Each spouse has an equal right to occupancy of the family home during the intimate relationship, no matter whose name is on it and whether or not they are First Nation.
- Spousal consent is required for the sale or disposal of a family home.
- An application for division of property must be made within three years after the day on which the parties stop living together.
- Courts can order the transfer of or enforce agreements about matrimonial real property between spouses or common-law partners.
- Courts can order an Emergency Protection Order when family violence has occurred and there is an urgent need for immediate protection. The spouse or common-law partner, whether or not they are First nation or a Band member, can apply even if they have had to leave the family home due to violence.
- Courts can order that a spouse or common-law partner be excluded from the family home on an urgent basis through an Exclusive Occupation Order. An Exclusive Occupation Order is made following the break-up of a conjugal relationship or following the death of a spouse.

For additional information on Emergency Protection Orders, please visit: <https://journeyproject.ca/epo/>

## Support & Resources

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### Jordan's Principle

Jordan's Principle is a legal rule that ensures all Indigenous children living in Canada can access the products, services and supports they need when they need them. This includes substantive equality, culturally appropriate services, and any product or service needed to safeguard the best interests of Indigenous children.<sup>46</sup>

Navigating family court can be overwhelming, especially when there has been family violence. Through Jordan's Principle, applicants can apply for professional mental health services not covered by the Non-Insured Health Benefits (NIHB) program, therapeutic services, income support services, child care, medical travel, infant supplies (e.g. diapers, wipes, formula).

For additional information or to contact a regional service coordinator, please visit:  
<https://sac-isc.gc.ca/eng/1568396042341/1568396159824>

Requests for Inuit children can be made through the Inuit Child First Initiative:  
<https://jordansprinciplehubbc.ca/>

### Non-Insured Health Benefits (NIHB) Program

Health Canada provides eligible First Nations people and Inuit with a specified range of medically necessary health-related goods and services when they are not covered through private insurance plans or provincial/territorial health and social programs.

Non-Insured Health Benefits (NIHB) include prescription drugs, over-the-counter medication, medical supplies and equipment, short-term crisis counselling, dental care, vision care, and medical transportation.

For additional information, please visit:  
<https://sac-isc.gc.ca/eng/1572537161086/1572537234517>

### Friendship Centres

Friendship Centres are a beacon for Indigenous peoples who relocate to urban areas, or travel to larger centres from their home communities for services. These community-based organizations provide culturally appropriate services and serve as a place for Indigenous and non-Indigenous people to come together, to share traditions and to learn from one another. Currently, there are three Friendship Centres which offer health and wellness programming, mental health support, family resource programming, social and cultural support, housing support, etc.

First Light - St. John's Friendship Centre - <https://firstlightnl.ca/>  
The Labrador Friendship Centre - <http://www.lfchvgb.ca/home/>  
The People of the Dawn Indigenous Friendship Centre - <https://pdifc.com/>

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46 Bella Coola Legal Advocacy Program. (2024). *Legal information for Indigenous people.*

## **Newfoundland Aboriginal Women’s Network**

The Newfoundland Aboriginal Women’s Network (NAWN) strives to promote, enhance and encourage the health, social, educational, economic, cultural, and political well-being of Aboriginal women within the island portion of Newfoundland and Labrador.

## **Non-Insured Health Benefits Program**

Health Canada provides eligible First Nations people and Inuit with a specified range of medically necessary health-related goods and services when they are not covered through private insurance plans or provincial/territorial health and social programs.

Non-Insured Health Benefits (NIHB) include prescription drugs, over-the-counter medication, medical supplies and equipment, short-term crisis counselling, dental care, vision care, and medical transportation.

## **First Nations & Inuit Hope for Wellness Help Line**

The Hope for Wellness Helpline is available to all Indigenous people across Canada, 24 hours a day, 7 days a week. People call to talk about a whole range of issues which can include mental health concerns, anxiety, coping with stories in the media, relationship issues, abuse, and family and gender-based violence. Services are offered in English and French and, upon request, telephone counselling is also available in Cree, Ojibway, and Inuktitut.

