



## Legal information for Indigenous women, women with Indigenous children and families on First Nation reserves in Canada

This resource provides general legal information for women who have been subjected to abuse in their relationship and must resolve issues related to safety, parenting arrangements for their children, property division and the enforcement of family law orders.

### Why women may be cautious about family law

Women in Indigenous families may be reluctant to use the family law system when their relationship breaks down for a number of reasons.

- **Colonial systems:** Various levels of government and the legal system have a long history of causing Indigenous communities much harm. Policies, practices and laws have aimed at genocide, cultural assimilation and marginalization. The residential schools and child protection systems have caused and continue to cause harm to generations of Indigenous families.
- **Racism:** A woman, if she has not experienced it herself, will certainly know others who have been subjected to discrimination and racism at both the individual and systemic level.
- **Children's welfare:** Despite the fact that Indigenous peoples make up a small percentage of the country's population, half the children under the age of 14 who are in child protection care are Indigenous. This is more children than Canada sent to residential schools. Women with children fear involvement with child protection authorities, which might well happen if they engage with community and legal services due to family violence.
- **Policing:** The RCMP/police are deeply distrusted because of a history of police violence, inadequate responses and criminalization when seeking help.

## Legal information for Indigenous women, women with Indigenous children and families on First Nation reserves in Canada

- **Value conflict:** The services, procedures and laws a woman will encounter in the family law system may conflict with traditional Indigenous beliefs and values about healing families and communities.
- **Trauma:** Given the impacts of colonialization, the woman and/or her ex-partner may be coping with personal histories of trauma as they try to resolve highly emotional family law issues.
- **Access to justice:** Family law cases are very costly, even when a woman has access to legal aid. Relevant family law information may not be available in a woman's language and interpreters may not be available. While the majority of Indigenous peoples live in urban regions, women living in remote areas have very limited access to lawyers, courts and related supports.

As a result of these very real problems, women in Indigenous communities may be cautious about or unwilling to use the family law system to resolve issues after separation, especially when there is family violence.

However, a woman may not have a choice. Her ex-partner may begin the family law case or she may be forced to access the system for safety reasons and to receive financial support.

If a case is initiated, an abusive ex-partner may exploit these challenges during the proceedings, for example, by threatening to report the woman to child protection authorities if she will not agree to the partner's demands.

### Factors that impact family law cases

If a woman does become involved in the family law system, there are three factors related to Indigeneity that will impact her case:

- If she or her ex-partner is a Status Indian under the *Indian Act*
- If her children are Indigenous
- If she, her partner and/or her children live on a First Nation reserve

### Laws that impact family law cases

According to the federal *Indian Act*, a reserve is federal land that is administered by the First Nation. This means that provincial and territorial laws may not be applicable and family court

## Legal information for Indigenous women, women with Indigenous children and families on First Nation reserves in Canada

orders made under provincial or territorial laws may not be enforceable on the reserve. The exception to this is when a First Nation negotiates self-government, in which case the First Nation has full ownership and jurisdiction over its land.

The federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) gives First Nations the authority to create their own rules for their reserve for property and exclusive possession. When a Band creates rules, it is those rules that apply on their reserve. Otherwise, the federal law will apply.

### Parenting arrangements

The laws for parenting arrangements after separation are the same for everyone in a province or territory, whether they live on a reserve or elsewhere, or are a Status Indian or not.

However, the Indigeneity of the children may be relevant. The federal *Divorce Act* applies to people who were married whether they are Indigenous or not. This law lists a child's Indigenous "upbringing and heritage" as one of the many factors to be considered when determining what is best for the child when deciding parenting arrangements after separation.

Some provincial laws, which apply to everyone not just married people, also include a child's Indigeneity as factor for determining what is best for the children:

- Ontario
- British Columbia
- Saskatchewan
- Manitoba
- Prince Edward Island

The laws in other provinces and the territories do not mention Indigeneity as a factor for consideration when deciding parenting arrangements. This may change as regions align their laws with the federal *Divorce Act*, which was updated in 2021. However, Alberta updated its *Family Law Act* in 2025 and did not include reference to Indigeneity in its best interests of the child test (Section 18).

### Property and the matrimonial home

Matrimonial real property (MRP) refers to any property shared between spouses in a common-law or married relationship that is tied to the land, such as a house.

Where the family property is not on a First Nation, the laws of the province or territory will apply.

## Legal information for Indigenous women, women with Indigenous children and families on First Nation reserves in Canada

However, because MRP law falls under provincial or territorial jurisdiction, it does not apply to property on a First Nation reserve. In this case, the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) applies.

FHRMIRA is applicable if:

- the family home is located on a reserve
- at least one spouse (married and common-law) is a Status Indian, and
- the Band has not established its own rules for property on the reserve.

FHRMIRA sets out:

- how to divide family property on a reserve, and
- the right of parties to remain in the matrimonial home on a reserve, including exclusive possession of that home.

If a woman has property on a reserve, she will want to learn which laws apply to her case. It is highly recommended that she gets legal advice.

### **Enforcement of orders**

Because many First Nation reserves fall under federal jurisdiction, orders made under provincial or territorial laws will have no automatic authority there.

As a result, a woman may have difficulty getting family law orders enforced if she and/or her ex-partner live on a reserve. She will need to ask the First Nation what the policy is on enforcing family court orders on the reserve.

If a woman lives on a reserve or her children will spend time there with their father, she should consider safety and arrangements for the children that limit the ex-partner from taking advantage of enforcement challenges.

If the ex-partner works on his reserve, that income cannot be garnished for child support if the mother is not a Status Indian.

## Legal information for Indigenous women, women with Indigenous children and families on First Nation reserves in Canada

### Protection orders

If a woman and her children do not live on a reserve, she may turn to the laws of the province or territory where she and the children live for a protection order. Such order may protect her and her children and possibly other family members from the abusive ex-partner.

If the family home is located on a First Nations reserve and at least one spouse (married or common-law) is a Status Indian, a woman can seek an Emergency Protection Order (EPO) under the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA).

In the FHRMIRA, family violence is defined as actions committed by a person against:

- their married or common-law partner
- a child who lives in the family home
- any other person who lives in the family home.

The definition includes both physical and non-physical forms of violence.

An EPO can last up to 90 days. It may include exclusive possession of the family home. The factors a court will consider before granting an EPO include:

- the history and nature of family violence
- the existence of immediate danger
- the best interests of the child, including the interest of any child who is a First Nation member to maintain a connection with the First Nation.

### Resources

- [Native Women's Association of Canada](#)
  - [Provincial/Territorial Member Associations](#)
  - [You are Not Alone: A toolkit for Aboriginal women escaping violence](#)
- [Pauktuutit Inuit Women of Canada](#)
  - [Saimaniik Toolkit](#)
- [Les Femmes Michif Otipemisiwak](#)
- [National Indigenous Circle Against Family Violence](#)
- [Matrimonial Real Property](#), National Aboriginal Lands Managers Association (NALMA)
- [National Association of Friendship Centres](#)
  - [Find a Friendship Centre](#)
- [Family justice services](#), a limited list provided by the Government of Canada
- [Experiences of Indigenous families in the family justice system](#), a literature review conducted by Simon Fraser University for the Department of Justice Canada, 2023