

Your Family, Your Rights:

A Woman's Guide to Family Law

Tri-City Transitions Society

Table of Contents

Who is this booklet for?.....	pg 3
Family violence	pg 4
What should I know if I want to move out?.....	pg 5
<i>Where can I get help?</i>	
<i>What should I take with me?</i>	
What are my legal rights when I'm moving out?	pg 6
<i>What if I need to come back to pick something up?</i>	
<i>Should I bring my kids with me?</i>	
<i>Will I lose the house if I leave?</i>	
<i>What about my "common-law" relationship?</i>	
What can I do to protect my finances?	pg 7
<i>How much money am I legally allowed to take out of our accounts?</i>	
<i>How can I prevent him from emptying our accounts and charging things to our lines of credit?</i>	
What is family court?.....	pg 8
What is mediation?	pg 9
How can the courts keep my kids and me safe?	pg 10
<i>What is a court order?</i>	
<i>What do court orders do?</i>	
<i>What is the difference between an order made in family court and an order from criminal court?</i>	
<i>What kind of criminal court orders can help to keep me safe?</i>	
What are the different kinds of family court orders?	pg 11
What are the orders called as I go through the court system?	pg 12
What are my options when going through the family court system?	pg 13
How can I apply for legal aid?	pg 14
<i>What financial information does legal aid look at to determine if I qualify?</i>	
<i>What should I bring with me when I go to apply?</i>	
What can I do if my legal aid application is refused?.....	pg 15
What do I need to know about working with a lawyer?.....	pg 16
How can I get the most out of the time I spend with my lawyer?.....	pg 17
What do I need to know about representing myself in court?.....	pg 18
Glossary.....	pg 19-20



Who is this booklet for?

This guidebook is for women who live in British Columbia who are survivors of family violence and who have separated or are considering separating from a partner. Using this guidebook can help you better understand your rights and build the confidence you need if you decide to begin an action in family court. It will also help you access resources available to women escaping domestic violence in the Lower Mainland. The guidebook contains general legal information only --it is **NOT** to be used as legal advice for your specific problem. It will not replace getting help from a lawyer, but it may give you some tools to begin addressing your family law concerns. Note: Many of the legal terms used in the guidebook are explained in the glossary at the end. It can be helpful to learn about these terms, even if they seem straightforward. Also, although abusers may be of any gender and may have a family relationship to you other than as a partner or spouse, this guidebook uses the words “he” and “your partner”.



It may be that, if you have experienced violence in your relationship, you find it difficult to process and retain information. This is completely normal and may be a result of the trauma you are dealing with.

If you are finding it hard to go through this booklet, or would like answers to any questions you might have, please feel free to speak to your community support worker or legal advocate. They can help explain some of this material and assist you in making a



Family Violence

The family law system has provisions in place to help protect women who are survivors of family violence. However, the legal system is complicated and it can sometimes be difficult to access the supports and protections that you need. This guidebook can help you recognize when your rights are not being upheld and let you know more about the provisions that are available to protect you.

Abuse occurs when one family member, who is frequently a partner in an intimate relationship, attempts to dominate and control another. Abuse that includes physical violence is known as domestic violence. Abuse is much more than just physical violence. An abuser will often use a combination of methods to achieve control including:

- Physical violence (such as pushing, shoving, hitting, or strangling)
- Threats, intimidation, or coercion
- Harassment and stalking
- Mental and emotional abuse
- Financial abuse
- Sexual abuse
- Spiritual abuse

Your abuser may even use the legal system and his knowledge about his own rights as a new way to control you and your children. For this and many other reasons it's important to know how the legal system works and what rights you are entitled to.

What is "family violence?"

The Family Law Act defines family violence as abuse of a family member, which includes physical abuse (but not reasonable force used in self-defence or in defence of others), sexual abuse, and psychological or emotional abuse including intimidation, harassment, threats, stalking, intentional damage to your personal things, and unreasonable restrictions on your personal finances.

In the case of a child, family violence includes direct or indirect exposure to family violence. The presence of family violence can be used in the courts to help decide who will have guardianship, parental responsibilities, and parenting time with the kids. It does not matter if the abuse is directed at the kids or at another member of the family, such as you. In either case, the judge must take into consideration the fact that being exposed to family violence is not in the best interests of the child.

What should I know if I want to move out?

There's no rule that says when you can and can't move out, or that you must tell your spouse ahead of time that you're moving out. If there has been violence between you and your spouse, however, you might want to consider making a safety plan before leaving the relationship.

Separating from a partner is often one of the most dangerous times for a woman in an abusive relationship. Having a plan of when you are going to leave, what you are going to bring with you, and where you are going to go can help ensure you are as safe as possible. If you need help with this process, you can contact your local women's centre, transition house, second stage service, or counselling service to develop your personalized safety plan.

Where can I get help?

If you feel that you are in **immediate danger**, call **9-1-1** or the non-emergency police number to speak to the authorities in your area.

NOTE: the Port Coquitlam non-emergency number is 604-945-1550.

If you are looking to get connected to your local women's centre, transition house, or other service available to women escaping partner violence you can call **VictimLINK** at **1-800-563-0808**. This 24-hour line provides immediate crisis support for victims of family and sexual violence, as well as information about and referrals to victim's services.



What should I take with me?

If you are considering pursuing a court action, it is best to plan ahead and make sure that you bring any documents you may need to take to court as evidence. Many of these items will already be accounted for in your safety plan; it is very important however, to make sure you have as much of the relevant paperwork as possible. The more of this information you have to present in court, the better.