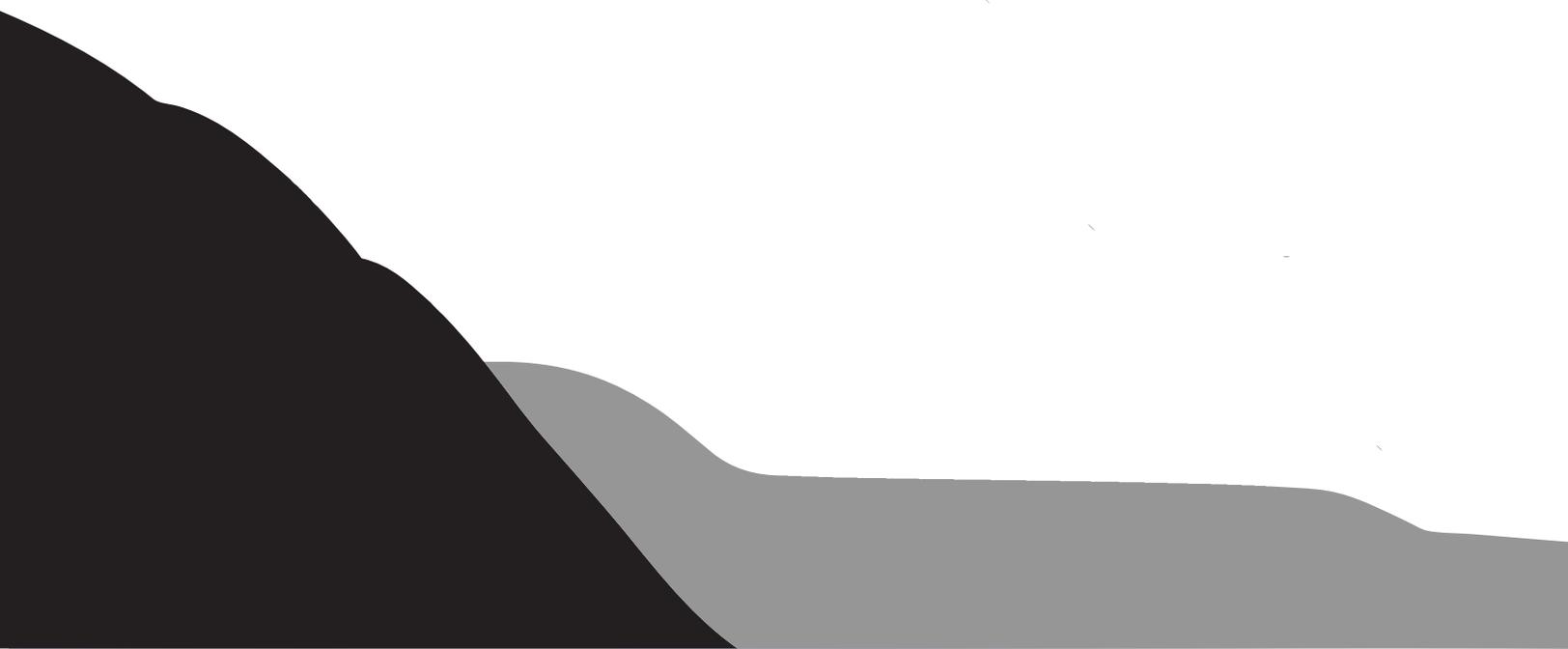
Phone: 1-855-242-3310

For additional information, please visit: <https://www.hopeforwellness.ca/>



## **Section 6**

# **NORTHERN, RURAL AND REMOTE COMMUNITIES**





While the formal family law is the same everywhere in Newfoundland and Labrador, there are significant practical differences for survivors who live in northern, rural and remote communities. Newfoundland and Labrador is a vast province, with many communities only accessible by airplane, boat or snowmobile during the winter months. Women living in rural, remote, or northern regions are targeted at higher rates of intimate partner violence than individuals residing in urban areas.<sup>47</sup>

This is due to factors including:

- A greater adherence to conservative/traditional values and gender roles;
- Women from rural areas report being shunned by their support networks after disclosing abuse;
- Patriarchal attitudes which normalize violence against women; and
- Geographical barriers and isolation that can lower visibility and increase travel time to shelters or police.<sup>48</sup>

## Safety

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It is hard to keep anything private in small communities, as people tend to know one another's business and there may be close-knit ties between community members. This can make it difficult to reach out for help, if you don't want your partner knowing what you are doing or if you want to keep your family situation private.

Consider the following safety tips:

- If you live outside a city or town, or if you live in a community that is only accessible by boat, snowmobile, or airplane, find somewhere on your property where you can hide, even for a short period of time (for example, a fishing stage or barn); a spot in a treed area that you can find easily but where your partner won't think to look for you; somewhere on a neighbour's property. Try to find somewhere you have cell phone reception so you can call for help if you need to.
- If possible - purchase a satellite phone and store it somewhere safe.
- If you live in a small city or town, find a safe place you can get to quickly (a church in your community that is open 24 hours a day, a hospital, a neighbour you can trust to keep your privacy).
- Make an extra copy of the keys to any vehicles and hide them where you can grab them quickly.
- If you have neighbours you trust who can see your house, set up a signal system so they know if you need help. For example, pulling a blind or closing or opening a curtain could signal that you need assistance.
- Make a plan with this neighbour about what this help would look like. Do you want the neighbour to drop by, claiming to have some other reason for doing so? Should they call and ask to speak to you?
- Make sure you know the official address to your rural property. Post this

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47 Kohtala, S. (2021). Barriers to safety planning and best practice for supporting survivors of domestic violence in rural, remote, and northern regions. *Electronic thesis and dissertation repository*. 7711. <https://ir.lib.uwo.ca/etd/7711>

48 Kohtala, S. (2021). Barriers to safety planning and best practice for supporting survivors of domestic violence in rural, remote, and northern regions. *Electronic thesis and dissertation repository*. 7711. <https://ir.lib.uwo.ca/etd/7711>

somewhere that is easy to see (for example on your refrigerator) in case someone other than you is making a 911 call.

- Make sure the official address is visible on the exterior of the home as well. This will make it easier for first responders or police to locate the home.
- Find out how long the police response time would be if you had to call 911 for assistance.

