

Family court information for intimate partner abuse survivors in Alberta

Common family law issues

Arrangements for the children after separation			
Applicable laws: <i>Divorce Act</i> (national), <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Parenting order</u>: a court order about parenting arrangements, including parenting time, decision-making responsibilities, and how children will communicate with a parent when not in that parent's care</p> <p><u>Parenting time</u>: time a child is in the care of a parent. It</p>	<p>The woman can only use the <i>Divorce Act</i> for parenting arrangements if she is married and seeking a divorce. Otherwise, she has to use the <i>Family Law Act</i>. Both laws use very similar language and principles.</p> <p><u>Parenting time</u>: Children might spend relatively equal amounts of time with each parent or they might be primarily resident with one and spend less time, often on a scheduled basis, with the other. Parenting time can be supervised if there are concerns for the</p>	<p>Both statutes require family violence to be considered as part of the best interests of the child (BIC) test.</p> <p>The <i>Family Law Act</i> defines family violence broadly as including behaviour by a family or household member "causing or attempting to cause physical harm to the child or another family or household member, including forced confinement or sexual abuse, or causing the child or another family or household member to reasonably fear for his or her safety or that of another person," with the noted exception of acts of self-protection or protection of</p>	<p>Both statutes require the court to only consider the BIC test. Under the <i>Family Law Act's</i> BIC test (section 18), which is very similar to that of the <i>Divorce Act</i> (section 16), the court must prioritize the child's physical, psychological, and emotional safety, and consider all the child's needs and circumstances, including:</p> <ul style="list-style-type: none"> (i) the child's physical, psychological and emotional needs, including the child's need for stability, taking into consideration the child's age and stage of development, (ii) the history of care for the child, (iii) the child's cultural, linguistic, religious and spiritual upbringing and heritage, (iv) the child's views and preferences, to the extent that it is appropriate to ascertain them, (v) any plans proposed for the child's care and upbringing, (vi) any family violence, including its impact on

<p>includes periods when a child is not physically with that parent. For example, when the child is at school.</p> <p><u>Decision-making responsibility:</u> Which parent makes decisions related to the children’s well-being</p>	<p>children’s safety or well-being in the care of a parent.</p> <p><u>Decision-making responsibility:</u> This covers significant decisions, about children primarily in four areas: health; education; culture, language, religion and spirituality, and significant extra-curricular activities.</p> <p>The parents might share responsibility for making these decisions; they might each be given responsibility for specific categories of decision-making or one parent might have all of the responsibility.</p>	<p>another person and reasonable parental discipline.</p> <p>The <i>Divorce Act</i> also defines family violence broadly. It uses a similar definition, with the added addition of stalking/harassment, emotional abuse, financial abuse, psychological abuse, threats of violence, threatened or actual harm to animals or property, coercive control, failure to provide the necessities of life, and exposing a child to family violence.</p>	<p>(a) the safety of the child and other family and household members, (b) the child’s general well-being, (c) the ability of the person who engaged in the family violence to care for and meet the needs of the child, and d) the appropriateness of making an order that would require the guardians to co-operate on issues affecting the child, (vii) the nature, strength and stability of the relationship (a) between the child and each person residing in the child’s household and any other significant person in the child’s life, and (b) between the child and each person in respect of whom an order under this Part would apply, (viii) the ability and willingness of each person in respect of whom an order under this Part would apply (a) to care for and meet the needs of the child, and (b) to communicate and co-operate on issues affecting the child, (ix) taking into consideration the views of the child’s current guardians, the benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian, (x) the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship, and (xi) any civil or criminal proceedings that are relevant to the safety or well-being of the child.</p>
<p>For more information on the <i>Divorce Act</i> see: The Law and Parenting after Separation from Luke’s Place</p>			

