



MOTHERS LEAVING ABUSIVE PARTNERS

Family Law Information



Legal
Services
Society

August 2016

Mothers Leaving Abusive Partners: Family Law Information is a joint publication of the YWCA Metro Vancouver and the Legal Services Society (LSS).

© 2016 YWCA Metro Vancouver and Legal Services Society, BC

First edition: 2008

Second edition: August 2016

ISSN: 2371-6614 (Print)

ISSN: 2371-6622 (Online)

Acknowledgements

Writer: YWCA Metro Vancouver

Editors: Lesley Cameron and Judy Clarke

Designer: Brian Goncalves

Legal reviewer: Salima Samnani

Thanks to all those who participated in user testing of the booklet.

The YWCA Metro Vancouver gratefully acknowledges the Law Foundation of British Columbia for funding this publication.

This booklet provides general information on British Columbia law only. The information in this booklet is not intended to offer specific legal advice. Information in this guide is accurate as of August 2016.

This booklet may not be commercially reproduced, but copying for other purposes, with credit, is encouraged.

See the back cover to find out how to get free copies of this booklet.

The YWCA Metro Vancouver is a progressive, non-profit organization dedicated to achieving women's equality. It is a registered charity, providing a range of integrated services for women and their families, and those seeking to improve the quality of their lives. From early learning and care to housing, health and fitness, employment services, and leadership, the YWCA Metro Vancouver touches lives in communities throughout Metro Vancouver.

The Legal Services Society is a non-profit organization that provides legal aid to British Columbians. LSS is separate from the BC government, its primary funder. It also receives grants from the Law Foundation and the Notary Foundation (of BC).



Contents

Who Is This Guide For?	1
What Is Abuse?	1
“Family violence” under BC law.	2
Where to Get Help	4
Women’s Centres and Transition Houses	4
The Police	4
Family Justice Counsellors	5
Lawyers	6
Legal Aid Lawyers	8
What Does Legal Aid Pay For?	8
How to Protect Yourself and Your Children	11
Protection Order	11
Peace Bond	12
No-Contact Conditions	12
Once You Have the Document	14
How Can the Courts Help?	15
Criminal Court	15
Provincial Family Court	16
Supreme Court	18
Family Case Conferences and Judicial Case Conferences	19
Mediation	19
What Will Happen to the Children?	22
Family Law Act Language (Provincial Court)	22
Divorce Act Language (Supreme Court)	23
Deciding Parenting Arrangements	24
Staying Safe While Transferring the Children	26
Parenting Responsibilities	28
What Does “in the Best Interests of the Child” Mean?	30
How to Leave and Take Your Children with You	31

Frequently Asked Questions33

 Will the abuse stop when I leave my partner?33

 Do I have to let my children see my ex-partner
 before I get a court order?33

 Can my children decide which parent they want
 to live with?35

 Will the judge decide that my ex-partner is
 dangerous to our child because I was abused?35

 Will the judge let my ex-partner have parenting
 time or contact with the child if they’ve hurt
 the child in the past?36

 My ex-partner doesn’t show up for parenting time
 with the children. What should I do?37

 I don’t want my children going on visits with
 my ex-partner. Can I stop it?37

 When can visits be stopped?38

 My children have seen my ex-partner abuse me.
 What can I do to help them?39

 What if my children tell me they were hurt
 or abused?40

 My ex-partner won’t pay their child support.
 Can I stop their parenting time or contact?41

 The judge has asked for a Section 211 report.
 What does this mean?.....41

 My ex-partner says that they’re the victim of
 “parental alienation syndrome.” What does that
 mean and what should I do?43

 Can I leave our community with my children?.....44

Other Resources.....45

Checklist: What to Take When You Leave.....46

Who Is This Guide For?

This guide is for women with or without children who've been abused by their intimate partner (such as a spouse, boyfriend, or girlfriend).

If your intimate partner is violent or abusive, their violence or abuse could get worse if you leave or threaten to leave.

This booklet gives you information to help you:

- stay as safe as possible when you leave your intimate partner, and
- understand and use the legal system.

We refer to your intimate partner in this booklet as your partner or ex-partner.

What Is Abuse?

There are many types of abuse. For example:

- Physical abuse (affecting your body)
- Psychological abuse (affecting your mind and how you feel)
- Financial abuse (affecting the ability to support yourself or your children)

If you have to go to court with your ex-partner, the court will use the definition of “family violence” in the BC Family Law Act to decide if you've been abused. The chart on the next page explains the legal terms for different types of abuse.



“Family violence” under BC law

Legal definition	What does this mean?
(a) Physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm	<ul style="list-style-type: none"> • Making any kind of physical contact that hurts or could hurt you or your children. For example: <ul style="list-style-type: none"> – pushing – pulling hair – kicking – biting • Stopping you or your children from leaving your home or any other place. For example: <ul style="list-style-type: none"> – sitting on you so you can’t move – locking you in a room for even a short time • Not giving you or your children the basic things you need. For example: <ul style="list-style-type: none"> – food – water – heat – a bed <p><i>Note: You won’t be accused of physical abuse if you use reasonable force to try to protect yourself, your children, or your pets from getting hurt.</i></p>
(b) Sexual abuse of a family member	<ul style="list-style-type: none"> • Rape • Unwanted sexual touching • Making you or your children watch or listen to pornography or people taking part in sex acts
(c) Attempts to physically or sexually abuse a family member	<ul style="list-style-type: none"> • Trying or threatening to hurt you or your children. For example: <ul style="list-style-type: none"> – saying they’re going to hurt you – trying to punch you – throwing something at or near you – trying to force you into a sex act – trying to rape you <p><i>Note: Even trying or threatening to hurt someone is abuse. You don’t need to actually hurt them.</i></p>