## **Firearms**

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You may have concerns about firearms in your home or if you know your partner/ex-partner has access to firearms.

Tips for firearm safety:

- Learn as much as you safely can about any firearms your ex-partner has, including what kinds, how many, how much ammunition and where everything is kept.
- Provide a list of this to a trusted family member, friend, neighbour and/or the police.
- Even if you know how to use a gun, do not rely on this to keep you safe because your ex-partner may be able to overpower you and use the weapon against you.

## **Communication**

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You might live in an area that has limited internet connectivity or unreliable cell phone service. This can make it challenging for you to call for help quickly or to gather information or stay in touch with friends. Many communities in the province cannot rely on their mobile phones due to service dead zones, and many northern communities do not have high-speed internet or cell service. Digital communication may only be possible when there is accessible Wi-Fi.

- If you live in an area with cell phone reception, have a cell phone with key numbers pre-programmed into it.
- Consider having a second cell phone that your ex-partner does not know about, so even if they take one phone away from you, you have another you can use.
- Teach your children how to use your cell phone or, if they are old enough, how to use their own cell phone, to call for help in an emergency.
- Keep a landline phone even if you have a cell phone. If possible, get a cordless system with several phones so you can carry one around with you. Make sure you know how far outside the house this phone will get reception.
- Get to know your property and the areas where your cell phone reception is the strongest.

## **Services**

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Many small communities have limited services, so you may need to travel to another town or city for certain things. For instance, there may be only one or two lawyers – or even none – in the town closest to where you live.

Consider the following:

- Find out as much as you can about services in your community before you need them.
- If there is a women's shelter or transition home, does it operate 24 hours a day? How do you get a bed there? Are there services you could use before you leave home?
- Is there a Status of Women Centre in your region? Are there services you can use there before you leave home, or as you navigate a separation?
- Is there a police station close by or does the police response come from another community? In Newfoundland and Labrador, police response in some rural communities can be over an hour away.
- Is there a family court in your community or will you have to travel to another location to go to court?
- Are there any lawyers in your community? Find out if any of them practise family law and if any of them take legal aid certificates.

## **Finding a Lawyer**

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You may have trouble finding a lawyer, especially if you reside in a northern, rural or remote location. If you have a Legal Aid certificate, there may only be a few lawyers in the region, or you may be assigned a lawyer from another region if there is a conflict.

Tips for finding a lawyer:

- Contact Legal Aid to find out if you are eligible for any of their services. You can get some of this information from the Legal Aid website: <https://www.legalaid.nl.ca/>
- You can also talk to someone at Legal Aid by calling 1-800-563-9911.
- Even if you have not yet left your partner, consider meeting with a lawyer to talk through your legal options and ask them about developing a safety plan.
- Once you have met with a lawyer, that lawyer is not permitted to meet with your partner because that would be a conflict of interest.
- Find out from the lawyer:
  - Whether they practise family law;
  - Whether they accept legal aid certificates;
  - What their hourly rate is;
  - What their retainer is (this is the amount of money you pay the lawyer upfront);
  - Whether they can take your case;
  - What your legal options, rights and responsibilities are.

## **Court**

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Depending on where you live, and the subject matter of your family law case, you will either file with Provincial Court or Supreme Court. The court that serves your community may not be the closest court to where you live, especially in rural and remote parts of the province, so find out its location as soon as you can.