Finances and Assets

If you are able to safely collect some of your financial statements, you can present them to the court when requesting child or spousal support payments. You can also use these if you decide to apply for income assistance (welfare).

- ☐ Credit card statements
- ☐ Bank statements
- ☐ Records of loans or other debts
- ☐ Copies of recent pay stubs or T4 slips
- ☐ Records of any other income (for example: Employment Insurance, Worker's Compensation, or Social Assistance)
- ☐ RRSP and investment account statements
- ☐ A list of assets you own (and any related records)
- ☐ Records relating to your home, such as a deed, a lease/rental agreement, or insurance papers
- ☐ Tax returns for at least three years
- ☐ Copies of your spouse's financial information, such as pay stubs, tax returns, company records and ledgers, bank accounts, investments, and RRSPs

Other items to consider taking:

- ☐ Your marriage certificate, if you're married
- ☐ Your BC Services Card (or CareCard) and other health and dental insurance cards
- ☐ Your driver's licence, SIN card, birth certificate, passport, and any immigration papers you may have
- ☐ Your children's birth certificates, passports and BC Services Cards
- ☐ Medications and prescriptions
- ☐ Your children's clothing, furniture, and personal belongings
- ☐ A record of your spouse's SIN Number, BC Services Card number, and date of birth

"What are my legal rights when I'm moving out?"

What if I need to come back to pick something up?

If you realize that you have forgotten to bring something with you and you don't believe it's safe to go back to the home to pick it up, you can contact the RCMP or local police to accompany you to your partner's house.

Should I bring my kids with me?

If you are concerned for your children's safety, bring them with you when you leave.

Who the kids stay with after you and your partner separate may also have an impact on future court decisions about guardianship, parenting arrangements, and contact under the *Family Law Act*, or about custody and access under the *Divorce Act*. The "best interests of the child" must be the only consideration in any agreement or court order about these issues.

If your partner is the parent of your kids and has lived with them at some point in their lives, he is a guardian. If he has not lived with the kids, he may still be a guardian if he falls under an exception to this rule, for example if he regularly cares for the child. If he is a guardian, you will both remain guardians and share parenting responsibilities and parenting time under the law until an agreement or court order changes this arrangement.

However, if since you separated he has been uninvolved in taking care of your kids, the court may be more likely to give you greater parenting responsibilities and parenting time. In exceptional cases, a court may remove his guardianship. If he is not a guardian, a court may still order that he can have contact with the kids.

Will I lose the house if I leave?

You may be worried that if you leave, this will affect who gets what. Don't worry; if you have a right to a share in the property, you won't lose it by moving out. However, if you move out of the home while your spouse remains, it might be difficult later to convince the court that you should be allowed to return.

If you are married, haven't started a court case yet, and the property is only in your spouse's name, you may want to consider filing a *Land (Spouse Protection) Act* entry against the home to prevent your spouse from selling the property without notice to you. If a court case has started, married and unmarried spouses can also file a certificate of pending litigation, sometimes called a "*lis pendens*", against the home under the *Land Title Act* to protect your interest in the property from creditors.

What about my "common-law" relationship?

The property division rules also apply to unmarried couples who have lived together in a marriage-like relationship for at least two years. These so-called "common-law" couples, just like married couples, will generally share any property that you two got while you were together, including your home.

What can I do to protect my finances?

If you and your partner share finances or assets, you might want to think about taking some steps to protecting the assets that you have a right to.

If you have shared accounts, you are legally allowed to take a certain amount of money out of them to provide for yourself and your kids. You are also allowed to take steps to prevent him from emptying your accounts or racking up your line of credit.

How much money am I legally allowed to take out of our accounts?

If you have a joint bank account with your partner, you can take up to half the money in the account.

If you have an income and your spouse doesn't, consider not taking anything. This might put you in a better position when you go in front of the court to split up your finances and property.

How can I prevent him from emptying our accounts and charging things to our lines of credit?

Bank Accounts and Credit Cards

- Let your bank and your creditors know you have separated. If you can, have your name removed from any joint bank accounts or credit cards.
- If your spouse has signing authority or debiting authority on any of your accounts you should consider canceling his authority.
- You can ask the bank to make your accounts "deposit only" (so that no more withdrawals can be made and the only transactions that can take place are deposits).
- You can also ask to have your credit limit reduced to the current balance owing.

Insurance, Pensions and RRSPs

- If your spouse is currently the beneficiary, you may want to change the beneficiary of your insurance policies, pensions, and RRSP accounts.



What is family court?

The civil legal system settles disputes, or “claims”, between private parties such as spouses. Civil law includes family law matters such as divorce, property division, guardianship of children, and both child and spousal support.