Child support			
Applicable laws: <i>Divorce Act</i> (federal), <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Child Support Guidelines</u>: set out rules and tables for calculating the base amount of child support to be paid.</p>	<p>Both parents are required to contribute to the financial support of their children. Most commonly, the parent with whom the children spend most of their time will receive child support from the other parent.</p> <p>People who have acted in the role of a parent (e.g., step-parents) may also be required to pay support for a child.</p> <p>Child support generally ends when the child reaches the age of majority (18 in Alberta), but it can end earlier if the child becomes independent or run longer if the child is unable to become independent because of illness, disability or other valid reason such as being a full-time student.</p> <p>Parenting time does not affect the obligation to pay child support. Parents have child support</p>	<p>Family violence is not a factor the law or courts consider when determining child support.</p> <p>However, getting child support is often difficult for women who have left abusive partners.</p> <p>Some don't seek support because they are afraid of increased violence by the abuser.</p> <p>Some abusers attempt to coerce their former partner into not seeking child support. They may quit their jobs, hide income and assets and even live in poverty themselves to avoid their child support responsibilities.</p>	<p>The amount of child support is calculated based on the income of the person paying support and the number of children. The income/financial situation of the person receiving the support is not relevant.</p> <p>Where there are child-related expenses that go beyond those intended to be covered by the base level of child support, the court can order the parents to share those expenses in a way that is proportional to their respective incomes. These items, often called "extraordinary expenses" can include the cost of health care or medical treatment not otherwise covered, extra-curricular activities beyond the usual, special education needs and the like.</p> <p>Where the person who has to pay support hides income, provides false information or unnecessarily delays proceedings, the court can proceed without his documents and/or can impute income to him. This means the court assigns him income based on the employment he could have, given his work history, and then calculates how much child support he has to pay based on that.</p> <p>Child and spousal support can be collected by the provincial Maintenance Enforcement Program (MEP), which can also take steps when the person paying support doesn't make or falls behind with their payments. If the parties do not enroll in the enforcement program, child or spousal support is paid directly between the parties (e-transfer, cheque, etc.)</p>

	obligations regardless of whether they spend time with their child.		Courts can vary child support order if the circumstances of the family change; for example, a child leaves home or the person paying the support loses their job. Federal Child Support Guidelines Federal Child Support Tables
--	---	--	---

Spousal support			
Applicable laws: <i>Divorce Act</i> (federal), <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p>The <i>Divorce Act</i> applies only to people who were legally married. For support purposes, the term 'spouse' also includes former spouses, so you can apply for or change spousal support even after the divorce is finalized.</p> <p>In Alberta, both married spouses and Adult Interdependent Partners (AIPs) can apply for spousal support under the <i>Family Law Act</i>.</p> <p>An adult interdependent relationship is when two people have either lived together in a marriage-like relationship for 3 years, signed an Adult Interdependent Partnership agreement, or lived together and had a child together.</p>	<p>If the woman is married and seeking a divorce, she will apply through the federal <i>Divorce Act</i>. If the woman was not married or she is not seeking a divorce, she will need to use the provincial <i>Family Law Act</i>.</p> <p>While child support is the right of every child, there is no right to spousal support (also known as alimony) under either statute. Spousal support is at the judge's discretion.</p> <p>Spousal support eligibility requirements under the <i>Divorce Act</i> are relatively straightforward. Spousal support can be ordered to: (1) compensate a spouse who sacrificed income or career opportunities during the marriage; (2) compensate a spouse for the ongoing care of the children that goes beyond child support; or (3) help a spouse who is in financial</p>	<p>Family violence is not a factor the courts consider when deciding on spousal support.</p> <p>Abusers tend to be reluctant to pay spousal support and may withhold it. Many women avoid pursuing spousal support for fear of making the abuser angry, having to be in contact with them, or having them use it against her.</p> <p>The gendered realities of families and abuse mean that it is usually the woman seeking spousal support. However, some abusers may try to force the woman to pay spousal support, often by misrepresenting the facts (e.g., underreporting income or falsely claiming to have been a stay-at-home parent).</p> <p>Abuse is likely to leave the woman in a worse financial position and thus more likely to have to seek spousal support, for numerous reasons. She may have difficulty keeping a job/be unable to work due to trauma or other health issues resulting from the abuse. The abuser may have engaged in financial abuse tactics, such as making the woman surrender her savings, sabotaging her career, or opening credit cards in her name. The process of leaving an abusive partner can be very expensive (e.g., moving, hiring a lawyer).</p>	<p>Under the <i>Divorce Act</i>, a judge must consider several factors to determine if spousal support should be paid, including:</p> <ul style="list-style-type: none"> • The financial means, needs and circumstances of both spouses; • The length of time the spouses have lived together; • The roles of each spouse during their marriage; • The effect of those roles and the breakdown of the marriage on both spouses' current financial positions; • The ongoing responsibilities for care of the children, if any; <p>Any previous orders, agreements or arrangements already made about spousal support.</p> <p>The <i>Family Law Act</i> considers all of the above factors, and also explicitly considers:</p> <ul style="list-style-type: none"> • Any financial obligations to a third party (e.g., child support for children of a previous marriage or relationship)

