

Family court information for intimate partner abuse survivors in Manitoba

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 includes periods</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 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,</p>	<p>Both statutes require courts to consider family violence when determining the best interests of the child (BIC).</p> <p>The <i>Family Law Act</i> defines "family violence" broadly using language that is substantively identical to the <i>Divorce Act</i>. It includes:</p> <p>"any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of</p>	<p>Under section 35 of the <i>Family Law Act</i> and section 16 of the <i>Divorce Act</i>, the court must make decisions solely based on the best interests of the child (BIC). To determine the child's best interests, both statutes require the court to consider all of the child's needs and circumstances. Each statute provides a non-exhaustive list of relevant factors, which are virtually identical in both statutes. The <i>Divorce Act</i> list (s. 16(3)) includes:</p> <p>(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;</p> <p>(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;</p> <p>(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;</p> <p>(d) the history of care of the child;</p>

<p>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>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>Both laws use very similar language and principles.</p>	<p>another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes</p> <p>(a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;</p> <p>(b) sexual abuse;</p> <p>(c) threats to kill or cause bodily harm to any person;</p> <p>(d) harassment, including stalking;</p> <p>(e) the failure to provide the necessities of life;</p> <p>(f) psychological abuse;</p> <p>(g) financial abuse;</p> <p>(h) threats to kill or harm an animal or damage property; and</p> <p>(i) the killing or harming of an animal or the damaging of property”</p>	<p>(e) the child’s views and preferences, giving due weight to the child’s age and maturity, unless they cannot be ascertained;</p> <p>(f) the child’s cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;</p> <p>(g) any plans for the child’s care;</p> <p>(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;</p> <p style="padding-left: 40px;">(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;</p> <p>(j) any family violence and its impact on, among other things,</p> <p style="padding-left: 40px;">(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and</p> <p style="padding-left: 40px;">(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and</p> <p>(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.</p> <p>The <i>Family Law Act</i> also directs the court, when considering family violence (s. 35(3)(j)), to assess additional factors under s. 35(4), including the nature, seriousness, frequency, and timing of the violence; the presence of coercive control; the child’s direct or indirect exposure; harm or risk of harm; safety concerns; fear; and any steps taken to prevent further violence.</p>
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For more information on the *Divorce Act* see: [The Law and Parenting after Separation](#) from Luke’s Place

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 (18 in Manitoba) 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.</p> <p>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 their documents and/or can impute income to them. This means the court assigns them income based on the employment they could have, given their work history, and then calculates how much child support they have to pay based on that.</p> <p>Both 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>

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	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
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Spousal support			
Applicable laws: <i>Divorce Act</i> (federal), <i>Family Law Act</i> (provincial), <i>The Vital Statistics 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><u>Common-law spouse:</u> Defined in the <i>Family Law Act</i> as two people who have either lived together in a romantic relationship for 3 years, share a child and have lived together in a romantic relationship for 1 year OR together have registered a common-law relationship under <i>The Vital Statistics Act</i></p>	<p>If the woman is married and seeking a divorce, she will apply through the federal <i>Divorce Act</i>. If the relationship was common-law 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. 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>Under the <i>Family Law Act</i>, both married spouses and common-law partners are considered spouses for the purposes of spousal</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 Post-Traumatic Stress Disorder (PTSD) 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</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> factors are very similar.</p>

	support. Eligibility requirements are similar to those of the <i>Divorce Act</i> .	leaving an abusive partner can be very expensive (e.g., moving, hiring a lawyer).	
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Property division			
Applicable laws: <i>Family Property Act</i> (provincial), <i>The Vital Statistics Act</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Spouse:</u> Two people who are married to each other.</p> <p><u>Common-law partner:</u> A person who is not married to their partner but has lived with them in a conjugal (marriage-like) relationship for at least 3 continuous years, or who has registered a common-law relationship with them under <i>The Vital Statistics Act</i>.</p> <p><u>Family asset:</u> “an asset owned by two spouses or common-law partners or either of them and used for shelter or transportation, or for household, educational, recreational, social or</p>	<p>Manitoba uses an opt-out system. Essentially, this means that common-law partners are treated the same married spouses for the purposes of property division by default, but it is possible to opt out of this through signing an agreement.</p> <p>Gifts and inheritances that were expressly given to one spouse/partner only are not family assets.</p>	<p>Family violence is not expressly a factor that courts consider in deciding on property division.</p> <p>Abusers like to make division of property (and everything else) as difficult as possible for their former spouse/partner. She should be prepared to have to produce evidence of whether something is a family asset.</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 family asset. The abuser would have no legal claim to the necklace, nor to any income the woman may get if she</p>	<p>Equal division is the default. An exception may be made if equal division would be grossly unfair or unconscionable given any extraordinary financial or other circumstances of the parties or the extraordinary nature or value of any of their assets.</p> <p>Under section 14(2) of the <i>Family Property Act</i>, the court will consider any circumstances that the court deems relevant when deciding whether to order unequal division, including:</p> <ul style="list-style-type: none"> (a) the unreasonable impoverishment by either spouse or common-law partner of the family assets; (b) the amount of the debts and liabilities of each spouse or common-law partner and the circumstances in which they were incurred; (c) any spousal agreement between the spouses; (c.1) any common-law relationship agreement between the common-law partners; (d) the length of time that the spouses have cohabited with each other during their marriage and immediately before their marriage; (d.1) the length of time that the common-law partners have cohabited during their common-law relationship; (e) the length of time that the spouses have lived separate and apart from each other during their marriage; (e.1) the length of time that the common-law partners have lived separate and apart from each other during their common-law relationship;