	Criminal Court	Civil Court
<i>At which court are matters heard?</i>	Criminal law matters are heard in either Provincial or Supreme Court; however, most cases will be heard in Provincial Court.	Civil law matters are also heard in either Provincial or Supreme Court, although not all family law matters can be heard in Provincial Court. NOTE: Most parties will choose to bring matters such as guardianship to Provincial Court because it is less costly and less formal, but divorce and property division issues can only be handled in Supreme Court.
<i>Are the police involved?</i>	Yes, police are involved in the investigation process including the gathering of evidence.	No, civil court cases involve issues between private parties, so the police do not get involved.
<i>What lawyers get involved?</i>	A government lawyer called Crown counsel represents the state. Crown counsel does not represent you. A defence lawyer may represent the accused. If the accused has no lawyer, he represents himself.	Each person can arrange for a lawyer to represent them or can represent themselves in court. Even if you plan to represent yourself, it is a good idea to seek legal advice from a lawyer along the way.
<i>What is my role?</i>	If you have been a victim of violence you may be called as a witness for the Crown. You may also choose to make a Victim Impact Statement, which is considered in the sentencing process.	If you are going to family court to deal with matters between yourself and your partner, you are one of the two private parties in the matter.
<i>What happens as a result?</i>	The judge or jury will find the person who is accused of committing the crime either guilty or not guilty.	Generally, the court will make an order telling each party what they must do or what they are entitled to (for example, regarding child support, parenting arrangements, etc.) based on what they have asked for and the evidence and arguments presented by each side.
<i>Are there punishments?</i>	A person who is found guilty of a crime will be sentenced. Sentencing may include measures such as fines, orders that require the guilty person to satisfy certain conditions, or imprisonment. Many factors are taken into account during the sentencing process, including the impact of the crime and the circumstances in which it occurred.	The judge may order that one party pay an amount of money to another party, but there are no punishments like fines or imprisonment. NOTE: There are some exceptions. For example, if a person breaches (disobeys) a protection order and the police are called, then the person who breached the order may be charged with a criminal offence.

In mediation, two people sit down with a worker who is specially trained to help them reach an agreement on their family law issues. The mediator helps both parties to agree on a middle ground that gives each of them some of what they want. Their role isn't to make any of the decisions (like a judge) or give you legal advice (like a lawyer). Recent changes to family law in British Columbia mean that judges are often required to order couples to try to solve their concerns through mediation rather than the court system.

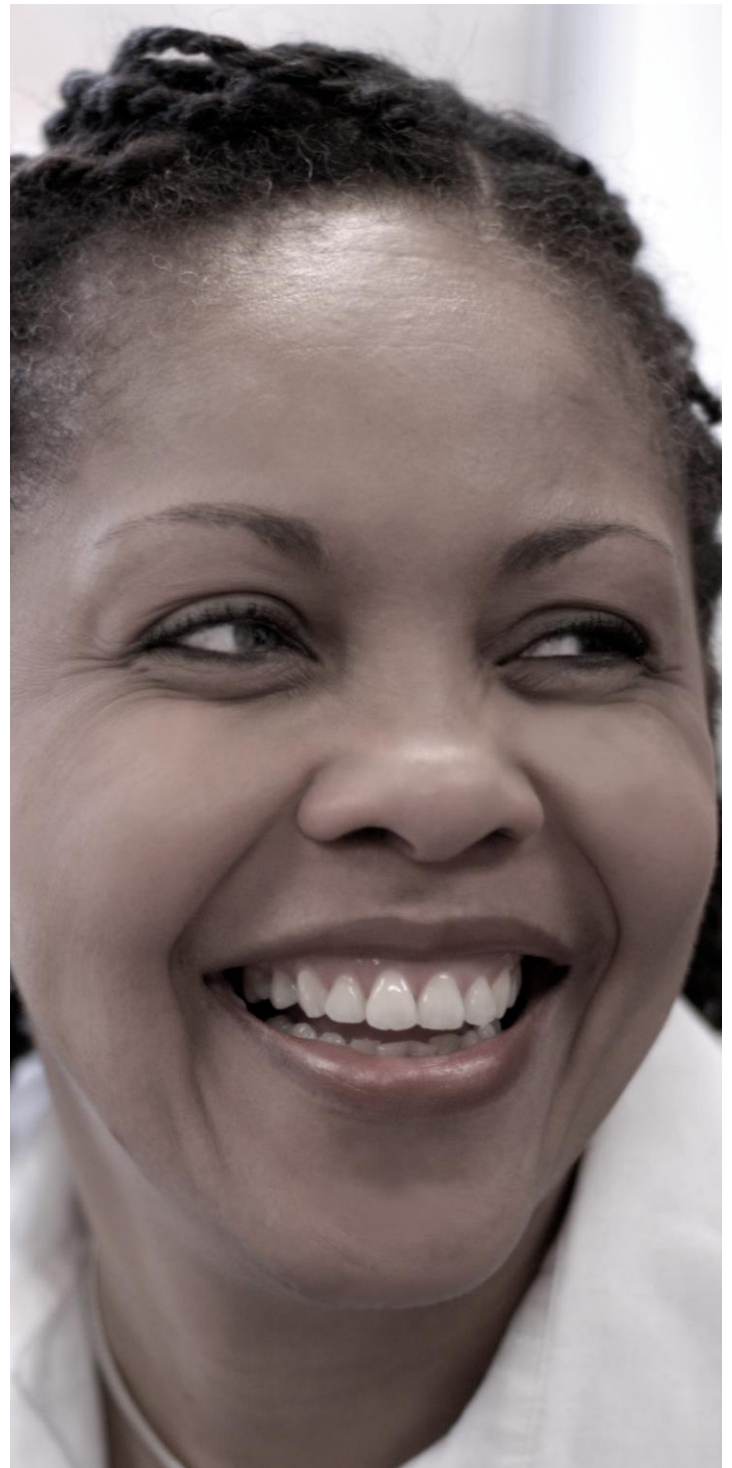
Do I have to go to mediation?

If you have experienced violence or emotional abuse, or you are afraid for your safety or the safety of your children, mediation may be a way for your partner to continue abusing you and your family. It may seem like if you go to mediation you might be able to make things more peaceful with your partner, but mediation can easily become another way for him to hurt you. He may use mediation to pressure you into giving him what he wants or threaten that he will take you to court if you do not give him what he is asking for.

