

Family court information for intimate partner abuse survivors in Prince Edward Island

Common family law issues

Arrangements for the children after separation			
Applicable laws: <i>Divorce Act</i> (national), <i>Children's 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>A 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>Children's 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 the <i>Divorce Act</i> and the <i>Children's Law Act</i> or <i>CLA</i> explicitly include family violence in the best interests of the child (BIC) test, including "the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate" (<i>Divorce Act</i> section 16(3)(ii)/<i>CLA</i> section 33(1)(i)(ii)).</p>	<p>Under both laws, decisions about parenting arrangements are made using the BIC test. The <i>Children's Law Act</i>, which contains very similar factors to those in the <i>Divorce Act</i>, states that the court shall consider all factors related to the child's circumstances, including:</p> <ul style="list-style-type: none"> (a) the continuity of care for the child and the possible effect of disruption of that care on the child; (b) the difference in the concept of time, and the developmental capacity of the child; (c) the child's needs, given the child's age and stage of development, including the child's need for stability; (d) the nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life; (e) each parent's willingness to support the development and maintenance of the child's relationship with the other parent; (f) the history of care of the child;

<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>Limited, supervised, or zero parenting time is unusual under the CLA. The survivor should be prepared to produce strong evidence that it is not safe for the children to be alone with their other parent.</p>	<p>(g) the views and preferences of the child, being given due weight in accordance with the age and maturity of the child;</p> <p>(h) the child’s cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;</p> <p>(i) any plans for the child’s care;</p> <p>(j) the ability and willingness of each person in respect of whom an order would apply to care for and meet the needs of the child;</p> <p>(k) the ability and willingness of each person in respect of whom an order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;</p> <p>(l) any family violence and its impact on, among other things,</p> <p style="padding-left: 20px;">(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: 20px;">(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>(m) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and 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>Children’s 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 PEI), 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 obligations regardless of whether they spend time with their child.</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 program, child or spousal support is paid directly between the parties (e-transfer, cheque, etc.)</p>

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intimate partner abuse survivors**

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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' in the <i>Divorce Act</i> also includes former spouses, so you can apply for or change spousal support even after the divorce is finalized.</p> <p><u>The Family Law Act defines spouses more broadly for spousal support purposes, and includes people who are married, have lived together in a conjugal (marriage-like) relationship for at least three continuous years and</u></p>	<p>Spousal support in both the federal and provincial legislation is based on an expectation that people should become as economically independent as possible. Where there are limits to this, spousal support may be ordered.</p> <p>Spousal support is often a temporary arrangement until the person can support themselves, but there are circumstances in which spousal support will run for a long time or permanently. For example, if the marriage has been long-term and traditional, with the wife remaining in the home, or if one spouse has an ongoing and serious medical situation that makes it impossible for them to work.</p>	<p>Family violence is not a factor that 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>Spousal support is calculated based on both parties' incomes and the ability of the person seeking support to support themselves, based on things like education level, disability, the role they took on during the relationship, and the impact of the separation on their finances. For example, if the woman dropped out of university to raise the children and has been a stay-at-home mother for 12 years, the court will consider her to be financially disadvantaged as a result of the relationship/separation.</p> <p>That said, spousal support is normally meant to be temporary and there is an expectation that the survivor will demonstrate efforts to find work, upgrade her education, etc.</p>