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<p>aesthetic purposes.” (<i>Family Property Act</i>)</p>		<p>chooses to sell it. However, the abuser may well try to convince the court otherwise.</p>	<p>(f) whether either spouse or common-law partner has assets of an extraordinary value to which this Act does not apply by reason of their having been acquired by way of gift or inheritance; (g) the nature of the assets; and (h) the extent to which the financial means and earning capacity of each spouse or common-law partner has been affected by the responsibilities and other circumstances of the marriage or common-law relationship.</p>
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Exclusive possession of matrimonial home			
Applicable laws: <i>Family Law Act</i> (provincial), <i>Domestic Violence and Stalking Act</i> (DVSA) (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Sole occupation or exclusive occupation:</u> An order under section 80 of the <i>Family Law Act</i> or 14(1)(d) of the <i>Domestic Violence and Stalking Act</i> (DVSA) that gives one spouse the right to occupy the family home and prevents the other from being there, even if they rent or own it.</p> <p><u>Family home:</u> The home that the spouses shared during the marriage or common-law relationship.</p> <p><u>Spouse:</u> Two people who are married to OR in a common-law relationship with each other.</p> <p><u>Common-law spouse:</u> Two people who have either lived together in a romantic relationship for 3 years OR share a child and have lived</p>	<p>Exclusive occupation can be ordered regardless of who legally owns or rents the home. If the woman's name is not on the deed or lease of the family home but the abuser's is, it may still be possible for her to obtain exclusive possession.</p> <p>An exclusive occupation order does not change the legal ownership or tenancy of the family home. The abuser still technically owns or rents the home, even if they are not permitted to enter it.</p>	<p>Orders made under the DVSA are normally temporary.</p> <p>The <i>Family Law Act</i> considers family violence as it relates to the best interests of the child. It defines family violence as physical abuse (including forced confinement), sexual abuse, emotional abuse, financial abuse, harassment, stalking, neglect/failure to provide necessities, threats, violence or threats directed towards animals or property, and exposing children to such acts. The DVSA's definition of domestic violence is very similar, and section 2(2) of it defines stalking as repeated conduct that is harassing or causes the victim to fear for their own safety and that the stalker knows or ought to know is unwelcome.</p> <p>Women leaving abusive partners can expect to have to go to court to ask for this. Because most abusers are driven by a need for power and control and a sense</p>	<p>The court may be more likely to grant exclusive occupation, and/or to grant it for a longer period, if there are children involved and the survivor can demonstrate that it is in their best interests.</p> <p>The <i>Family Law Act</i> does not explicitly require that family violence be established to have taken place for exclusive occupation to be issued. However, it would be unusual for the court to order it without the presence of family violence. If there are children involved, their best interests must be the primary consideration in any decision under this Act.</p> <p>The DVSA does not specify requirements for an exclusive occupation order. However, these are the factors it requires the courts to consider for protection orders, which may include exclusive occupation:</p> <p>6.1(1) (a) the history of domestic violence or stalking committed by the respondent; (b) the nature of the domestic violence or stalking committed by the respondent; (c) whether the domestic violence or stalking is repetitive or escalating;</p>