It is the judge, family justice counselor, mediator, or lawyer's job to recognize when mediation is not a safe option for you. However, if you are in court and the violence you experienced is not being discussed, you can disclose to the judge that you don't want to go to mediation because there has been a history of family violence.

If you feel concerned about the idea of disclosing that you have experienced abuse in the courtroom, it may help to talk to a family law advocate or community victim support worker before going to court (see our resource section for numbers to call).

If you do decide to go to mediation, we recommend that you consider seeing a lawyer before making any final decisions or agreements to make sure that you're getting what you deserve.



What is mediation?

Is it right for me?

How can the courts help keep my kids and me safe?

What is a court order?

A court order is a legal document that outlines what each party is or is not allowed to do. It also outlines legal duties (when a person legally *must* do something, such as pay child support). Orders become effective on the day that they are made, unless the judge decides otherwise.

What do court orders do?

There are two main types of orders that you can ask a judge to give you: protection orders, which are safety-related, and non-safety related orders such as conduct orders.

What is the difference between family court orders and criminal court orders?

Orders made in the criminal court and orders made in the family court are largely the same. You can sometimes have orders from both systems at the same time. The biggest difference is that criminal court orders are always enforceable using the police and in family law system, only protection orders are enforceable in this way.

What if there is a conflict between orders made in family court and criminal court?

Safety-related orders always take priority over other orders regardless of which court system made them. For example, you may have a protection order in place that says your partner is not allowed to communicate with you. You may also have a court order that says your partner can have contact with your child. The protection order will overrule the contact order if you have to communicate with each other to arrange for contact.

What kind of criminal court orders can help to keep me safe?

A **no-contact order** is any court order that requires that your partner not see or speak to you in any way (including by email or text messaging) and if the court believes that your kids are in danger too, that he may not see or speak to them either. A no-contact order may be imposed on your partner during the criminal justice process after charges have been laid as a condition of release from custody before trial (bail), instead of or after imprisonment (jail) as a condition of probation, or as part of a conditional sentence. A no-contact order may also be imposed as a condition of a peace bond or of a family law protection order.

A **peace bond** is a court order made under the *Criminal Code* that is used to try and stop a possible future assault from occurring. It requires your partner to “keep the peace and be of good behaviour” and may include other conditions, such as a no-contact order. A peace bond is not a plea or finding of guilt. There does not need to be proof that the person has committed a criminal offence, only that you have reasonable grounds to fear for your safety or the safety of your children. To get a peace bond you must call the police. They will ask you why you are afraid, and apply for the order to be made by a judge or justice of the peace in Provincial Court.



What are the different kinds of Family court orders?

	Safety-Related Orders	Other Orders
What are these orders called?	Protection orders (previously known as “restraining orders”).	Court orders, conduct orders.
What does it do?	Protection orders are used to limit a family member’s contact with you when you fear for your safety or there is a risk of your partner hurting you again.	These court orders decide who is responsible for completing specific actions (for example, who has the kids when, who has to pay spousal support, and so on).
When can I get one?	You can ask for a protection order any time you are afraid that a family member is going to hurt or harass you.	Whenever you apply for an order deciding something that does not directly impact your safety (i.e. you want to have primary parenting responsibilities and your partner to not have contact).
Do the police enforce this?	Yes; if your partner breaches (disobeys) a protection order by doing something he has been ordered not to do, you can call the police. It is likely they will arrest him and he may be charged with a criminal offence.	No; conduct orders are not criminally enforced like protection orders are, but there are other enforcement mechanisms in place. An example of this is the Family Maintenance Enforcement program, which forces your partner to pay his child or spousal support. You can also apply to the Provincial court for enforcement of an order.
Examples of what this kind of order might cover:	<ul style="list-style-type: none"> • Restrict one party from contacting the other. • Stop your partner from visiting the family home. • Control stalking and harassment. • Prevent your partner from owning a weapon. 	<ul style="list-style-type: none"> • Determine who the kids live with. • Decide how you and your partner communicate. • Order your partner to attend counseling. • Establish who is going to live in the family home, and who will pay the utility bills, mortgage, and other expenses.

What should I do with my order once I’ve got a copy of it?

If you are affected by a family law protection order, a peace bond, or any other no-contact order, you may want to make sure you have a copy with you at all times. This way, if your partner breaks the rules and tries to contact you, you will be able to call the police and provide them with the copy right away. It may also be useful to take a copy to your child’s school or daycare and ask the teacher or caregiver to keep it on file.

What are the orders called as I go through the court system?

It is very common to have to go back to court many times when you are dealing with a family law matter. Often, things need to have a short-term solution before the permanent judgment (a final order) is made. When this is the case, they will make an **interim** (temporary) order. Once you and your partner have either settled on an agreement or been through a family trial, the judge will make a **final** (permanent) order.