Legal definition	What does this mean?
(d) Psychological or emotional abuse of a family member, including:	
(i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets, or property	<ul style="list-style-type: none"> • Forcing you to: <ul style="list-style-type: none"> – stay in your relationship or home – leave your relationship or home • Making you worry about the people you love, as well as your pets or special objects • Saying you'll lose your children if you go to court or call the police • Calling you names or saying hurtful things about you or your family over and over • Making you do things you don't want to do. For example: <ul style="list-style-type: none"> – using drugs – leaving your children alone – transferring your home into someone else's name – selling all your RRSPs <p><i>Note: Any threat can be family violence, even if:</i></p> <ul style="list-style-type: none"> – it's made only once – it's not likely to happen – your abuser doesn't follow through with their threat <p><i>Your ex-partner might try to use the court process against you. That's abuse as well.</i></p>
(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy	<ul style="list-style-type: none"> • Stopping you from working • Putting your job in danger (for example, making you miss work or saying they won't take care of the children if you go to work) • Taking your money away from you • Not letting you have a credit card or bank card • Not paying child support so that you suffer or maybe re-enter the relationship • Stopping you from seeing friends or family
(iii) stalking or following of the family member	<ul style="list-style-type: none"> • Following you • Asking people to say where you are • Showing up where you work • Sending text messages, emails, or calling you over and over
iv) intentional damage of property	<ul style="list-style-type: none"> • Destroying sentimental or valuable items • Damaging the home. For example: <ul style="list-style-type: none"> – punching holes in walls – breaking door locks
e) in the case of a child, direct or indirect exposure to family violence	<ul style="list-style-type: none"> • Doing <i>anything</i> listed in the chart above to a child or to another person where a child can see or hear the abuse

Where to Get Help

Many specially trained people can help you leave an abusive partner. VictimLink BC is a free, confidential phone service for referrals, help with safety planning, and crisis support. You can call any time, day or night: **1-800-563-0808**.

Women's Centres and Transition Houses

You can get practical help and emotional support from staff at women's centres and transition houses.

Some women's centres also have legal advocates who can help you with legal issues and give you both emotional and court support. Legal advocates aren't lawyers: they're people with some experience with family law issues. They can:

- help you leave an abusive relationship,
- put you in contact with Legal Aid, and
- escort you to court as a support person.

Transition houses can give you free safe housing for a short time. They're open 24 hours a day, every day of the year.

To find a women's centre or transition house, call VictimLink at **1-800-563-0808** (no charge).

The Police

Call 911 and ask for the police if you need help quickly. If English isn't your first language, tell the 911 operator what language you speak and they'll get you an interpreter.

Some police departments have a Domestic Violence Unit. When you talk to the police, ask if you can speak to someone from this unit. You might have to talk to a regular officer first.

If you want the police to come to your home, but you're afraid your partner will overhear you:

- call or text a friend and ask them to call the police,
- call the police, tell them your address, and say "Help," or

- call the police from your landline and hang up. They can trace your number to your home and come over to make sure you and your family are safe.
- If you call 911 from a landline and hang up:
 - the police will likely come to your home, or
 - the 911 operator might call back. You don't need to spend a lot of time on the phone with 911 for the police to come to your home.

If you want to report family violence, but it isn't an emergency, you can ask a support person or legal advocate to be with you when you call the police. This is helpful if:

- you're worried about what the police will say or do,
- English isn't your first language,
- you find it hard to talk when you feel stressed, or
- you're worried about how your community will react.

To find a legal advocate, call [VictimLink](https://www.victimlink.ca) at **1-800-563-0808** (no charge).

Family Justice Counsellors

Your lawyer, the court, or a support person might ask you to see a family justice counsellor if:

- your ex-partner takes you to court,
- you decide you want to take your ex-partner to court, or
- you want to solve your family law issue out of court.

Family justice counsellors are trained mediators who meet with you and your ex-partner to talk about how to solve your problems.

In BC, you can find family justice counsellors in Family Justice Centres and at some courthouses. Their services are free and you can meet with them more than once.

Family justice counsellors can:

- give you basic information about the family court system,
- help you and your ex-partner find ways to agree,
- develop a family law agreement that is “binding” (like a court order), and
- in some cases, help you to prepare a **Section 211 report** (a report that describes what parenting arrangements would be best for the child).

Family justice counsellors aren’t lawyers or judges. They can’t give legal advice or make decisions about your case.

Usually, your first meeting with a family justice counsellor will be an **intake interview**. The counsellor will ask questions to see if there has been family violence and if it’s safe to begin mediation between you and your ex-partner. Once the process starts, you can stop it at any time if you feel it’s unsafe or unproductive. (See page 19 for more information on mediation.)

To find a family justice counsellor, call Service BC at:

- » **604-660-2421** (Greater Vancouver)
- » **1-800-663-7867** (no charge, elsewhere in BC)

Ask to speak to a family justice counsellor near you.

Lawyers

If you’re leaving an abusive relationship and you have children, **talk to a lawyer at least once before you leave**. There are ways to get free or low cost legal advice, or even a lawyer to take your case, if you have a low income. To find a lawyer:

- Call staff at women’s center or transition house (see page 4) and ask for the names of lawyers who help women leaving abusive partners.
- Ask friends and family if they can recommend a good lawyer.

Before you hire a lawyer, try to meet them to see if you’re a good fit for each other and if they understand abuse. If English isn’t your first language, ask for an interpreter or go with

someone you know who can translate. Once you've chosen a lawyer, prepare for all your meetings so that you make good use of your time with them (see page 10).