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<p>together in a romantic relationship for 1 year.</p>		<p>of entitlement over their partner (i.e., they feel that they own her and have a right to control her), it is probably unlikely that exclusive occupation would be agreed to as part of a separation agreement.</p>	<p>(d) whether the domestic violence or stalking is evidence of a pattern of coercive or controlling behaviour respecting the subject; (e) other previous incidents of violence committed by the respondent, including any violence against animals; (f) any mental health concerns involving the respondent; (g) the current status of any relationship between the subject and the respondent, including any recent separation or intention to separate; (h) any other circumstances of the respondent that may increase the risk to the subject, such as (i) substance abuse, (ii) employment or financial difficulties, or (iii) access to firearms or other weapons; (i) any circumstances of the subject that may increase the risk to the subject, such as pregnancy, age, family circumstances, health or economic dependence.</p>
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Restraining orders			
Applicable laws: <i>Domestic Violence and Stalking Act (DVSA)</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Protection order:</u> An order to protect victims of stalking or domestic violence who are in urgent danger. May sometimes be called a restraining order, though this is not the legal term in Manitoba.</p> <p><u>Domestic violence:</u> Defined in section 2(1.1) of the <i>Domestic Violence and Stalking Act (DVSA)</i> as physical abuse, sexual abuse, emotional abuse, forced confinement, damage to property, or threats of any of the above AND the parties in question either share a child or are/have been in a family, marital, or romantic/dating relationship, regardless of whether they have ever lived together.</p> <p><u>Stalking:</u> Defined in section 2(2) as a pattern of behaviour that is either harassing or “causes the other person reasonably, in all the circumstances, to fear for their own safety.” Unlike domestic violence, stalking can apply to any two people, regardless of their relationship.</p>	<p>Under section 8.1(1) of the DVSA, a protection order usually lasts for 3 years. It can be shorter or longer, at the discretion of the justice of the peace. It is also possible to apply to have an expired order renewed, if there is evidence of an ongoing risk of harm.</p> <p>Under section 4(2) of the <i>DVSA</i>, the survivor can either apply for a protection order herself in person or with the assistance of a police officer, lawyer, or a designated person or Protection Order Designate (POD). A POD is typically a Victim Services worker. If someone else is applying on the survivor’s behalf, it may be possible to do so by telephone rather than in person at the courthouse.</p>	<p>If the abuser is “in possession of a firearm,” section 7.1(1) of the DVSA requires all protection orders to include the seizure of all firearms and ammunition.</p> <p>Under section 13(3) of the <i>DVSA</i>, any entity “who directs, authorizes, assents to, permits or participates or acquiesces” an act forbidden under a protection order is also guilty of breaking the protection order. For example, even though the protection order is against the abuser, this means any person who assists the abuser in their stalking or abuse is also guilty of an offence.</p> <p>If the survivor has a child who is either underage or a dependent adult who lacks legal capacity, she may apply for a protection order on her child’s behalf if there is evidence that they are also at urgent risk of violence or stalking from the abuser.</p>	<p>Under section 6.1(1) of the DVSA, the justice of the peace is required to consider the following:</p> <ul style="list-style-type: none"> • The history of the abuse/stalking • The nature of the abuse/stalking • If the abuse/stalking is “repetitive or escalating” • If there is evidence of a pattern of coercive control • The abuser’s history of violence against anyone besides the applicant, including animal abuse • If the abuser has any past or present drug/alcohol/mental health concerns • The current status of the relationship between the abuser and the survivor, especially a recent or pending separation • Factors in the abuser’s life that may increase the risk of serious violence, such as access to firearms, recent stressful events, or financial difficulties • Factors that may increase the survivor’s vulnerability, such as if she is pregnant, highly financially dependent on the abuser, or has a disability

Family court related services

Family Court Process

- Families Change Manitoba <https://mb.familieschange.ca/>
- CLEA <https://www.communitylegal.mb.ca/faqs/procedure/>

Family Law Legal Aid

- Legal Aid Manitoba – Family <https://www.legalaid.mb.ca/services/services-we-provide/family/>

Family Law Mediation and ADR

- Family Law Manitoba – Mediation <https://www.gov.mb.ca/familylaw/resolution/mediation.html>
- Family Law Manitoba – ADR <https://www.gov.mb.ca/familylaw/resolution/alternate-dispute-resolution.html>

Child Protection

- Legal Aid Manitoba – Child Protection <https://www.legalaid.mb.ca/services/services-we-provide/child-protection/>
- Protecting Children from Abuse and Neglect https://www.gov.mb.ca/fs/childfam/child_protection.html
- ManitobaParentZone Child Protection <http://www.manitobaparentzone.ca/mobile/parent-or-caregiver/teens/child-protection.html>

Family Law Information Centre (FLIC)

- Manitoba Family Law Access Centre <https://cfcj-fcjc.org/inventory-of-reforms/manitoba-family-law-access-centre-flac/?lang=fr>

Government site that shows the family court system and who the main officers/players are

- Family Division Procedures <https://www.gov.mb.ca/familylaw/resolution/family-division-procedures.html>
- Court System and Procedures <https://www.gov.mb.ca/familylaw/resolution/court-system-and-procedures.html>