

Family court information for intimate partner abuse survivors in British Columbia

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 that sets out 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 includes periods when a child</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 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 have similar definitions of family violence. It includes emotional abuse, physical abuse, sexual abuse, financial abuse, forcible confinement, neglect or failure to provide basic necessities, harassment, stalking, threats or intimidation, patterns of coercive and controlling behaviour, actual or threatened harm to animals or property, and directly or indirectly exposing a child to family violence.</p> <p>The best interests of the child (BIC) test expressly requires family violence to be considered, under both laws. This allows the court to contextualize parenting arrangements in light of</p>	<p>Both statutes require the court to consider only the best interests of the child when making parenting arrangements. Under the <i>Family Law Act</i> (s. 37), the best-interests assessment requires consideration of all of the child's needs and circumstances, including the following factors:</p> <ul style="list-style-type: none"> (a) the child's health and emotional well-being; (b) the child's views, unless it would be inappropriate to consider them; (c) the nature and strength of the relationships between the child and significant persons in the child's life; (d) the history of the child's care; (e) the child's need for stability, given the child's age and stage of development; (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental

<p>is not physically with that parent (e.g., 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>family violence, considering the appropriateness or safety of making an order that requires the parents to extensively collaborate and communicate.</p> <p>Judges are also meant to consider the impact of the family violence on the abuser’s ability to be a safe parent and provide for the child’s needs. For instance, even if the abuser has no history of directly abusing the children and the children never witnessed the abuse or were too young to remember, the history of abuse directed at the survivor may call the abuser’s ability to be a safe parent into question (e.g., a pattern of “exploding” and becoming violent when the mother does something they do not like may suggest a risk of a similar overreaction if the child will not stop crying, engages in normal age-appropriate rebellion, makes a mess, etc).</p>	<p>responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;</p> <p>(g) 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;</p> <p>(h) 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;</p> <p>(i) 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;</p> <p>(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.</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., stepparents) may also be required to pay support for a child.</p> <p>Child support generally ends when the child reaches the age of majority (19 in British Columbia), 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>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 BC Family Maintenance Agency (BCFMA), 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 program, child or spousal support is paid directly between the parties (e-transfer, cheque, etc.)</p> <p>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.</p>

	Parenting time does not affect the obligation to pay child support. Parents have child support obligations regardless of whether they spend time with their child.		Federal Child Support Guidelines Federal Child Support Tables
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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><u>Spouse:</u> 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 British Columbia, the <i>Family Law Act</i> also considers people who have lived together in a marriage-like relationship for 2 years, OR have lived together in a marriage-relationship for an unspecified period of time and have a child together, to be spouses.</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 are relatively straightforward. Under the <i>Divorce Act</i>, 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 need because of the breakdown of the marriage.</p> <p>Spousal support is meant to be a temporary solution. There is an expectation that the</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; • Any previous orders, agreements or arrangements already made about spousal support. <p>The <i>Family Law Act</i> requires the court to consider each spouse's</p>

<p>This definition applies to people who are seeking spousal support.</p> <p><u>Spousal support</u>: Money that one spouse pays to the other, typically on a monthly basis, after the relationship ends.</p>	<p>recipient makes efforts to become able to support themselves.</p> <p>Where there are children, child support takes priority over spousal support. This means that if the abuser cannot afford to pay both child and spousal support (or successfully presents their financial situation that way), the court will only order child support.</p>		<p>circumstances when deciding the amount and duration of spousal support, if any, including the length of time the parties have lived together</p> <ul style="list-style-type: none"> • Each spouse’s role in the relationship • Any existing agreement or order relating to the support of either spouse
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Property division			
Applicable laws: <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Spouse:</u> For property division purposes under the <i>FLA</i>, a spouse includes people who are married or have lived together in a marriage-like relationship for at least 2 continuous years.</p> <p><u>Family property:</u> Property owned by either or both spouses at the time of separation, with some exceptions. It includes money, debt, appliances, real estate, businesses, and more. This kind of property is subject to equal division.</p> <p><u>Excluded property:</u> Property that is not</p>	<p>BC uses an opt-out system for common-law relationships. This means that unless the spouses opt out with a written agreement, common-law relationships are treated the same as marriage for the purposes of property division, including the rule of equal division.</p> <p>Some types of property are excluded from equal division. These include gifts and inheritances intended for one spouse only, property owned prior to the relationship/marriage, and insurance/damage payouts. However: "if the value of excluded property increased during the relationship, that increase in value is considered family property and is divided equally" (Government of BC).</p>	<p>Family violence is not a factor the courts consider in property division.</p> <p>Abusers 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 marital 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 marital property. 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</p>	<p>The court may order unequal division if equal division would create an unfair situation. For example, if the survivor has been a stay-at-home mother for a substantial period and sacrificed career opportunities due to this, property division could be ordered unequally to reflect the reality that she is economically disadvantaged as a result of her role in the relationship. Otherwise, all family property will automatically be divided 50/50.</p> <p>The court may consider one or more of the following when deciding whether to order unequal division, per section 95:</p> <p>(2) (a) the duration of the relationship between the spouses; (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division]; (c) a spouse's contribution to the career or career potential of the other spouse; (d) whether family debt was incurred in the normal course of the relationship between the spouses; (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt; (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends; (g) the fact that a spouse, other than a spouse acting in good faith, (i) substantially reduced the value of family property, or</p>