What is it called?	Ex Parte Order (emergency interim order)	Interim Order	Final Order
What does it do?	<p>If you fear for your immediate safety an ex parte order may be a good choice for you.</p> <p>An ex parte order is a kind of interim order granted in case of emergency. It is made without notifying the opposing party (your partner) that you are going in front of a judge.</p>	<p>An interim or interlocutory order is a temporary condition (or set of temporary conditions) that is put in place before a judge makes a final order.</p>	<p>Final orders lay out what the judge decides at your last court appearance. They are the last word in who gets what and who has which responsibilities.</p> <p>Final orders can take time. Often you will have to go to court quite a few times before you can get a final order.</p>
How do I get one?	<p>Make an appointment with your lawyer or with family duty counsel*. You will have to fill out some paperwork and file those papers at the courthouse.</p> <p>You will then be given a day when you will be asked to go in front of a judge and talk about what you are asking for and why your situation is an emergency. Your partner will NOT be at this appearance.</p>	<p>Make an appointment with your lawyer or with family duty counsel*. You will have to fill out some paperwork and file it in the courthouse.</p> <p>You will then be given a day when you and your partner will be asked to go in front of a judge and talk about what order you want and why. The judge will listen to both sides and then decide.</p>	<p>A final order is usually the result of a family law trial (a long appearance at court at which you show evidence to the judge to establish that you should get what you're asking for) or a settlement agreement (when you and your partner agree on what you want to happen).</p>
What happens once I have some?	<p>The court may or may not make the order you request. Once an order is made, you must follow the order starting right away. It will be sent to the other person and they may ask the court to hear their side of the story. After hearing the other person's side of the story, the judge may set aside or change the order.</p>	<p>You and your partner must both follow the order starting right away.</p>	<p>You and your spouse must both follow the order starting right away.</p>
How long does it last?	<p>, or until you have another hearing and a judge varies the order (changes it) or sets it aside (cancels it).</p>	<p>This order will last for one year unless the judge says otherwise, or until you have another hearing and a judge varies the order (changes it) or sets it aside (cancels it).</p>	<p>Once a judge makes a final decision, you are bound by it, whether you like the outcome or not. It may be possible to appeal to a higher court. If you want to appeal, you should seek legal advice.</p>

* "family duty counsel" is a free lawyer in the court house available to the public, who can help you fill out forms, decide what to apply for, and tell you about the procedures used in family court.

Legal aid in British Columbia is provided by the Legal Services Society (LSS). Legal aid eligibility is determined based on reviewing financial information and establishing that your legal problem is covered by the legal aid rules, which include “serious family problems”. If you’re uncertain whether you might qualify for legal aid, don’t rule yourself out. Speak to an intake legal assistant by phone or at your legal aid office.

If you have suffered family violence, if you have serious health issues resulting from family violence, or if you or your children are in danger, you can use these reasons to help explain why you think you should qualify for legal aid.

What financial information does legal aid look at to determine if I qualify?

- **Monthly income** such as employment income, income assistance, pensions and benefits, child and spousal support, student loans, and income from your spouse (married or unmarried) if you still have access to it.
- **Assets** such as the family home, vehicles, business assets, RRSPs, and other real or personal property.
- **Deductions** for certain expenses, which may include daycare, MSP, child or spousal support payments, medical necessities, travel costs for access visits.

What should I bring with me when I go to apply?

- Any financial information relating to your income, assets, and possible deductions (for more detail on these categories, see the legal aid website).
- This may include pay stubs, tax returns, bank and credit card statements, and proof of the value of any assets or deductible expenses you have.
- Any existing court orders or other papers you have relating to your case.
- A written list of the concerns and questions you want to raise with a lawyer. This will help identify if you have a legal issue that falls within the legal aid rules.
- Put any documentation in chronological order. It is a good idea to keep a list of the documents you have.

To apply for legal aid, you can contact the call centre at 604-408-2172 or visit one of the two Surrey offices:

2620 Mary Hill Road, Room 323

Port Coquitlam, BC V3C 3B2

Phone: 604-472-0638

Mon- Thu: 9 am- 4 pm

Closed: 12:30 pm- 1:30 pm

***"How can I
apply for legal
aid?"***

If you have been declined legal aid, you may be able to appeal your legal aid decision. The intake legal assistant who refused your application can provide you with a "Legal Aid Application – Refused" form.