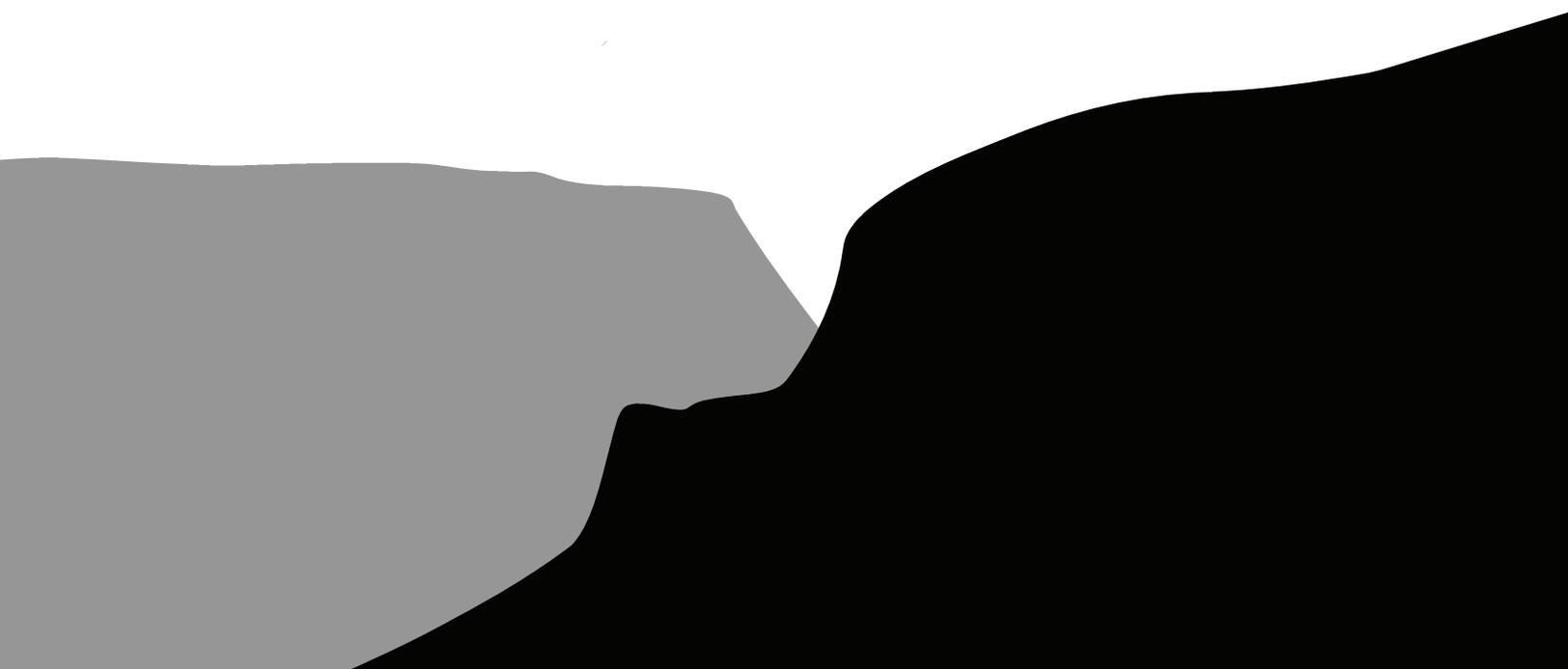
- Depending on the cell service and internet connection, attending court by phone or video may not be possible.
- The court may only operate certain days of the week or month. Find out this information so you don't make a long trip to the courthouse only to find it is closed.
- If at all possible, work with a legal advocate to make a safety plan for your family law case and for your trips to court.





# **Section 7**

## **INTERSECTING LEGAL ISSUES**





## Child Protection and Family Violence

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Child protection authorities sometimes become involved with families when there is violence. There is no federal legislation that dictates what child protection should look like in each province. Generally, the courts face two distinct questions: first, determining whether the child is in need of protection, and second, if that finding is made, considering what is in the child's best interest.<sup>49</sup> In Newfoundland and Labrador, the provincial government is the authority responsible for administering the *Children, Youth and Families Act*. This law determines the process and procedure for children in need of protective intervention in the province.

For an in-depth overview of child protection in Newfoundland and Labrador, please visit: <https://publiclegalinfo.com/wp-content/uploads/2021/04/PLIAN-Child-Protection-Publication-2020-Final.pdf>

- Best Interest of the Child Under the CYFA Safety, health, and well-being;
- Physical, emotional, and developmental needs;
- Relationships with family, or significant persons to the child or youth;
- Opinion regarding their own care and custody and provision of protective services;
- Identity, and cultural and community connections;
- The preservation of Indigenous cultural identity (where applicable);
- The importance of stability and permanency of their care;
- The importance of family as the preferred place for care and upbringing; and
- Other relevant factors.

### Legal Duty to Report

In Newfoundland and Labrador, it is the law that *every* person immediately reports suspected abuse and/or neglect for children (under age 16) and youth (ages 16 and 17).

#### Definition of child in need of protective intervention

A child in need of protection is defined as a child or youth who has experienced abuse and/or neglect, or is likely to experience abuse and/or neglect due to the lack of action by a parent.

The definition of a child in need of protective intervention can be found under section 10 of the *Children, Youth & Families Act*: <https://www.assembly.nl.ca/Legislation/sr/statutes/c12-3.htm>

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<sup>49</sup> Bala, N. & Kehoe, K. (2022). Concurrent legal proceedings in cases of family violence: The child protection perspective. *Department of Justice Canada*. [https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/fv-vf/child\\_protection.pdf](https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/fv-vf/child_protection.pdf)

This can also include:<sup>50</sup>

- Living in a situation where there is violence, or living in a situation where there is a risk of violence.
- Living with a parent whose actions show a propensity to violence or who has allegedly killed or seriously injured another person.
  - Indicators of propensity to violence include the parent: demonstrating a pattern of using violence or implied violence in response to situations; and/or being alleged to have killed or intentionally seriously injured another person through a violent assault.
- Exposure to violence in the home or between parents - this is indicated by the child seeing, hearing, or trying to intervene in the incident of violence. Incidents of violence include but are not limited to physical conflict; sexual assault; verbal altercations that include coercion, intimidation, or threats; manipulation or control of children; isolation; or unreasonable control of the adult victim.
- Exposure to violence can include circumstances in which parents are separated but continue to share parenting responsibilities and directly expose their child to violence.
- Domestic violence exists in the home and poses an imminent danger of serious physical and/or emotional harm to the child. Examples include the following:
  - Child was previously injured in a domestic violence incident and violence is occurring in the home now.
  - Child exhibits severe anxiety (e.g. nightmares, insomnia) related to situations associated with domestic violence.
  - Child cries, cowers, cringes, trembles, or otherwise exhibits fear as a result of domestic violence in the home.
  - Child's behaviour increases risk of injury (e.g. child attempted to intervene during violent dispute or participated in the violent dispute in an effort to protect a parent or stop the violence).
  - Individuals in the home use guns, knives, or other instruments in a violent, threatening, and/or intimidating manner.
  - Evidence of serious, frequent, or escalating property damage resulting from domestic violence is apparent.
  - Other indicators exist of highly dangerous domestic violence situations such as a perpetrator threatening or attempting to kill an adult, a perpetrator harming household pets, and/or recent separation that is resisted by a violent partner.