<p>family property and therefore not subject to equal division.</p>		<p>try to convince the court otherwise.</p>	<p>(ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;</p> <p>(h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;</p> <p>(i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.</p> <p>(3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.</p>
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Exclusive possession of matrimonial home			
Applicable laws: <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Exclusive occupancy:</u> The right to occupy the family home after separation while excluding the other spouse.</p> <p><u>Family home:</u> The home that the couple lived in when they were together.</p> <p><u>Spouse:</u> People who are married to each other OR have lived together in a marriage-like relationship for 2 years OR have lived together in a marriage-like relationship for an unspecified amount of time and have a child together.</p>	<p>Section 90 of the <i>Family Law Act</i> allows for the courts to grant either spouse exclusive occupation of the family home and/or possession or use of personal property to the exclusion of the other spouse.</p> <p>Note that it may be possible the survivor will have to pay the abuser rent or other expenses if he faces financial hardship as a result of being removed from the family home. If the exclusive possession order is part of the terms of a protection order or similar, the court may require the abuser to continue contributing to rent or other household expenses despite no longer living there.</p> <p>Exclusive occupancy orders are not usually permanent. They may expire on a specific date or once certain conditions have been met, such as the divorce being final, the family property issues being resolved, or the end of the children’s school year (especially if it was granted to avoid the children having to change schools in the middle of the school year).</p>	<p>Exclusive occupancy can be an important safety tool for survivors. They can make it much easier to do things like changing the locks or home security system.</p> <p>Family violence is not strictly required to be considered when deciding on exclusive occupancy, beyond the basic question of whether the spouses/partners are able to live together.</p>	<p>The legal issue at hand is whether it is impossible for the spouses/partners to live in the same residence and whether the survivor is the “preferred occupant,” meaning that the “inconvenience” it would cause her to have to leave the home outweighs the convenience of allowing the abuser to stay there. If there are children involved, the most important factor the courts will consider is their best interests.</p> <p>Convincing the court, on a balance of probabilities, that the spouses/partners cannot live together does not strictly require that abuse or safety concerns be established.</p>

Restraining orders			
Applicable laws: <i>Family Law Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Family Law Protection Order</u> (or simply protection order): An order to protect someone from family violence.</p> <p><u>Family member:</u> People related by blood, marriage, guardianship or adoption (including in-laws and common-law relationships) OR people who have a child together OR spouses or people who have lived together in a marriage-like relationship.</p>	<p>According to section 183, a survivor can apply for a protection order herself or someone else can apply on her behalf. The criteria for applying on behalf of someone else is not very clear: "An individual may also apply for a peace bond on behalf of certain others whose personal safety or property is threatened, such as a parent, grandparent, sibling, co-worker or friend" (LegalLine). One may also be ordered "on the court's own initiative."</p> <p>A protection order can restrict the abuser's actions in many ways. This can include (but is not limited to) not contacting the survivor, only contacting the survivor in approved ways (e.g., by email between the hours of 9:00 AM and 12:00 for the purposes of discussing the children), staying away from the survivor's workplace, having the police present when one partner collects their belongings from the family home, and seizing the abuser's firearms.</p>	<p>The <i>Family Law Act</i> defines family violence as emotional abuse, financial abuse, actual or threatened physical or sexual violence, stalking, forcible confinement, neglect, denial of life necessities, actual or threatened harm to animals or property, and exposing a child to family violence.</p> <p>Protection orders are enforced by the police. If there is evidence that the abuser has violated it, they may face criminal charges. This can create a difficult situation for women who are marginalized, have criminal records or precarious immigration statuses, or have police-related trauma.</p>	<p>The legal issue is of whether family violence is an ongoing threat, not whether it has occurred in the past. Indeed, it may be possible to obtain a protection order with no history of family violence if the court believes there is sufficient risk. However: "In Dawson v. Dawson 2014 BCSC 44 the judge said even a single act of family violence in the past may be enough to prove that family violence is likely to occur in the future. A single act may be given less weight if it happened a long time ago. But if the circumstances that contributed to it still exist, a single act could be enough to justify a protection order." (Provincial Court BC 2021)</p> <p>Section 184 of the <i>Family Law Act</i> states that the following factors must be considered when deciding on a protection order:</p> <ul style="list-style-type: none"> • History of family violence • The presence of "repetitive or escalating" violence • Any evidence of a pattern of coercive control • The current relationship status of the parties, especially recent or pending separation • Individual risk factors related to the abuser (drug addictions, recently fired from a job, mental health concerns, access to firearms, history of violence towards others, etc.) • The survivor's own perception of risk • Individual circumstances that may make the survivor more vulnerable (e.g., she is pregnant, elderly, or not financially independent)

Family court related services

Family court support for IPV survivors

- Rise Women’s Legal Centre <https://womenslegalcentre.ca/>

Family court process

- Families Change BC <https://bc.familieschange.ca/en>
- Family Cases – Provincial Court of BC <https://www.provincialcourt.bc.ca/types-of-cases/family-matters>

Family law legal aid

- Legal Aid BC Family Law <https://family.legalaid.bc.ca/>

Family law mediation and ADR

- Mediators – Province of BC <https://www2.gov.bc.ca/gov/content/life-events/divorce/family-justice/who-can-help/mediators>
- Arbitrators – Province of BC <https://www2.gov.bc.ca/gov/content/life-events/divorce/family-justice/who-can-help/arbitrators>

Child protection

- Child Protection Services in BC <https://www2.gov.bc.ca/gov/content/safety/public-safety/protecting-children>
- Child protection process – Legal Aid BC <https://family.legalaid.bc.ca/children/child-protection/child-protection-process>

Family Law Information Centre (FLIC)

- Family Justice Centres <https://www2.gov.bc.ca/gov/content/life-events/divorce/family-justice/who-can-help/family-justice-centres>