	need because of the breakdown of the marriage.		<ul style="list-style-type: none"> • If either spouse/partner has begun a new relationship and if so, how this affects their financial situation
--	--	--	---

Property division			
Applicable laws: <i>Family Property Act</i> (provincial), <i>Adult Interdependent Relationships Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Family home:</u> The home owned or leased by one or both partners that the couple lived in together as their main home.</p> <p><u>Household goods:</u> Personal property that is either owned by both spouses/adult interdependent partners or “was ordinarily used or enjoyed by one or both spouses or adult interdependent partners or one or more of the children residing in the family home for transportation, household, educational, recreational, social or aesthetic purposes.”</p> <p><u>Spouse:</u> A person who is/was married.</p> <p><u>Adult interdependent relationship:</u> A relationship between 2 adult interdependent partners.</p> <p><u>Adult interdependent partner:</u> An adult interdependent relationship in which the parties are romantically involved and have either lived</p>	<p>Certain kinds of property are exempt from equal division. These include inheritances, gifts to one spouse/partner only from a third party, personal injury claims, insurance payouts, and property owned prior to the marriage or adult interdependent relationship.</p>	<p>Abusers often like to make division of property (and everything else) as difficult as possible for women. She should be prepared to have to produce evidence of whether something is family property.</p> <p>The gift exemption applies regardless of what third party gave the gift – for example, if a family member gave the woman an expensive necklace for her birthday, this is not a household good. The abuser would have no legal claim to the necklace, nor to any income the woman may get if she chooses to sell it. However, the abuser may well try to convince the court otherwise.</p>	<p>Under section 8 of the <i>Family Property Act</i>, the factors that will be considered when making a distribution of property include:</p> <ul style="list-style-type: none"> • Each spouse/partner’s financial contributions to the household, including being a homemaker or stay-at-home parent • Each spouse/partner’s contributions to either’s business, farm, enterprise or undertaking • Each spouse/partner’s contributions to the acquisition, improvement or upkeep of shared property (e.g., paying for renovations) • Each spouse/partner’s income, earning capabilities, financial resources, property, obligations and liabilities • The length of the marriage/relationship of interdependence • Whether the property was acquired during separation • The terms of any oral or written agreement • Either spouse/partner’s transfer of property or “substantial gift” to any third party • Any relevant existing court orders

Family court information for intimate partner abuse survivors

together for 3 years, signed an adult interdependent partner agreement, OR both have a child together and live together in a relationship "of some permanence."			<ul style="list-style-type: none">• If either spouse/partner "has dissipated property to the detriment of the other spouse or adult interdependent partner"• Any other relevant factor
---	--	--	---