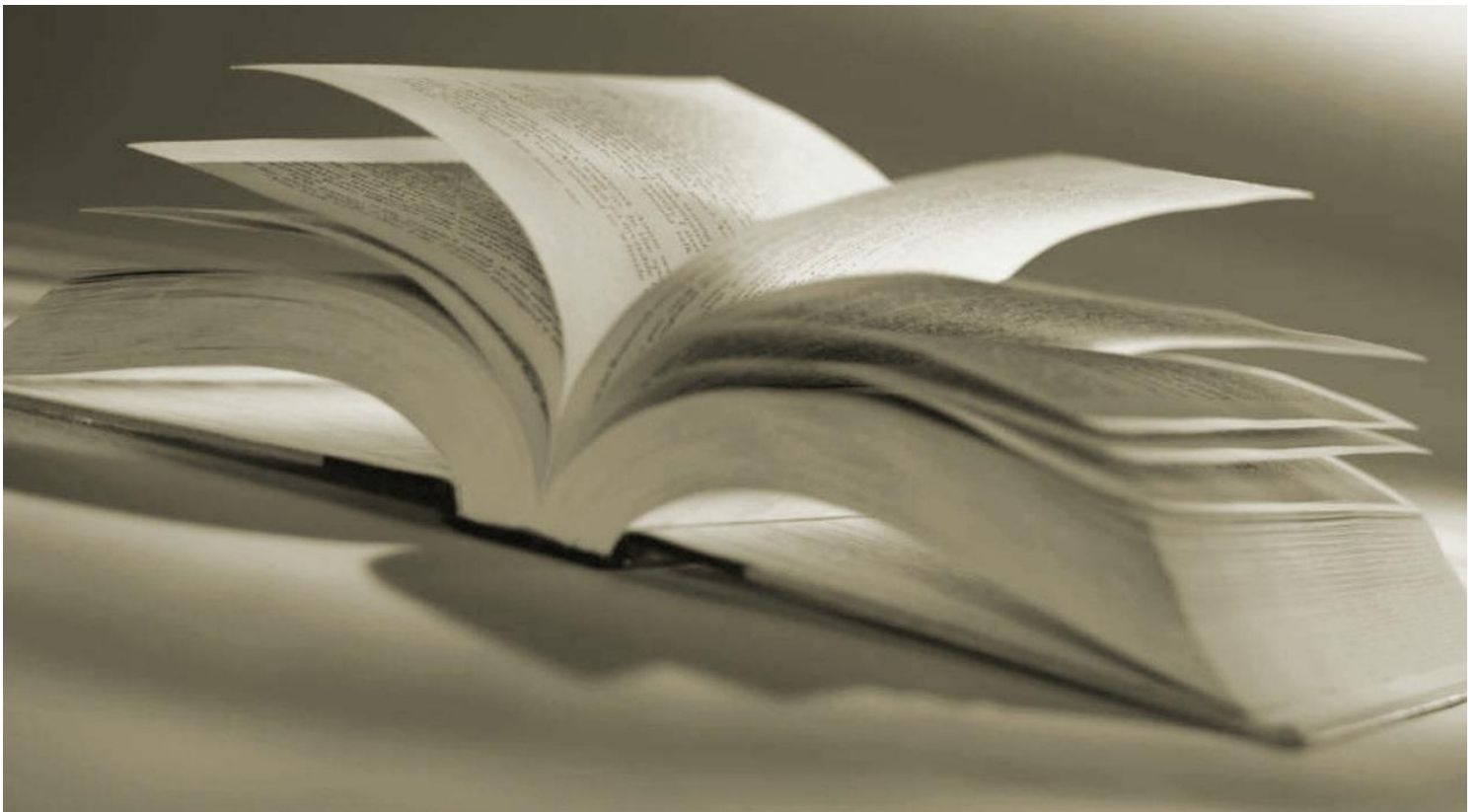
Requests for reviews *must* be in writing within 30 days of your original refusal and should outline your reasons for disagreeing with the decision. It is also helpful to include copies of supporting documentation.

If there is anything special about your case that prevents you from being able to represent yourself, or if something in your situation has changed (finances, for example) it may help to draw attention to this in your request for review.

The review decision may take up to three weeks and you will be notified of the decision by mail.

You can submit your letter of appeal to:

Provincial Supervisor, Legal Aid Applications
#425 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787



What can I do if my legal aid application is refused?

What do I need to know about working with a lawyer?

In your first meeting with a lawyer they will ask you for any information you have about your case and what you want the final results to be. After they have an understanding of what is going on right now and what changes you would like to see they should explain: confidentiality (which means that your lawyer cannot discuss your case with others without your permission), your role and their role, and the legal process.

The role of a lawyer is not to decide what will happen with your case, but rather to tell you what your options are and let you decide. Often they will advise you on what they think will be most likely to get you what you want but at the end of the day all of the big decisions should be made by you.

Your lawyer should:

- Acknowledge that you are in charge.
- Tell you what to expect.
- Explain when things should happen.
- Tell you what's important in your case.
- Estimate what things will cost.
- Help you analyze the cost-effectiveness of various strategies.
- Explain delays or date changes.
- Explain the risks of going to trial versus settling.
- Prepare you for your trial if you have one.

Your lawyer should NOT:

- Encourage you to reconcile with your partner if you don't want to.
- Pressure you into settling on an agreement with the other side that you are not satisfied with.
- Make any of the major decisions about what will happen with the case.
- Tell you that you are guaranteed to get what you want.



Whether you are using a legal aid lawyer and have only a limited amount of hours, or you have paid for a lawyer and are trying to keep your costs down, preparation can help you use your time wisely.

Here are some things you can do to help get the most out of your time with your lawyer:

- Write down the history of your relationship in chronological order and bring it to your first meeting with the lawyer. This can help you organize your thoughts and remember what you want to say.
- Include any abuse of you or the children, evidence of the abuse such as witnesses or medical reports, any financial information, and any related history with the courts. Record specific dates if you can.
- Tell your story honestly and straightforwardly, even if something has happened that you think might reflect badly on you.
- Keep it brief, but be prepared to answer questions.
- Make a written list of your questions and concerns before you meet or call your lawyer. Consider in advance what you want to accomplish and prioritize your most urgent concerns, such as safety.
- Gather any relevant documents and put them in chronological order to give to your lawyer. It may be useful to keep a list of all the documents you have.
- Keep copies of all correspondence from your lawyer, and from your partner and his lawyer.
- Keep copies of any agreements or court orders.
- Take notes when you meet with your lawyer so you can refer back to what they have already told you.
- Maximize your time with your support worker or counselor so that your time with a lawyer deals with legal issues only and minimal emotional support.
- Only contact your lawyer when necessary – every call or visit costs money or uses up your legal aid hours.
- Remember that you are in charge. The lawyer is there as a tool to help you understand your options and decide your next steps. Ultimately, you decide.

What do I need to know about representing myself in court?

If you don't have access to a lawyer through legal aid and you're unable to hire one yourself, you may need to attend your court dates by yourself. This is called self-representing. You will be a self-represented litigant.

Going to court when representing yourself can be challenging, as you may be required to face your partner and will have to speak directly to the judge about your matter. The judges in British Columbia are used to seeing self-represented people and know that you are doing your best to work through the system. However, they have to remain impartial. They cannot give you legal advice or present your case for you.