<p><u>have lived together in a conjugal relationship and are the natural or adoptive parents of a child (there is no minimum cohabitation period in this situation).</u></p>			
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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>Marital property:</u> Property owned by married spouses, including homes, vehicles, artwork, jewelry and money.</p> <p>Spouse: For property division purposes under the FLA, a spouse includes people who are married, or who have lived with their partner in a conjugal relationship for three years, or who lived with their partner in a conjugal relationship and they share a natural or adoptive child (no time requirements).</p>	<p>Married spouses have an automatic right to 50% of all marital property, regardless of who paid for it or whose name is on the legal documentation.</p> <p>There is no such entitlement for non married spouses. Equal division can be specified in a separation agreement but given what is known about the psychology of abusers, it is usually fair to assume that they will not voluntarily agree to this. In some cases, it may be possible to get a court to order it, but it is best to seek advice from a lawyer.</p> <p>Gifts and inheritances “to only one of the spouses, from a third party” do not count as marital property, and things purchased with such money might not either. This means that the abuser has no claim to inheritances or gifts given to the woman. Regarding gifts from one spouse to another, a lawyer should be consulted.</p>	<p>Abusers love making things as difficult for the woman as possible. When it comes to excluded property, she can expect to have to prove that it was a gift or inheritance for her only. She may face a particular uphill battle with property purchased using money that was a gift or inheritance to only one spouse. Conversely, the abuser might try to claim rightful marital property should be excluded or use gifts they gave her against her.</p>	<p>In the case of married couples, the judge will only order an unequal division of property if equal division would result in a situation that is very unfair and/or jeopardizes the best interests of a child.</p> <p>“The equal division of property rule does not apply to unmarried spouses. When unmarried spouses separate, the person whose name is on the deed or proof of purchase of the asset may be the only one entitled to it. Unmarried spouses are not responsible for each other’s debts, unless they co-signed for the debt or the debt is in both names.” (Family Law on PEI)</p>

Exclusive possession of matrimonial home			
Applicable laws: <i>Family Law Act (FLA)</i> (provincial), <i>Victims of Family Violence Act (VFVA)</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 the exclusive right to occupy the family home and requires the other to stay out.</p> <p><u>Emergency Protection Order (EPO)</u>: Under the <i>Victims of Family Violence Act (VFVA)</i>, exclusive occupation of a residence can be granted as a term of an EPO.</p> <p><u>Victim Assistance Order (VAO)</u>: Under the VFVA, a judge can make an order for exclusive occupation of a residence under the terms of a VAO.</p>	<p>Exclusive possession under the <i>Family Law Act (FLA)</i> is usually temporary. The court will inform the survivor of how long she has exclusive possession for. During this time, she may wish to change the locks, consider whether she wants to permanently remain in the family home, and look for another home if she is not sure she wants to remain.</p> <p>Exclusive possession orders usually only deal with the family home, not other shared property (e.g., vehicles).</p> <p>Exclusive occupation under an EPO can only last for up to 90 days unless it has been extended by a judge. EPO applications are decided by a Justice of the Peace and then reviewed by a Judge within 5 days, at which point the order can be varied or confirmed.</p> <p>Exclusive occupation under a VAO can last longer and can be applied for from a judge when an EPO is about to expire. The VAO can also include other terms of the EPO and terms about parenting of children.</p>	<p>Exclusive possession is virtually only granted in cases of family violence where there is a danger to the survivor or her children, and the former spouses have not been able to agree on the legal issues around the family home.</p> <p>There has to be a finding of family violence before an EPO or VAO can be made. Family violence is defined broadly in the VFVA to include both physical and non-physical forms of violence.</p> <p>Exclusive possession orders under the FLA can take a long time to get. If the situation is urgent, especially if the abuser is still in the family home, the woman may want to seek an EPO or a VAO or find a temporary alternate shelter instead of waiting for an exclusive possession order.</p>	<p>Under the FLA, the court is to consider the following factors before making the order:</p> <ul style="list-style-type: none"> • Best interests of the children • Any other property or support orders • Any written agreement between the parties • The availability of other suitable and affordable accommodations; and • Family violence <p>Where the court has made an interim parenting order in favour of one parent, the court shall make a temporary exclusive possession order in their favour unless the other party can show that it would be inappropriate to do so, considering the factors as listed above.</p>