## **What Will Happen if My Family is Reported to Child Protection?**

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Your family's situation may have been reported to child protection by anyone who has concerns for the safety and well-being of your child. Everyone has a legal duty to report concerns of child maltreatment or neglect. Reports may come in from:

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<sup>50</sup> Newfoundland and Labrador Department of Children, Seniors and Social Development. (2024). *Policy and procedures manual*. <https://www.gov.nl.ca/cssd/files/NL-Policy-and-Procedures-Manual-1.pdf>

- A teacher or daycare worker;
- A neighbour, co-worker, friend or family member;
- A family doctor;
- A doctor or nurse at the hospital;
- A police officer;
- A counsellor or therapist;
- Your partner/ex-partner.

Legal Support Navigators, shelter staff, and other family violence support services that may be assisting you have the same duty to report as all other professionals. Whenever possible, support services will:

- Discuss the legal duty to report with you at the beginning of your relationship with the agency and remind you of it throughout your time working with them.
- Explain their role and obligations under the law.
- Continue to support you and be your advocate even if they have to make a report.
- Encourage you to make the report yourself, with their support.
- Explain the role of the child protection agency so you know what to expect.
- Validate how you feel.
- Talk with you about any relevant cultural or religious supports that you can access to assist you in working with the child protection agency.
- Work on a safety plan with you to take into account the fact that your ex-partner may lash out once they are aware a report has been made to the child protection authorities.

You may be worried or scared when you hear that a social worker with child protection wants to talk to you about your children. You might also be relieved that the secret of the abuse has been shared and hope that child protection can assist you and your children to move on. It is important to note that any feelings you have are valid.

If you have to meet with a social worker from child protection, we strongly encourage you to:

- Let your lawyer know, if you have one, and get some advice from them before the meeting, when possible.
- Work with a support person to prepare for the meeting and, if possible, have the support person accompany you to the meeting, letting the social worker know that you plan to do this.
- Be polite, cooperative, and listen carefully but speak up when necessary.
- Take notes and document the social worker's name and contact information as well as any instructions they give you.
- In talking about your family, let the social worker know the impact you believe the abuse has had on your child, stress the steps you have taken to protect your child from the impact of the abuse, and let the social worker know your plans for the

future.

- Encourage the social worker to focus on your partner's responsibility for the abuse and the child's exposure to it. Make the social worker aware of the different abuse tactics. For example, does your partner/ex-partner:
  - Engage in financial abuse that deprives your child of a decent standard of living?
  - Physically abuse you in front of the child?
  - Attempt to alienate your child from you?
  - Put you down in front of the child?
  - Use the child to spy on you and report to your partner about your activities?
  - Damage the home?
  - Hurt or threaten to hurt family pets?
  - Threaten to hurt the child?
  - Discipline the child inappropriately?
  - Undermine your approach to parenting?
  - Draw the child into their abuse of you?
- If your partner is aggressive, abusive or physically violent with your child, tell the social worker. Also, tell them what you do to protect the children from direct abuse.
- Let the social worker know if the child has ever been hurt while trying to protect you.
- If you have a family law case to make arrangements for your child, talk to your social worker about whether they can provide a support letter or affidavit. These letters can identify for the court when child protection became involved, what, if any, its ongoing involvement is and which parent initiated whatever incident led to the police/child protection becoming involved. This letter could also contain a sentence that confirms that while child protection is involved, it has no concerns about your parenting, which can assist the court to draw the appropriate conclusions about which parent may pose concerns with respect to the child.

Child protection can provide important support to a family dealing with abuse. However, you should always be aware of the legal power the agency has and ensure that you have legal advice and representation in any formal dealings you may have with a child protection agency.

## **Reporting Your Ex-partner to Child Protection**

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If you need to contact a child protection agency because you have concerns for your child's safety when they are with the other parent, there are a few things you will want to consider.

### **Process**

You can report child abuse and maltreatment to child protection authorities 24 hours a day, seven days a week. When you make this call, you will speak with an intake worker. The

intake worker will take your report and write down your information. The report will be assessed using a screening tool. This will determine if the report meets the definition of a child in need of protective intervention. If it does, the response time will either be same-day, or within seven days. An investigation will then take place, usually within 30 days. Depending on the outcome of the investigation, the file will either be closed or remain open.

## Documentation

It is important to keep a record of all interactions with helping professionals, including child protection workers. If possible, prepare notes before you make the call. Outline your current concerns, including incidents, dates, witnesses and any evidence you are aware of. If a legal advocate or support person is available when you are making the call, they can support you in this process. Document the date and time of your call as well as the name of the worker you spoke with. This will be helpful in case you need to subpoena the social worker.