These are a few things that you can do to make your experience representing yourself in court a little bit easier:

Consult a lawyer. Even if you do not qualify for legal aid, you may still be able to access legal advice through the Legal Services Society from family duty counsel, family advice lawyers, or the Family LawLINE. You can also try seeking legal advice through pro bono or student legal clinics such as Access Pro Bono (604-878-7400). Access Pro Bono clinics offer 30-minute free consultations with a lawyer. The lawyer will be able to provide you with useful tips about your case, and can be very helpful in answering some of your more specific family law questions.

Take advantage of community resources. Connecting with a legal advocate or community outreach worker can also help to guide you through legal process. They can also help you explore other services to support you through this challenging time such as crisis housing, income assistance, or counseling.

Research some helpful information. There are lots of guides and websites available to help you navigate the family law system. These can be excellent, but keep in mind that few if any are targeted for women who have survived domestic violence, and may not consider some of the important needs of a woman in your a position.

Take a support person with you. You are welcome to bring a legal advocate, friend, or family member to sit in the gallery behind the bar during the hearing.

Try to be as prepared as possible. Double check that you have brought everything you need. Try to dress in business-like clothing. Note that hats, cellphones, food, drinks, and gum are not allowed in the courtroom.

Try to be as courteous and respectful as possible at all times during your hearing, both to the judge and your partner. Try your best not to make any rude or disparaging comments. Try to control any angry reactions you might be feeling. You can respond to any accusations made when it is your chance to speak.

NOTE: *For some women who have experienced partner violence, having aggressive reactions to situations is a very natural part of how their body deals with the trauma they have experienced. If you are experiencing a lot of strong emotions it may help to speak to a counselor or support worker for extra support.*

Prepare what you want to say. Before going in front of a judge, write out why you want the orders you're requesting, why they are important, and why the opposing party should not receive what they are asking for. Bringing papers with everything in point form will help you remember what you want to say during the day of your appearance.

What is court harassment?

Court-related abuse and harassment happens when your partner uses the legal system or repeated or ongoing legal actions to continue hurting you.

Examples of this includes:

- *Constantly threatens to go to court to take your kids away.*
- *Repeatedly delays court actions causing you to have to pay for a lawyer while nothing is happening with your case.*
- *Uses the police and the Ministry of Child and Family Services to make false accusations about your history and parenting ability.*
- *Claims that he is the one who has been abused or humiliates you by disclosing information about your past that is not related to the legal issue.*

If you are worried that your partner is using the court system to harass you, you may want to speak to a lawyer or legal advocate about what your options are.

Glossary

This glossary explains terms very generally. You may need to seek further information or advice. Some terms in this glossary may not apply to your situation. For example, different terms are used under the Divorce Act and the Family Law Act to describe care of and time with children. Try to find out which set of laws applies to you. (If you are dealing with care of and time with children in Provincial Court, you will use the terms from the Family Law Act. If you are dealing with these issues in Supreme Court and you married your partner, you may have the option of using (or you may already be using) the Divorce Act instead.) This guidebook focusses on the Family Law Act. Unless otherwise noted, the terms in this glossary are explained in the context of the Family Law Act.

“access” is a term used under the *Divorce Act* to refer to the time (agreed to or ordered by a court) that children spend with someone other than a person who has custody. This is similar to “contact” with a child under the *Family Law Act*.

“best interests of the child” When making a decision about guardianship, parenting arrangements, or contact with a child, the parties and the court are required to consider only what would be in the best interests of the child. To figure out what arrangement would best suit the child, all of their needs and circumstances must be considered. This can include the following factors:

- the child's health and emotional well-being;
- the child's views;
- the nature and strength of the relationships between the child and significant people in the child's life;
- who has historically taken care of the child;
- the child's need for stability, given the child's age;
- the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- any civil or criminal proceeding relevant to the child's safety, security or well-being.

“child support” is a form of financial support that one parent pays to another in order to provide for the needs of the children. Who pays child support and what amount is paid depends largely how much time the children spend with each parent and the financial circumstances of each parent. In order to get child support from your partner, you need to either reach a reasonable agreement on how much he will pay per month or you can go to court to get an order.

“contact” People who are not guardians (including parents who are not guardians) may have contact with a child. A person may have contact as a result of court order or agreement among all of the child's guardians. Contact may be on certain terms such as supervision (meaning a third party is there while your partner is with the kids). The *Divorce Act* uses the term “access”.

“custody” is a term used under the *Divorce Act*. Having custody means the child lives with you at least some times and you have responsibility for caring for the child and making decisions about the child. This is similar to having guardianship, parental responsibilities, and parenting time under the *Family Law Act*.

“divorce” is the legal ending of a marriage under the *Divorce Act*. If you are legally married and have not divorced, you cannot marry another person. Couples who are not married do not need a divorce. You have to make an application in the BC Supreme Court for a court order to get a divorce. The Provincial Court cannot make a divorce order. Divorces are granted on the basis of a breakdown of the marriage. The most common way to establish a breakdown of the marriage is to show that you and your spouse have lived separately and apart for at least one year before the divorce proceeding. Reasonable arrangements for the children (child support) must be in place before you can get a divorce.

Glossary

"family debt" is any financial obligation that you or your spouse have that was entered into either during your relationship or, if it is for the purpose of maintain family property, after your relationship ended. When you separate, responsibility for family debt must be divided equally between you and your spouse, unless you make an agreement dividing your debt unequally or the court thinks it would be "significantly unfair" to divide the debt equally. Property (and debt) division issues must be dealt with by agreement or in BC Supreme Court. The Provincial Court cannot make property division orders.