Restraining orders			
Applicable laws: <i>Family Law Act (FLA)</i> (provincial), <i>Victims of Family Violence Act (VFVA)</i> (provincial)			
Important terms	Summary, general principles	Family violence	How the court decides
<p><u>Restraining order</u>: a court order under the FLA that requires [a] spouse or ex-spouse to stop harassing [the other spouse] and/or [their] children. [A spouse] can only apply for a restraining order if [the couple is] already living apart with no plans to live together again.”</p> <p><u>Common-law spouse</u>: People living together in a romantic relationship, who either share a child or have lived together for 3 years.</p> <p><u>Emergency Protection Order (EPO)</u>: An emergency order to protect survivors of family violence who require immediate assistance. Terms of an EPO can include the requirement for an abuser to refrain from communicating with and stay away from the survivor.</p> <p><u>Victim Assistance Order (VAO)</u>: A longer-term protection order for victims of family violence that can include the same terms as an EPO</p>	<p>EPOs under the <i>Victims of Family Violence Act (VFVA)</i> can provide many different types of protection for the survivor. In addition to not contacting the survivor/her children or going to her home, the abuser may be ordered to stay away from people close to her or from additional locations, refrain from tampering with utilities, pay their share of rent or bills, or not interfere with the survivor’s belongings. This is not an exhaustive list.</p> <p>VAOs are a longer-term version of EPOs. They can also grant exclusive possession or take away or limit the abuser’s decision-making responsibility/parenting time.</p> <p>Applications for an EPO are made without notice to the other party. If granted, EPOs only become effective once the papers have been served on the abuser. In some cases, an exception may be made if the court feels that the abuser is intentionally avoiding being served.</p> <p>Survivors cannot apply for EPOs themselves. An approved professional, typically either a police officer or Victim Services, must do so on their behalf. This can be done 24/7.</p> <p>Survivors apply for VAOs themselves. A VAO Kit can be obtained from Victim Services. Applications for a VAO have to be served on the other party first, and then a summary hearing will be held in</p>	<p>There has to be a finding of family violence before an EPO or VAO can be made. Family violence is defined broadly in the VFVA to include both physical and non-physical forms of violence.</p>	<p>People must have already separated from their partner before they can apply for a restraining order under the FLA.</p> <p>In deciding whether to grant an EPO, the court has to be satisfied that family violence has occurred and that the situation is urgent. In considering whether to grant both an EPO and VAO, the court is to consider the nature of the family violence, the history of family violence, the existence of immediate danger to the victim and the best interest of the victim or any child or other person in the care of the victim.</p>

	<p>front of a judge. Applications for VAOs are to be decided within 10 days or as soon as possible thereafter.</p> <p>For more information, see Court Orders for Your Protection.</p>		
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Family court related services

Family Court System and Process

- Families Change PEI <https://pe.familieschange.ca/en>
- CLIA Family Law <https://legalinfopei.ca/information/family-law>

Family Law Legal Aid

- PEI Legal Aid <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/legal-aid>
- Family Legal Aid Charlottetown: 902-368-6656; Summerside: 902-888-8066

Family Law Mediation and ADR

- Child Focused Parenting Plan Mediation <https://www.princeedwardisland.ca/en/information/justice-and-public-safety/child-focused-parenting-plan-mediation>
- Mediation PEI <http://www.mediationpei.com/family-mediation/>
- Families Change Video on Mediation <https://pe.familieschange.ca/en/kids/law/mediation>
- Resolving Conflict Outside of Court <https://legalinfopei.ca/resolving-conflict-outside-of-court/>

Child Protection

- Child Protection Services PEI <https://www.princeedwardisland.ca/en/topic/child-protection-services>
- PEI's Child Welfare System <https://cwrp.ca/sites/default/files/publications/en/PEIchildwelfaresystem61E.pdf>

Family Law Information Centre (FLIC)

- Family Law Centre PEI <https://www.princeedwardisland.ca/en/topic/family-law>
- The Honourable C.R. McQuaid Family Law Centre <https://www.princeedwardisland.ca/en/building/honourable-cr-mcquaid-family-law-centre>

Family Court Support for IPV Survivors

- Anderson House <https://fvps.ca/anderson-house-housing/>
- Family Court Counsellors <https://pe.familieschange.ca/en/parents/where-can-we-get-more-help>