## Making the Call

Contact the child protection agency. The toll-free number for child protection is 1-833-552-2368. The intake worker will ask for details about the situation and record names as well as personal information for all who are involved. If your address and/or phone number is to be kept from your ex-partner for safety reasons, make sure that the worker knows this. You can report anonymously, however this may impact screening.

Tell the child protection worker about any relevant history of violence or abuse toward you that the children have witnessed or are aware of. Think about how your ex-partner may react to the report being made, and share this with the worker as well. For example: Is your ex-partner very charming? Will they deny everything? Will they blame the child or have them lie? Will there be increased safety risks for you and the children?

Tell the worker about the impact the abuse and/or neglect has had on the child. Let them know what you have done to keep your child safe and what kind of support you need from them.

Remember to ask the child protection worker what the follow-up will be and an approximate timeline. Also ask if they have any instructions for you prior to the assigned worker contacting you.

## Common Fears

Many survivors of intimate partner violence are fearful of calling child protection. Historically, professional interventions designed to protect children may unintentionally further victimize parents, most often mothers<sup>51</sup> The default position for many professionals is to place responsibility for keeping a child safe on the child's mother.<sup>52</sup>

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51 Hale, H., Bracewell, K., Bellussi, L., Jenkins, R., Alexander, J., Devaney, J. & Callaghan, J.E.M. (2024). The child protection response to domestic violence and abuse: A scoping review of interagency interventions, models and collaboration. *Journal of Family Violence*, doi.org/10.1007/s10896-024-00681-4

52 Hale, H., Bracewell, K., Bellussi, L., Jenkins, R., Alexander, J., Devaney, J. & Callaghan, J.E.M. (2024). The child protection response to domestic violence and abuse: A scoping review of interagency interventions, models and collaboration. *Journal of Family Violence*, doi.org/10.1007/s10896-024-00681-4

## Impact on Family Court Proceedings

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An order made under child protection legislation (the *Children, Youth & Families Act*) will supersede a prior order made under provincial family legislation or the *Divorce Act*. This means that even if a parenting order was in place before, if a child protection order comes into effect, it will take its place.

## Parenting Time/Access When There are Safety Concerns

Under section 41.(4) of the *Children's Law Act*, withholding access to the other parent is not wrongful when the parent believes, on reasonable grounds, that the child will suffer physical or emotional harm if access is exercised, or if the other parent is impaired by drugs or alcohol at the time of access, or if the court otherwise thinks withholding access is justified.

## Parenting Capacity Assessment

In a child protection case where there are concerns about intimate partner violence, there may be a focus on the survivor's ability to protect the child from harm. This can make survivors feel as though they are being blamed for not protecting their child, rather than supported. The court will be looking at the capacity of the parent who has been the target of the violence to care for the child and to protect the child from further exposure to intimate partner violence. This is assessed through a Parenting Capacity Assessment.

Parenting capacity refers to a parent's capability to safely parent their child long-term. It is different from the term "parenting ability" as an individual may have the skill to parent for a short period of time in specific circumstances (e.g. supervised visits), but not the parenting capacity to parent effectively over the long-term.<sup>53</sup>

A parenting capacity assessment of one or both parents is sometimes requested by one or both of the parties and ordered in complex cases. It is completed by a trained mental health professional, usually a psychologist. The assessment may be used to inform safety planning, a Family Centered Action Plan in Child protection matters, and/or case management decisions.

## Criminal Law and Family Violence

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In addition to your family law case, there may be a criminal matter happening at the same time. This may be because your ex-partner was charged, you were charged, or you were both charged. Family court and criminal court have very different rules. Unfortunately, the courts proceed separately and typically do not communicate with each other.

## When the Police Become Involved

At some point in your relationship, the police may have been called to your home. You may have called them for help. It may have been one of your children, another family member or a neighbour or friend who made the call, because of safety concerns.

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<sup>53</sup> Department of Children, Seniors and Social Development (2019). *Financial Services for families: Parenting capacity assessments*. Protection and in-care: Policy and procedure manual. <https://www.gov.nl.ca/cssd/files/Protection-and-In-Care-Policy-and-Procedure-Manual-April-4-2025.pdf>

What you (or whoever else made the call) may not have known is that, once the police are called, it is the police and not you who make the decisions about what is going to happen. This is because police in Canada follow a mandatory charging policy that requires them to lay charges in “domestic violence” cases where they believe there is evidence a crime has been committed, regardless of the wishes of the victim/survivor.

While this policy was rooted in good intentions and can be helpful to some survivors, it has also proven to be challenging to others. Women who have been subjected to intimate partner violence have become criminalized themselves due to mandatory charge policies when there is evidence of intimate partner violence.<sup>54</sup> There is a lack of acknowledgment of the pattern or cycle of violence in which intimate partner violence generally manifests. Instead, mandatory charge policies react to incident-based occurrences, focusing on the “dominant aggressor.” In some cases, when the police cannot determine who the dominant aggressor is, both parties are charged.