Exclusive possession of matrimonial home			
Applicable laws: <i>Family Law Act (FLA)</i> (provincial), <i>Family Property Act (FPA)</i> (provincial), <i>Protection Against Family Violence Act (PAFVA)</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Exclusive possession:</u> A court order that gives one spouse/partner the exclusive right to occupy and control the family home or other shared property and forbids the other from doing so.</p> <p><u>Family home:</u> The home the couple lived in while they were together.</p> <p><u>Adult interdependent relationship:</u> A relationship between 2 people who are not married to each other but “share one another’s lives[,] are emotionally committed to one another, and function as an economic and domestic unit.” (Government of Alberta 2020)</p> <p><u>Adult interdependent partner:</u> An adult interdependent relationship in which the parties are romantically involved and have either lived together for 3 years, signed an adult interdependent partner agreement, OR both have a child together and live together in a relationship “of some permanence.”</p>	<p>Only women seeking child support and/or spousal support may apply under the FLA. Otherwise, she will need to use the FPA.</p> <p>Exclusive possession under the FLA and FPA is temporary. It does not change legal ownership or residency – if the abuser’s name is on the deed or lease, it is still their home.</p> <p>If an EPO is made for exclusive occupation under the PAFVA, it will be reviewed within 9 days. At that point it can be revoked or confirmed. Where confirmed, it will become a KPBO and can last up to a year, at which point a further extension can be sought.</p> <p>An EPO can be applied for by a survivor or the police on her behalf with her consent.</p>	<p>Family violence is not officially a factor that Albertan courts consider for exclusive possession under the FLA and FPA. It may be possible to persuade the court to unofficially consider it as part of another mandatory factor (see the following column).</p> <p>Alternate options: She could try to use the family violence to establish that there are no other safe places for her to stay or that she needs to be allowed to change the locks.</p> <p>Best interests of the child: She could try to use the family violence as evidence that keeping the abuser out of the home is safer for the children. She could also argue that staying in the family home means more stability for the children or that going to a women’s shelter would not be in their best interests, particularly if she has teenage sons (many women’s shelters do not allow boys over a certain age).</p> <p>Family violence is the only consideration when seeking exclusive possession as part of an EPO under the PAFVA. In this legislation, family violence is broadly defined to include physical and non-</p>	<p>Official eligibility requirements are for there to be a marriage or interdependent relationship that has broken down to the point where the partners/spouses “cannot live peacefully together” (CPLA.ca).</p> <p>The following factors must be considered by the court with regards to any order for exclusive possession under the FLA and FPA:</p> <ul style="list-style-type: none"> • Alternate options for shelter for either spouse/partner • The best interests of any children involved • Each spouse/partner’s financial situation • Other court orders pertaining to child support, spousal support, and/or division of property • Restrictions or conditions in the rental agreement, if applicable

<p><u>Emergency Protection Order (EPO):</u> A temporary order under the PAFVA, an EPO can include exclusive occupation of a residence for a specified period, regardless of ownership or names on the lease.</p> <p><u>King’s Bench Protection Order (KBPO):</u> A temporary order under the PAFVA that can provide exclusive occupation of a residence for a specified period, regardless of ownership or names on the lease. These orders can be made where the situation does not meet the threshold for exclusive occupation under an EPO.</p>		<p>physical violence that intimidates and causes fear to a family member.</p>	
--	--	---	--