If you don't have enough money to pay for a lawyer, you can apply for legal aid (see page 8). If you can't get a legal aid lawyer, you may qualify for other programs that give free legal help:

- **Access Pro Bono:** Legal advice clinics or possibly a lawyer to take your case.
 - » **604-878-7400** (Greater Vancouver)
 - » **1-877-762-6664** (no charge, elsewhere in BC)
- **Family LawLINE:** Legal advice from family lawyers over the phone.
 - » **604-408-2172** (Greater Vancouver)
 - » **1-866-577-2525** (no charge, elsewhere in BC)
- **Family Duty Counsel:** Lawyers who work in courthouses who can give up to three hours of brief legal advice. They can check over forms and speak for you in court on simple matters, but can't take on your whole case. See the family duty counsel page on the Legal Aid BC website:
legalaid.bc.ca/legal_aid/familyDutyCounsel.php#fdc
- **Justice Access Centres:** Government-funded offices that provide family law information, advice, and services.
 - » Nanaimo: **250-741-5447**
 - » Vancouver: **604-660-2084**
 - » Victoria: **250-356-7012**
- **Rise Women's Legal Centre:** Free and low-cost legal services to women in BC, including legal advice, some representation, and preparing court documents.
 - » **604-451-7447**



Legal Aid Lawyers

In BC, people with low incomes can qualify for a legal aid lawyer through the Legal Services Society (Legal Aid BC). Call:

- » 604-408-2172 (Greater Vancouver)
- » 1-866-577-2525 (no charge, elsewhere in BC)

When you call Legal Aid, tell them that your intimate partner has abused you (and/or your children) and that you need help to stay safe. They'll assign a lawyer to you or you can ask for a lawyer by name.

As soon as Legal Aid tells you that you have a lawyer, call the lawyer right away. Even if you and the lawyer haven't spoken, the lawyer is responsible for talking to your ex-partner (or your ex-partner's lawyer) and for planning court dates.

It's always best to ask an advocate or transition house worker to give you the name of a lawyer who has experience working with women in your situation. If Legal Aid assigns a lawyer and you're not happy with them, speak to an advocate about how to get a different one. Do this as soon as possible.

What Does Legal Aid Pay For?

Your legal aid lawyer can't take on and solve all your family law issues (for example, they can't deal with all property issues). However, they can help you get a **protection order** to stay safe (see page 11), or to make sure that your children only see your ex-partner in a safe way.

If you get a large lump sum of money (for example, from the sale of a home or a one-time payment from your ex-partner), Legal Aid might ask you to use some of it to help pay for your lawyer.

If Legal Aid tells you that you don't qualify for a lawyer, ask for a written explanation and then call an advocate for help (see page 5). They can help you **appeal the decision** (ask for it to be reviewed).

Note: If you don't get legal aid the first time, you can reapply if something changes in your life. For example, if:

- your ex-partner assaults you again,
- you have less money, or
- there's more abuse (for example, they're making you more afraid for your safety, or the police, the hospital, or a child protection agency have become involved).

What Your Lawyer Needs to Know

Your lawyer needs to know the whole truth about your problem to help you properly. All information you share with your lawyer is private, which means they won't share it with anyone unless you tell them to. Remember:

- When you first meet with your lawyer, describe your problem fully and honestly.
- You don't need to have evidence that someone else can say is true or witnesses to tell your story of abuse. Your own spoken or written evidence is good enough, especially if you can remember dates and details.
- Tell your lawyer if your ex-partner has ever:
 - threatened to kill you, themselves, or the children
 - tried to commit suicide
- Tell your lawyer if your ex-partner:
 - has or can get hold of guns or other weapons
 - has mental health issues
 - has a drug or alcohol problem
- Abuse often gets worse after you leave. Tell your lawyer:
 - if the abuse gets worse
 - if there are any signs that the abuse might get worse or happen more often

See Tips for Working with Your Lawyer on the next page.

Tips for Working with Your Lawyer

- Before your first meeting, make detailed notes about your relationship with your ex-partner. For example:
 - the dates and type of any abuse
 - a list of witnesses
 - a list of any medical reports or other documents that might help
- If you and your ex-partner have been sharing the children's time, write down issues you have with your ex-partner about parenting time. For example, note if your ex-partner:
 - yells at you when they pick up or drop off your children
 - tells your children to misbehave or spy on you
 - steals the children's things to cause you problems
- Write down all the questions you want to ask your lawyer.
- When you meet, focus on legal issues and use your time wisely. Your lawyer isn't a support worker or counsellor. If you have a legal aid lawyer, they only have a limited amount of time to help you. Try to use an advocate or support person for other issues.
- Remember that every phone call costs money (or uses up your legal aid hours).
- Keep copies of:
 - all letters and emails from your lawyer
 - all letters and emails from your ex-partner and their lawyer
 - all court orders
- Reply to your lawyer as soon as you can. If you don't contact your lawyer for a long time, they might stop representing you.
- If you move to a new house or change your phone number, give your lawyer your new contact information.
- Your lawyer can't do anything that is improper. Trust them when they tell you what's possible and what isn't possible under the law.

How to Protect Yourself and Your Children

If you don't feel safe, you can:

- apply to the court for a **protection order**, or
- report your situation to the police, and ask them to:
 - help you get a **peace bond**, or
 - recommend that your ex-partner be charged with a crime (which usually means they'll have to follow **no-contact conditions** right away).

Protection Order

A family law **protection order** is an order made by the court against your ex-partner to keep you and your children safe. A protection order lists conditions that the person named in the order must follow. Protection orders are made under the Family Law Act.

You can ask your lawyer to help you apply for the protection order and then you can **file** it (give it to the court registry) yourself. It's always better to have the help of a lawyer, but you can apply on your own. You can apply for a protection order in either Provincial Family Court or Supreme Court.

Judges are careful about giving protection orders: if an abuser **violates** (doesn't follow) a protection order, they might face criminal charges.

Make sure the judge knows:

- the history of family violence,
- the type(s) of violence (use the chart on pages 2 – 3 to help you describe it),
- exactly why you feel that you and your children aren't safe. (use examples), and
- only the most serious safety issues — don't focus on problems that could be solved by living apart.

The judge will listen to the facts then decide if they'll grant a protection order. If the judge grants a protection order, it'll be registered with the Protection Order Registry. This means the police will have access to it and can enforce it.

Protection orders usually last for one year. You can apply for another one if you still feel unsafe.

Having a protection order doesn't mean that you can't see your ex-partner. If you choose to spend time with them while the order is in place, you won't get in trouble or be arrested. But having the order protects you.