## Benefits of Police Involvement

- There are many benefits of having police involved when you are in an abusive relationship or trying to leave one. Here are a few things to consider: Calling 911 can get you immediate assistance to keep yourself and/or your child safe in an emergency.
- The police can hold your partner/ex-partner accountable through criminal charges and conditions to keep you and/or your child safe.
- Police involvement and charges can be used as evidence of the abuse you have been subjected to in family court.
- Some survivors feel that when police lay the charges instead of them, it takes the pressure off them.
- The police can assist with immediate safety planning, like obtaining an Emergency Protection Order, issuing extra patrols, or placing a “hazard” on the residential address.
- When survivors feel pressure from family or friends to drop the charges, they can explain that it is out of their control and that the police are the ones to lay the charges.
- By calling the police for help, you are showing your partner/ex-partner, child and others that you will not tolerate the abuse any longer.

## Concerns About Police Involvement

- Once the police become involved, you may have some of the following concerns: You may not have wanted your partner/ex-partner to be charged because you are concerned they will become more abusive in response; you didn’t want their employment to be jeopardized; you did not want them to spend time in jail; or you did not want to testify in a trial.
- Once the police are involved, much of the decision-making is out of your hands.

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54 Goodmark, L. (2023). *Imperfect victims: Criminalized survivors and the promise of abolition feminism*. University of California Press: Berkeley, CA

- Calling the police may lead to involvement of child protection authorities.
- If your family or your partner/ex-partner is in the midst of an immigration or refugee process, you may not have wanted a criminal charge to threaten your partner's or your family's status in Canada. If you or your partner are in Canada illegally or either of you already has a criminal record, you may be worried about what may happen once police are involved.
- You may be worried that conditions restricting your partner/ex-partner's access to firearms will impact their ability to hunt or trap.
- You may be worried about the impact on your child.
- You may be worried about backlash from friends, family or your community.
- You and/or your partner/ex-partner may have had bad experiences in the past with police, such as racism or other forms of unjust treatment.

## How Your Partner/Ex-partner May Respond

Your partner/ex-partner or members of their family may put pressure on you to ask the Crown Attorney to drop the charges, lie in court or compromise the case in some way. Your partner/ex-partner may tell you that if you do this, they will change, the abuse will stop, or, if you have already separated, they may promise to let you have whatever you want in your family court case.

It is important to consider the impact on your credibility and leverage in family court if you change your statement or interfere with the criminal court process. Credibility is language used by the courts. It refers to how trustworthy a witness is, based on how sincere or accurate they are.

If you feel threatened or pressured by your partner/ex-partner at any point, let your Victim Services worker and, if you have one, your family law lawyer, know what is going on. A lawyer can help you develop strategies to document and resist manipulation and intimidation.

## Contact Between Your Children and the Other Parent<sup>55</sup>

- If your partner/ex-partner has been released by police or court, there are some key things to consider with respect to parenting and the release conditions. Do the release conditions state that the accused cannot communicate directly or indirectly with you or appear at any place you may be?
- Do the no-contact conditions include the child? There may also be a condition in place that allows your partner/ex-partner to communicate with you about the child through a third party.
- Accused persons can and often do apply to have release conditions modified by a court in order to allow contact with the survivor to make parenting arrangements. Therefore, it is important that you ask the Crown Attorney or your Victim Services Coordinator to keep you informed about any applications to change the release conditions.

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55 Department of Justice Canada. (2021). *HELP toolkit: Identifying and responding to family violence for family law legal advisers*. <https://www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>

- Do the release conditions allow your ex-partner to communicate with the child (and sometimes even you) as permitted by a family court order dated after the release document? If so, it will be important to identify any parameters you may want. You may need to advocate against direct communication in your family court pleadings if you do not feel this would be safe for you and/or your child.

If you don't have a lawyer, make sure any contact you have with your partner/ex-partner is safe and in accordance with their release conditions. Make arrangements that you think are emotionally and physically safe for you and your child. Perhaps a trusted friend or family member would be willing to be present during visits or to assist with exchanging the child for visits with the other parent so you do not have to have direct contact.

## Understanding the Proceedings

While not common, family court documents can be used for cross-examination purposes in criminal court if the matter goes to trial. A criminal lawyer may review the pleadings, and cross-examine you about any inconsistencies. For this reason, once the immediate considerations relating to the child are handled, your family law case might slow down until the criminal case has been dealt with. It is a good idea to speak with a lawyer if there are ongoing criminal and family proceedings.

### If There is a Guilty Plea in Criminal Court<sup>56</sup>

If your ex-partner enters a guilty plea, there will be an Agreed Statement of Facts. This is a written document that outlines the facts everyone involved in a legal case agrees are true. You, or your lawyer if you have one, can request a transcript of any guilty plea or resolution so you can understand the charges your ex-partner pleaded to and the facts they admitted.

### If Your Ex-Partner is Acquitted in Criminal Court

An acquittal, meaning there is no finding of guilt, in criminal court does not necessarily keep the incident out of family court because the two systems have different standards of proof: beyond reasonable doubt versus balance of probabilities. Even if your partner/ex-partner is found not guilty in criminal court, you can raise your concerns about the abuse in your family court case. In addition, family violence does not have to be criminal in nature to be relevant in the family law case.