Restraining orders			
Applicable laws: <i>Protection Against Family Violence Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Emergency protection order (EPO):</u> A temporary no-contact order that can be granted in urgent situations involving actual or threatened family violence.</p> <p><u>King’s Bench protection order (KBPO):</u> A no-contact order for situations of family violence that do not meet the threshold for an EPO.</p> <p><u>Restraining order:</u> A no-contact order for situations of violence, stalking or threats, regardless of the relationship between the parties. May be suitable for women who have never lived with their abusive partner and do not have children with them.</p>	<p>In the case of an EPO, the survivor can apply and the police can also apply on behalf of the survivor with her consent.</p> <p>A KBPO normally lasts for 3 months, though it can be up to 1 year and can be renewed up to a further 1 year period. At expiry, a further renewal can be sought.</p> <p>EPOs must be reviewed by a judge within 9 days. There is no way to renew or extend an EPO, but if the court thinks there is still a threat to the survivor when it expires, it can be changed to a KBPO.</p> <p>The PAFVA specifies that a survivor’s history of getting back together with the abuser following a family violence incident is not to be considered by the court as a reason to not grant the order.</p>	<p>EPOs, KBPOs, and restraining orders can all apply to family relationships other than intimate partners, such as in-laws and stepchildren. This could be helpful for situations where the abuser’s family has also been abusive to the woman.</p> <p>Many women fear that seeking a protection order will make things worse. The abuser may become angry and decide to retaliate. It requires the abuser to know where the woman lives and works, as well as the address of any other place they may be required to stay away from (e.g., her brother’s home, her new partner’s workplace, the children’s school or daycare).</p> <p>These orders may not be very helpful when dealing with abusers who demonstrate high-risk attitudes or behaviours, such as emotional volatility, a strong sense of entitlement over the woman, or a failure to accept that the relationship is over. Whether it is worth it to pursue one is ultimately the woman’s decision.</p> <p>The abuser will not know that the woman is applying for an EPO. Only if it is granted will the abuser be notified.</p>	<p>PAFVA section 2(2):</p> <p>“In determining whether an order should be granted, the judge of the Provincial Court or justice of the peace must consider, but is not limited to considering, the following:</p> <p>(a) repealed 2006 c8 s5;</p> <p>(b) the history of family violence by the respondent toward the claimant and other family members;</p> <p>(b.1) whether there is or has been controlling behaviour by the respondent towards the claimant or other family members;</p> <p>(b.2) whether the family violence is repetitive or escalating;</p> <p>(c) the existence of any immediate danger to persons or property;</p> <p>(c.1) the vulnerability of elderly claimants;</p> <p>(c.2) the effect of exposure to family violence on any child of the claimant or on any child who is in the care and custody of the claimant;</p> <p>(d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant;</p> <p>(e) the claimant’s need for a safe environment to arrange for longer-term protection from family violence.</p>

Family court related services

Family Court Process

- Families Change Alberta <https://ab.familieschange.ca/en>
- Alberta court procedures <https://www.alberta.ca/court-procedures>
- Alberta Courts: Family applications – flowchart
<https://www.albertacourts.ca/docs/default-source/qb/family-applications-flow-chart.pdf>
- Alberta Courts: Family desk applications – flowchart
<https://www.albertacourts.ca/docs/default-source/qb/family-desk-applications-flow-chart.pdf>
- Alberta Courts: Legal resources and useful links
<https://www.albertacourts.ca/kb/resources/legal-resources-useful-links>

Family Law Legal Aid

- Family Law – Legal Aid Alberta <https://www.legalaid.ab.ca/services/family-law/>

Family Law Mediation and ADR

- Family Mediation <https://www.alberta.ca/family-mediation>
- Family Law Dispute Resolution Services <https://www.albertacourts.ca/kb/areas-of-law/family/family-law-dispute-resolution-services>

Child Protection

- Ministry of Children and Family Services <https://www.alberta.ca/children-and-family-services>
- How child intervention works <https://www.alberta.ca/how-child-intervention-works>

Family Law Information Centre (FLIC)

- Family Law Information Centres <https://reddeercityvsu.ca/wp-content/uploads/2021/03/Family-Law-Information-Centre-FLIC-Brochure.pdf>
- Calgary Legal Guidance <https://clg.ab.ca/index.php/legal-help/free-legal-info-formerly-dial-a-law/family-law/family-court/>
- Family law assistance <https://www.alberta.ca/family-law-assistance>

Family Court Support for IPV Survivors

- Family violence – Find supports <https://www.alberta.ca/family-violence-find-supports>