If you have any other court orders under the Family Law Act, a protection order overrules them. For example, if there's an order that says your ex-partner can see the children, but the protection order says that your ex-partner *can't*, the protection order must be followed.

Peace Bond

A **peace bond** is similar to a protection order but made under the Criminal Code of Canada.

- To get a peace bond, call the police and tell them you want one.
- Tell them why you feel afraid or in danger.
- You don't have to show that a person has already committed an offence, but you do have to have a **reasonable fear** (for example, a threat).
- If they agree you have a good reason to be afraid, they'll apply for a peace bond to be ordered by a judge in Criminal Court.

Peace bonds apply across Canada for one year. You can ask for another one if you still feel unsafe.

No-Contact Conditions

No-contact conditions are made by a judge or justice of the peace in a criminal case.

If the police decide to charge your ex-partner with a crime (such as assault, uttering threats, or stalking), your ex-partner will be

arrested. They'll either be held in jail until their trial or released **on bail**. If released, the judge or justice will likely set **conditions** about what they can and can't do while on bail. One of the conditions will be "no-contact" with you or your children.

Other conditions while on bail might be that your ex-partner can't:

- go to certain places (for example, where you live or work),
- have any weapons, or
- use drugs or alcohol.

Tell the Crown counsel (the prosecuting lawyer) if you would like any other conditions (for example, no-contact conditions with other members of your family).

The judge might order that your ex-partner can have some contact with you to talk about family law matters. If you don't think it's safe for your ex-partner to keep seeing your children, or if you have to hand the children over for a visit (at one of your homes or in public), tell the Crown counsel. They can tell the judge.

If your ex-partner violates the conditions, they might be arrested again.

Your ex-partner is likely to be released on bail if:

- they've been arrested and charged with threatening or assaulting you, *but*
- they're not a flight risk (likely to run away), *or*
- they don't have a serious criminal record.

Orders Made before the New Family Law Act

In 2013, new laws came into force in BC. Before 2013, **restraining orders** made under the Family Relations Act were similar to protection orders. Now under the Family Law Act, these orders are called family law protection orders.

If you have a restraining order made before March 2013 with no **expiry** (end) date in it, that order is still valid.

Once You Have the Document

If you have a protection order or peace bond, or are protected by no-contact conditions, make copies of the order or document and:

- put a copy in every purse you carry and in your children's backpacks,
- take a copy to your children's school or daycare and ask the teacher or another responsible person to keep it in a safe place, and
- give copies to others who may need them such as:
 - good friends, or
 - family members who often have your children with them.



How Can the Courts Help?

Courts in real life work quite differently from what you might have seen on TV shows. It's helpful to have a general idea of how the courts work in BC and how they can help you. If you have any questions about the court system, speak to a lawyer or an advocate.

In BC, there is a Supreme Court and Provincial Court. Provincial Court is divided into three courts: Family Court, Criminal Court, and Small Claims Court. In larger cities, these courts might be in separate buildings. In smaller cities, all three courts might be in the same building.

For family law matters, you go to either Provincial Family Court or Supreme Court:

- If you're not asking for a divorce and you don't think that dividing property will be an issue, you can file your case in Provincial Family Court and try to resolve your property issues outside of court.
- If you want a divorce or want to divide property, you must go to Supreme Court.

Your case might end up in both Criminal Court (because of abuse by your ex-partner) and Provincial Family or Supreme Court (because of family law issues between you and your ex-partner). If this happens, you or your lawyer must tell the Family Court judge about any Criminal Court proceedings. Under the Family Law Act, when a judge is deciding what's best for a child, they must also think about "any civil or criminal proceeding relevant to the child's safety, security, or well-being." The judge won't know this if you don't tell them.

Criminal Court

Criminal Court is for cases where a crime has been committed (for example, your ex-partner has threatened or hurt you). Criminal Court judges can't make family law orders (for example, orders for parenting time).

You can't take a case to Criminal Court yourself. The police take your information, investigate, and then give a report to Crown counsel who takes the case to court. The Crown counsel isn't your lawyer and they don't take any instructions from you.

Crown counsel will approve the case if:

- a conviction is likely (your ex-partner will probably be found guilty), or
- if it's "in the public interest" (usually this means keeping society safe from dangerous people).

In a criminal case, you don't need any witnesses or written evidence of your abuse. Your own evidence can be enough to get your ex-partner convicted of a crime. But it's helpful if you can take a picture of any injuries or go to the doctor so there's a medical report.

Criminal Court proceedings can change quickly. Charges are often dropped for many different reasons, including a lack of evidence. Very often, no-contact conditions that are part of a bail order are cancelled if charges are dropped. If this happens, Crown counsel might try to have a peace bond put in place.

It's a good idea to apply for a protection order along with no-contact conditions. A protection order will protect you even if the no-contact conditions are cancelled.

Provincial Family Court

Family Court deals with:

- child or spousal support,
- parenting arrangements,
- guardianship (who looks after the children),
- relocation (moving away with the children), and
- protection orders.

The court process in Provincial Family Court is easier and more casual than in Supreme Court. You don't have to pay any filing or application fees in Provincial Family Court. If you don't have a lawyer, it's much easier to represent yourself in Provincial Family Court than Supreme Court.

If you want the court to decide on parenting time and responsibilities, you may need to attend a free, one-time course called Parenting After Separation. This course is taken in a classroom setting. You won't be in the same class as your ex-partner. Parenting After Separation classes are offered in many cities, in several languages, and online. If you can't get to a class easily, you can ask the court to excuse you.