"family member" Abuse by a person of any of their family members is family violence (see "family violence", below). It means:

- a person's spouse or former spouse
- a person with whom the person is living, or has lived, in a marriage-like relationship,
- a parent or guardian of the person's child
- a person who lives with and is related to the person or to a person mentioned in any of the three bullet points above
- a person's child
- a child who is living with, or whose parent or guardian is, a person referred to in any of the five bullet points above

"family property" is primarily composed of the assets either you or your spouse got during the relationship and owned by one of you on the date that you separate. When you separate and you are trying to divide your assets, family property must be divided equally between you and your spouse, unless you make an agreement dividing your property unequally or the court thinks it would be "significantly unfair" to divide the property equally. This property includes money, homes, vehicles, investments, and so on. Some things, such as property you or your spouse got before your relationship began, inheritances, and gifts to one of you from someone else, are not included in family property. This is called "excluded property". Property division issues must be dealt with by agreement or in BC Supreme Court. The Provincial Court cannot make property division orders.

"family residence" When dealing with property division, the "family residence" is a residence owned or leased by one or both spouses and the place the you and your spouse ordinarily live. The Supreme Court can make temporary orders about who can live in the family residence and who can access property stored at the family residence while you and your spouse sort out property division issues. The Provincial Court cannot make property division orders.

"family violence" is considered by the court when making orders about your safety or your children. It includes:

- physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- sexual abuse of a family member,
- attempts to physically or sexually abuse a family member,
- psychological or emotional abuse of a family member, including
- intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
- unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- stalking or following of the family member,
- intentional damage to property, and
- in the case of a child, direct or indirect exposure to family violence (this includes violence towards you that your children witnessed).

"guardianship" A guardian is a person who is responsible for caring for and making decisions for a child. Parents who live together after their child's birth are both the child's guardians. If you and your partner have separated since the birth of your child, you are both still considered your child's guardians, unless a court order or an agreement between all of the child's guardians says otherwise. If a parent never lived with the child, then that parent is not a guardian unless he or she regularly cares for the child or is appointed as a guardian by a court order or agreement with the child's other guardians. People other than parents can sometimes be guardians, but they must have a court order or a will naming them as guardians. Guardians, and only guardians, have parental responsibilities and parenting time.

"parenting arrangements" state what each guardian is required to do in caring for the child (parental responsibilities) and who will have the child when (parenting time). Only guardians can have parental responsibilities and parenting time. Parenting arrangements can be agreed to or ordered by a court. The court is not allowed to presume that that parenting time or responsibilities should be allocated or shared equally or that decisions should be made by guardians separately or together. In making parenting arrangements you, your partner, and the court are required to consider the best interests of the child only (see "best interests of the child", above).

"parental responsibilities" As a guardian, it is your duty to make decisions respecting your kids that are in their best interests. Parental responsibilities may be allocated individually or shared together among guardians.

"parenting time" means the time when you (or your child's other guardian) has the kids in your (or their) care. During parenting time, a guardian has care and control of the child and responsibility for day-to-day decision-making.

"protection order" When a person is at risk of family violence, the court may make a protection order against a family member (such as your partner) to help keep the at-risk family member (such as you or your kids) safe. Protection orders used to be called "restraining orders". A protection order can tell your partner not to do certain things, such as communicating with you or your kids; coming to your home, work, or school; following you; or keeping weapons. If your partner does not follow the conditions in the order, the police can arrest him and charge him with a criminal offence.

"property division" is when you split up your assets and debts after separation. The default is that you and your partner each get half of the family property and family debt.

"section 211 report" Section 211 of the *Family Law Act* allows the court to order that an assessment be done by a mental health professional of the needs of a child, the views of a child, or of each party's ability and willingness to provide for the needs of their children. These reports are particularly important where the dispute between the parties is especially fractious and unlikely to settle.

"separation" There is no such thing as a legal separation. You and your spouse separate when you live apart from each other and at least one of you wants to separate. Your spouse does not have to agree to the separation for you to be considered separated. Usually, separation is marked by one partner moving out of the home, but you can still live together and be considered separated as long as you can show that your lives have become separate from each other's in other ways, such as not continuing a sexual relationship and telling friends and family that you have separated. The date of separation can have an impact on some legal issues such as when you can get a divorce, how property is divided, and how long you have to apply for certain orders such as for spousal support.

"separation agreement" This is a form of contract between you and your spouse that you may choose to make when you split up. This agreement is not necessary to show that you are separated (see "separation", above) but it can allow you to settle some of the issues that come with the breakdown of a relationship (such as parenting arrangements, child and spousal support, and property and debt division) without having to go to court for orders.

"spouse" means people who are married or who used to be married; unmarried people who have lived together in a marriage-like relationship for more than two years; and, for some purposes (but not for property division), unmarried people who have lived together in a marriage-like relationship for less than two years but have had a child together. Some things that may show that a relationship is "marriage-like" include living in the same residence, sharing a bed, having a sexual relationship, performing chores for each other, attending social events together, telling others you are a couple, owning property together, supporting each other financially, or raising children together. (When people say "common-law spouses" they usually mean to refer to unmarried spouses as explained in this section, but legally there is no such thing as a "common-law spouse" or "common-law marriage" in British Columbia.)

"spousal support", sometimes called "maintenance", is financial support that you can make an agreement about with your partner or apply to a court for. It means your partner pays you money after you have separated in order to help address financial disadvantage or hardship that has come about as a result of your relationship or break-up. To get a spousal support order from the court, you have to first show that you are entitled to support and then the court will determine what amount of support should be paid.

Tri-City Transitions Society

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