### If You Have Been Charged

It is the police officer's job to examine the evidence, interview witnesses and determine if charges should be laid. In some cases, the police may lay charges against you or against both you and your partner.

If you do not believe that the police officers who dealt with your case had an adequate understanding of the situation, then it is important to find support as soon as possible. There are some circumstances where injuries are caused in self-defence, and there may be a clear imbalance of strength, size and/or power that needs to be considered. If you are concerned about this, you may want to contact a legal advocate who can help to advocate for you with the

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<sup>56</sup> Department of Justice Canada. (2021). *HELP toolkit: Identifying and responding to family violence for family law legal advisers*. <https://www.justice.gc.ca/eng//fl-df/help-aide/docs/help-toolkit.pdf>

police. Also, be sure to speak with a criminal defence lawyer who has experience working with survivors who have been subjected to abuse and are facing charges regarding their abuser.

For additional information on reporting intimate partner violence to the police and prosecuting intimate partner violence related charges, please visit: <https://journeyproject.ca/publications/>

## **Concurrent Legal Proceedings - What You Need to Know**

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### **Standards of Proof**

The purposes of criminal court and family court are different, as are the standards of proof. Different standards of proof are required by different courts in order to establish guilt/liability. So even if your partner is found not guilty in criminal court, you can still raise the issue of abuse in your family court case.

### **Family**

In family court, the standard of proof is on a balance of probabilities, which means the judge has to believe that one person's story is more likely than not to be true as compared to the other person's story. This is a much lower standard of proof than that required in criminal court, which is beyond a reasonable doubt.

### **Child Protection**

Proceedings of the provincial government department responsible for child protection are civil in nature, and unlike criminal matters, the intent in those matters is not to punish the parent but to protect the child. The finding in a civil matter is based "on the balance of probabilities" unlike criminal proceedings, which are based on the standard "beyond a reasonable doubt." A factual finding that any particular incident has occurred is not required, but rather that there is potential or actual risk to the child.

### **Criminal**

In Canada's legal system, a person charged with a criminal offence is considered innocent until proven guilty. This means that although the survivor sees the accused as guilty, the court does not. The judge (or jury) must be convinced *beyond a reasonable doubt* that the accused is guilty. This is a high standard of proof. If there is a reasonable doubt, the accused must be found not guilty. Even if the court thinks the accused is maybe guilty, or even probably guilty - that is not enough to convict the accused.

### **Duty to Report**

There are some situations where there is a legal duty to report.

The *Children, Youth and Families Act* is the law in Newfoundland and Labrador, and it requires *every* person to immediately report suspected abuse and/or neglect for children (under age 16) and youth (ages 16 and 17).

The *Adult Protection Act* is the law in Newfoundland and Labrador which protects adults who do not understand or appreciate the risk of abuse and neglect. This law requires

everyone to report suspected neglect or abuse.

Under the *Gunshot and Stab Wound Reporting Act*, health care facilities and ambulance services in Newfoundland and Labrador are required by law to report gunshot and stab wounds to the police. Professionals like emergency room physicians and nurses who believe that an adult seeking treatment for injuries suffered those injuries as a result of intimate partner violence may encourage them to report to the police or go to a shelter, however at the time of publication they are only mandated to report gunshot and stab wounds.

While not required by law, most service providers will disclose confidential information when there is an imminent risk of death or serious bodily harm to the client or others. This might include contacting mental health support or emergency services and only sharing necessary information.

## **Evidence**

One type of evidence that is generally not allowed in most courts is “hearsay” evidence. As noted previously, hearsay is information being offered for its truth, that a witness learned from someone else, but for which the witness does not have firsthand knowledge.

### **Criminal**

Hearsay evidence is generally considered inadmissible in criminal matters. This means that it is not accepted in criminal proceedings and cannot be used to support a case.

### **Child Protection**

The rules for evidence in child protection proceedings are more relaxed than criminal matters. Sometimes, hearsay can be introduced as evidence under the rules of exception. The exception is that the evidence is both *reliable* and *relevant*. Courts typically want to spare children the experience of testifying in court, and children may refuse or be unable to recount their views to court. Children’s views can be transmitted to court through third party reports. For example, reports from a social worker, teacher, child psychologist, paediatrician or other trusted individual may be permitted as reliable evidence. Generally, it is at the discretion of the judge to determine if hearsay evidence is reliable and relevant.

### **Family**

The rules for evidence in family court proceedings are more relaxed than criminal matters. Sometimes, hearsay can be introduced as evidence under the rules of exception. The exception is that the evidence is both *reliable* and *necessary*.





The Journey Project exists to strengthen justice supports for survivors of sexual violence and intimate partner violence.

The Journey Project was founded in 2017 as a collaborative initiative of Public Legal Information Association of NL and End Sexual Violence NL.

Journey supports survivors of any age and any gender and is provincial in scope. This means people living anywhere in Newfoundland and Labrador can access our services. It also means that anyone who has experienced sexual violence and/or intimate partner violence in Newfoundland and Labrador can access our services – even if they are living in another province, or another country.

The Journey Project team is grateful to every survivor who has informed this project and our work.

**[www.journeyproject.ca](http://www.journeyproject.ca)**