Tips for Going to Court

- Take a friend, family member, or support person to court with you. Ask them to take notes about what the judge says.
- You're not allowed to record the court proceedings on audio or video.
- Take notes during the proceedings. Ask your lawyer any questions you have *after* the court appearance.
- If you need to say something to your lawyer while they're speaking to the court, write a very short note and pass it to them.
- Tell a sheriff if you're afraid that your ex-partner will follow or harm you when you're in the courthouse or if they do follow you into the courthouse. The sheriff can make sure your ex-partner stays away from you.
- Court appearances are formal. Dress in nice work clothes.
- Stay calm. It's normal to be nervous or even to cry. But getting angry, making faces, rolling your eyes, or yelling in court will disrupt the court process and harm your case. Tell your friends, family, and support people to be calm and behave appropriately.
- If you're asked questions or you're **testifying** (telling your story), give short answers and look at the judge when you speak.

Ex Parte Order

An **ex parte order** is an emergency order granted by the court. Your ex-partner doesn't get any notice of this type of order and they don't appear in court to argue their side. This order is usually used for:

- protection orders,
- emergency parenting arrangements,
- **financial restraining orders** (to stop your ex-partner from selling, hiding, or giving away assets or money), and
- **non-removal orders** (to stop your ex-partner from removing your children from the city or province).

To get an ex parte order, you need to explain to the judge:

- why you need the order right away, and
- why you can't give your ex-partner proper notice.

The judge only hears one side of the story with these orders, so they try not to make them often. The order will often be for just a short time.

If the judge won't give you the order, you can ask for **short leave**. This means that your ex-partner has to appear in court on much shorter notice than what's normally given. For example, you can ask the judge for short leave of two days to give you time to tell your ex-partner that you're applying for the order.

If you don't have a lawyer but need an emergency order, talk to family duty counsel (see page 7).

Either you or your ex-partner can apply for an ex parte order.

Supreme Court

If you want to get a divorce or divide your **family assets** (things that you and your ex-partner both own or bought during your relationship, such as the house, car, and money or other investments), you must go to Supreme Court.

The Supreme Court also makes custody/parenting orders as part of a divorce if you're married. Before a judge grants a divorce, they must know that proper arrangements have been made for the care of the children, including parenting arrangements and child support.

Supreme Court has more complex rules than Provincial Family Court. You also have to pay application and filing fees in Supreme Court. If you don't have enough money, ask the court clerk how to apply to **waive the court fees** (be excused from paying them) or use the Legal Aid BC online self-help guide (familylaw.lss.bc.ca/guides/waiveFees/index.php).

Family Case Conferences and Judicial Case Conferences

Usually, before you make a court application, you'll have either:

- a Family Case Conference (in Provincial Family Court), or
- a Judicial Case Conference (in Supreme Court).

The exception is when you're applying for an emergency order or an **ex parte order** (see page 18).

A case conference takes place with a judge and a clerk in a private room with you and your ex-partner and/or your lawyers. The judge will often try to help you and your ex-partner come to an agreement. This is like mediation, but the judge's orders must be followed, just like any other order made by a judge.

Mediation

Going to court isn't the only way to solve issues. Your ex-partner or the judge might suggest **mediation**. This means a trained mediator meets with both of you to talk about ways to solve your problem.

Before you agree to mediation, be sure it's the right choice for your situation. For couples who are separating and have no history of abuse, mediation can be a cheaper way to deal with their issues. However:

- If your ex-partner is abusive, they might use mediation as another way to abuse you. Your ex-partner isn't likely to start treating you fairly in mediation if they've never treated you fairly when you were together.
- Your ex-partner might use the mediation to scare you or to force you to give them what they want. For example,

they might tell you that if you don't come to an agreement, they'll go to court and things will go really badly for you.

If you do choose to attend a mediation with your ex-partner, tell both the mediator and your lawyer about any concerns or fears you have. You can ask for **shuttle** mediation, where you don't need to be in the same room as your ex-partner. Your lawyer meets with the mediator and your ex-partner while you're in another room. You can even attend a mediation by phone.



When You're in a Mediation

- Ask the mediator to write down any suggestions. Sometimes it's easier to understand things when they're written down.
- Ask for a break whenever you need one.
- If you feel uncomfortable or pressured:
 - Leave at any time if it's not working for you.
 - Don't agree to anything without speaking to a lawyer or advocate.
 - Take a copy of any agreement to a lawyer to make sure you understand it and you're happy with it before you sign it.

Sometimes the mediator won't tell you that you have these choices. Stay strong and know you have a choice.

If you do make an agreement during a mediation, you can file it in court. It will be treated like a court order and is **binding** (you and your ex-partner must do what it says). Even if you don't file the agreement, it's still considered to be binding. The courts don't like to change an agreement without a very good reason, so you must know what you're agreeing to.

Some women agree to things they're unhappy with in mediation to try to make peace with their ex-partner. Sometimes they still don't get peace and are forced to live with an agreement that makes their life more difficult. Don't make an agreement that will cause you *more* problems.

Mediation is a confidential process. You, your ex-partner, and your lawyers can't tell the judge what was said in mediation or why mediation *didn't* solve the issues.

What Will Happen to the Children?

Guardianship, Parenting Time, Contact, Parenting Responsibilities, Custody, and Access: What the Words Mean

When most families separate, the parents arrange how they'll care for the children. You don't need to ask a judge to decide on the parenting arrangements if:

- you and your ex-partner can agree by yourselves (for example, by email), or
- your ex-partner doesn't want any visits.

In this case, you and your partner can make an agreement that the court approves.

However, it may not be possible to make arrangements if your ex-partner was abusive.

If you and your partner can't agree on a parenting arrangement, you can both tell your ideas to the judge. The judge will choose one of your suggestions or come up with a compromise.

Family Law Act Language (Provincial Court)

- **Guardianship:** Usually both parents are **guardians** under the Family Law Act. A parent who's never lived with a child and hasn't regularly cared for them usually isn't a guardian unless an order or agreement says so.
- Only guardians can apply or ask for **parenting time** and **parenting responsibilities**. Even if a parent is a guardian, their amount of parenting time or parenting responsibilities (see below) is based on what's best for the child.

If you and your ex-partner are both guardians but you want to be the only guardian, you can ask the court to remove the other parent as a guardian. The court is very careful about this so you'll need a lot of evidence to show why it's in the best interest of the children. Ask a lawyer if it's possible in your situation.

- **Parenting time** is the time a child spends with a guardian. Even short visits count as parenting time.
- **Parenting responsibilities** are the responsibilities that a guardian usually has during their parenting time. (See the table on pages 28 – 29.)
- **Contact with a child** is time that a non-guardian — such as a grandparent or step-parent, but also a non-guardian parent — has with a child. This means spending time with the child, but not having the responsibilities or rights of a guardian.

Divorce Act Language (Supreme Court)

In Supreme Court, where you apply for a divorce under the Divorce Act, the court might make orders for **custody** and **access**.

- Having **custody** usually means taking care of the children and being in charge of their daily lives.
- Parents are often given **joint custody**, which means that they share responsibility.
- Where the children live most of the time is called their **primary residence**.
- **Access** is the time the children spend with the parent who doesn't have custody or primary residence. Access can include phone calls or video calls (such as Skype).

Note that even if you get a divorce in Supreme Court, judges often still use ideas and language from the Family Law Act.

The BC Ministry of Children and Family Development is responsible for making sure that a child is properly cared for. The ministry has the right to remove a child from a home where there's violence, even if the child isn't the one being hurt.

Deciding Parenting Arrangements

Judges in Provincial Court decide parenting arrangements based only on the **best interests of the child** (see page 30), as directed by the Family Law Act. If your application is in Supreme Court based on the Divorce Act, the judge will think about:

- giving your children as much time as possible with both parents, and
- how well the parents are likely to work together.

It's always best to come to court with a **proposal** (a list of ideas or suggestions) for how parenting time and parenting responsibilities should be divided. Here are some things to know about how parenting arrangements are made:

- You won't automatically get most of the parenting time (or custody) when you leave a relationship just because you're the mother. The children's other parent has rights as well.
- The judge will decide what's best for the child. The judge isn't there to decide what's best for the parents. You need to say clearly what you think is best for your children and why.
- Each case is different. The parent who's looked after the children for most of the time before the breakup of the relationship might get more parenting time. The other parent will get to see the children as often as the judge thinks will be good for the children:
 - If a child's very young (under five years), the judge will usually allow many short visits.
 - Older children are more likely to have longer visits. These can include weekday time, overnights, weekends, and part of school vacation times.
- Even if there's a history of abuse or violence (with you or with the children), judges still often order that children spend the same amount of time with each parent if:

- both parents were actively involved, or
- they believe both parents want to be actively involved.

Parenting responsibilities are usually shared. But sometimes it's better for the children if both parents don't share certain parenting responsibilities. If you're worried, you can ask the court to divide parenting responsibilities in a certain way. For example:

- you might not want to share the responsibility of keeping the children's passports if you're worried that your ex-partner might run off with the children, or
- you might not want to share responsibility for the children's health care if your ex-partner might not give permission to treat them.

See pages 28 – 29 for more information about parenting responsibilities.

If your children are at risk of physical or emotional harm, you can ask for **supervised parenting time**, **supervised contact**, or **supervised access**. This means that someone else is there when your children are with your ex-partner. This person can be:

- you,
- a friend or relative you trust, or
- someone who does this as a job (you or your ex-partner will have to pay for their service).

Supervision usually lasts for a limited time period. If the visits go well, eventually the supervisor might not be needed.

Also think about how you'll **exchange the children** (hand them over to your ex-partner) for visits, especially if you're afraid that your ex-partner will abuse you during an exchange. In your proposal, say how you think child exchanges should happen. The plan can be changed later, if other things change. See the next page for tips on how to stay safe when you're **transferring** (picking up or dropping off) the children to the other parent.

Staying Safe While Transferring the Children

Your ex-partner might use the exchange of the children (pickup and drop off) as a time to abuse you. For example, they might:

- lie about what time you showed up for the exchange;
- try to talk to you about the abuse, getting back together, or other things you don't want to talk about;
- try to make you upset, sad, or angry; or
- follow you home after you pick up your children.

If your ex-partner does any of these things, you could:

- bring a friend or family member with you (as a witness),
- do the exchange at the child's school or daycare — one parent can drop off and the other can pick up after,
- ask a friend or family member to transfer the child, or
- make the exchange in a place where people can see you, such as:
 - in a busy coffee shop, or
 - a mall with an escalator. You can be at the top and your ex-partner at the bottom. You can send the children down to meet them.

Older children might be able to walk alone to the exchange, or wait for the other parent in a public place.

If you do the exchange yourself, try not to talk to your ex-partner. Simply say hello and confirm the pickup time. If there are any problems, write down what happened right away. Use email, text, or a written message in a notebook to pass on any important information about the children.

If you're worried about being followed to your home, go somewhere else first to see if your ex-partner is following you. If your ex-partner follows you, go to the nearest police station and ask for help. You can also call 911.



In dangerous or high-conflict situations, a judge can make an order for a **supervised parenting time exchange**. This means that someone else takes the children from one parent to another for their parenting time. This person could be:

- a friend,
- a family member, or
- someone who does this as their job (you or your ex-partner would have to pay for this service).

Ask your lawyer, a woman's centre, or a transition house for the names of local people who are paid to do supervised parenting time exchanges.

Parenting Responsibilities

Under the BC Family Law Act, the following are “parenting responsibilities.” All guardians must carry out these responsibilities in the best interests of the child:

<i>Legal wording</i>	<i>Means to be responsible for:</i>
(a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;	<ul style="list-style-type: none"> Deciding daily things such as: <ul style="list-style-type: none"> what the child eats or wears how to take care of the child's basic needs
(b) making decisions respecting where the child will reside;	<ul style="list-style-type: none"> Deciding where you'll live with your child. A parent doesn't have the right to know where the other parent lives. See page 44 for information on moving to another city (relocating).
(c) making decisions respecting with whom the child will live and associate;	<ul style="list-style-type: none"> Choosing who the child will spend time with, such as: <ul style="list-style-type: none"> friends family members babysitters
(d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;	<ul style="list-style-type: none"> Deciding schooling and other activities, including: <ul style="list-style-type: none"> where they go to school how many extra activities they'll do what type of activities they'll do (for example, sports, arts, and tutoring)
(e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;	<ul style="list-style-type: none"> Choosing to have the child in activities, such as: <ul style="list-style-type: none"> French immersion or language lessons religious instruction or attending a place of worship
(f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;	<ul style="list-style-type: none"> Making health care decisions for the children, including: <ul style="list-style-type: none"> medical health dental health mental health (such as counselling)

Parenting Responsibilities, continued

<i>Legal wording</i>	<i>Means to be responsible for:</i>
(g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;	<ul style="list-style-type: none"> • Applying for such things as: <ul style="list-style-type: none"> – a driving or fishing license – child tax benefits – subsidies
(h) giving, refusing or withdrawing consent for the child, if consent is required;	<ul style="list-style-type: none"> • Giving permission for the children to (for example): <ul style="list-style-type: none"> – go on school trips – travel with other people – do certain activities
(i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;	<ul style="list-style-type: none"> • Reading and replying to notices for parents, such as: <ul style="list-style-type: none"> – notices from the school – notices from the government – information about your child based on privacy laws
(j) requesting and receiving from third parties health, education or other information respecting the child;	<ul style="list-style-type: none"> • Being able to get information from: <ul style="list-style-type: none"> – doctors – dentists – counsellors – teachers – other professionals in your child's life
(k) subject to any applicable provincial legislation, (i) starting, defending, compromising or settling any proceeding relating to the child, and (ii) identifying, advancing and protecting the child's legal and financial interests;	<ul style="list-style-type: none"> • Acting on legal issues for your child, such as: <ul style="list-style-type: none"> – making sure your child's financial future is protected. For example, adding money to a child's registered education savings plan (RESP).
(l) exercising any other responsibilities reasonably necessary to nurture the child's development.	<ul style="list-style-type: none"> • Doing anything else that parents do to make sure their children are cared for.

What Does “in the Best Interests of the Child” Mean?

Judges consider only the **best interests of the child** when they make decisions that affect children. The judge will look at many things to decide what’s best for a child both physically and emotionally, such as:

- the child’s health and emotional well-being (for example, a child with special health needs might need special parenting arrangements);
- what the child wants, unless the child is too young to say what they want (also called the “child’s views”);
- the child’s relationships with other important people in their life (such as parents and grandparents);
- the history of the child’s care (how the guardians looked after the child in the past);
- the child’s need for stability and routine, depending on the child’s age and health (for example, young children usually need a more regular routine than older children);
- the ability of the guardian to be responsible (for example, if a parent has a mental health issue, parenting time with the child might be supervised);
- how family violence might have harmed the child (for example, if your ex-partner has been violent in front of your children, visits might need to be supervised and the child may need counselling);
- if shared parenting time could be unsafe for the child;
- any **legal proceeding** (civil or criminal) that might affect a child’s safety or well-being (for example, a charge against your ex-partner for violence that affected your children, or a protection order that was broken by your ex-partner);
- the effect of a guardian’s “bad behaviour” on the children (for example, a judge might not stop visits with a parent with alcohol issues unless the parent drinks around the children); and
- a guardian’s ability to obey a court order.

How to Leave and Take Your Children with You

If you leave an abusive relationship and take the children with you, your ex-partner might accuse you of keeping the children from them or of abducting the children. To avoid this, here's a list of things to do:

- If possible, meet with a lawyer before you leave or as soon as you can after you leave to get legal advice about your situation (see pages 4 – 8 for where to get legal help).
- Email, text, or leave a note for your ex-partner. Take a screenshot, photograph, or copy of it with you if you can. Write that you're leaving and give a phone number where you can pick up messages (for example, your parents' number or a friend's number, or a cell phone number).
- In the email, text, or note, say that you want to agree on parenting arrangements. If you leave a note like this, it might stop the other parent from getting an ex parte order for sole parenting time by saying that you "disappeared" with the children. If your ex-partner does get an ex parte order, go to the courthouse as soon as possible to **vary** the order (have it changed). Family duty counsel should be able to help with this.
- Get a lawyer as soon as you can. They can tell you about your rights and responsibilities so you can make good decisions. Hiring or talking to a lawyer doesn't mean that you have to go to court.
- Call a legal advocate, transition house, or women's shelter (see the section Where to Get Help on page 4) and ask for their list of lawyers. If your income is low, you might be able to get legal aid. Contact Legal Aid BC for information (see page 8).
- Go to court to sort out parenting arrangements or try to come to an agreement as soon as possible.

If you don't take the children with you when you leave, go to court for a parenting time order right away. You might be able to get an ex parte or short leave order.



It might be safer to take the children with you when you leave. Some partners become neglectful or more violent with the children when women leave (even if they've never been neglectful or violent toward the children before).

Frequently Asked Questions

Will the abuse stop when I leave my partner?

A woman is most at risk of abuse:

- for two years after she leaves her abusive partner,
- when she is pregnant, or
- when she has a baby.

Many women believe the abuse will stop when they leave their partner. This may or may not be true. However, you can make a safety plan before you leave to help you stay safe.

After their partner leaves, abusers may:

- use the courts and the police to harass their ex-partner,
- use the children to continue the abuse or to force their ex-partner to come back, or
- use money as a way to control their ex-partner (for example, not paying child support, or not giving their ex-partner a share of any money they have).

You can make these things less likely if you:

- set up a strong support network for you and your children, and
- see a lawyer right away.

Do I have to let my children see my ex-partner before I get a court order?

It's best to get an order first if you think your ex-partner is likely to hurt your children or refuse to give them back after a visit.

If you don't have an order, the police might not be able to help you if your ex-partner doesn't return them after a visit. You would then have to go to court for a parenting time order.

If you're afraid for your children's safety, offer to give your ex-partner parenting time by phone, video (such as Skype), or email.

If you *do* decide to send your children to see your ex-partner without getting an order first, get your ex-partner to agree to conditions that you put in a text or email. For example:

- Clearly state that the children are coming for a visit and aren't moving in.
- Set the date and the exact time of the beginning and end of the visit.
- Ask that the children be returned to a certain place.
- Include what your partner can't do, such as drinking alcohol, driving without a car seat, or taking the child to be around unsafe people.
- You may want to tell your ex-partner that if the children aren't returned in the way that's set out, you'll go to the police or try to get an ex parte order for parenting time.

Ask your ex-partner to reply by email or text that they accept the conditions. If your ex-partner doesn't follow the conditions, you can show the court that you had an agreement.

If you and your ex-partner come up with an agreement, you can go to a notary public to have the agreement notarized. This will cost \$25 to \$50. Take your ID and a friend with you. However, make sure you're happy with the agreement and think you'll be happy with it for some time.

This might make your ex-partner think twice about not bringing your children back because they'll know that a judge could read your agreement.

An agreement doesn't guarantee that your ex-partner will return your children after a visit. If they don't return the children, take the email, the screenshot of the text messages, or the signed agreement to your lawyer or to family duty counsel at the courthouse right away. If you know that your ex-partner isn't likely to follow an agreement, don't allow a visit and go to court for an order.

Emails or texts used for agreements can be useful evidence in court. Keep emails in a safe email account. Make sure that your ex-partner can't guess the password and security questions. If you use texts, take screenshots of them and email them to yourself right away to make sure that they can't be deleted.

Keep notes about any time you see or speak with your ex-partner. Write short notes that remind you of what happened each time.

Can my children decide which parent they want to live with?

The courts usually don't let children decide where they want to live until they're at least 12 years old. The reasons include:

- They don't want to put children in the middle of their parents' fight.
- They know that young children might not be able to decide what's best for them.

If the court wants to hear the child's views, usually a family justice counsellor interviews a child or writes a **Hear the Child** report for the court. In rare situations, the court may interview the child.

Will the judge decide that my ex-partner is dangerous to our child because I was abused?

Judges in BC must think about how your ex-partner's violence toward you might affect what's best for your child's safety.

After hearing the facts, the judge will decide:

- if the abuse has seriously affected your child, and
- if the violence is still a problem if you and your ex-partner no longer live together.

Always tell the judge about:

- any violence the child has witnessed,
- any violence that happened after separation, and
- how the violence affected your child.

See the section on best interests of the child (page 30) for other things a judge will think about when they make an order for parenting arrangements.

Will the judge let my ex-partner have parenting time or contact with the child if they've hurt the child in the past?



A judge might allow some parenting time or contact if they feel there's no **immediate danger** to the children. Some signs of immediate danger are:

- **a conviction** (being found guilty) of hurting the children,
- reliable witnesses who've seen or heard the abuse,
- the children talk about the abuse in video/audio recordings,
- police or medical reports that show the children have been abused, or
- the abuser continuing the abuse during parenting time.

If you believe that your child will be in immediate danger if parenting time is ordered, talk to a lawyer about what evidence you need to prove this. See also page 11 about protection orders.

Even if the child might be at some risk, the judge might still give your ex-partner some parenting time or contact. However, they may order that:

- the visit must be supervised,
- the abuser must complete counselling before any visits can happen, or
- the visits must be in a public place.

My ex-partner doesn't show up for parenting time with the children. What should I do?

It's always a good idea to make a note of when your ex-partner doesn't show up. Mark a calendar or send yourself an email. If the meeting location is a public place, it's helpful to take a photo with your phone. Or buy a small item nearby and keep the receipt to show that you were at the right place at the right time. Wait for 30 minutes in case they're late.

Don't stop allowing their parenting time after a few missed visits. But once this is a pattern, you don't have to plan your life around the other parent's time. If you're going to stop their parenting time, make sure you've made plenty of notes of the times you tried to arrange it.

I don't want my children going on visits with my ex-partner. Can I stop it?

Parenting time is about the children, not you. If your only concern is that the other parent was a bad partner and not that the children will be harmed, you can't **deny** (stop) parenting time or contact. If you do, your ex-partner could go back to court to force you to let the children visit. You could even lose parenting time and responsibilities. Unless there's a good reason for stopping parenting time (see the next page), and especially if it's happened often, the court can make **penalizing orders**. In extreme situations, a judge may even:

- order you to make a **security** payment to the court that you'll lose if you don't follow the order, or
- fine you or order you to pay the other parent up to \$5,000.

The judge can also order that the missed parenting time must be made up.

If you want to deny parenting time, talk to your lawyer or an advocate. If you don't feel it's safe to send your children to a visit, try to have the visit by phone or video (such as Skype).

If the child doesn't want to go to the parenting time, sometimes it's better to let your ex-partner know the reason so you can work things out. You can suggest a different time or place for a visit. Or take the child to a counsellor or doctor. They can write a note to say that the child was upset or anxious about the parenting time.

When can visits be stopped?

Under s.62 of the Family Law Act, you can deny parenting time if:

- you believe that the child might be affected by family violence if the parenting time or contact takes place (see pages 2 – 3 for a definition of family violence). For example:
 - your ex-partner has threatened to hurt you or the child when they see either of you next,
 - they recently assaulted you, or
 - they've recently abused the child (including emotional abuse).
- you believe that the other parent is drunk or high on drugs during or leading up to parenting time.
- you have a doctor's note that says the child shouldn't visit because they're sick.
- the other parent misses their parenting time over and over *and* doesn't give reasonable notice or a good reason for missing the visit. For example, if they often call the night before to say that they won't be coming.

- your ex-partner cancels the visit, but then changes their mind at short notice and demands to have the visit after all.

You might have other important reasons for denying parenting time. Before you deny parenting time, try to ask a family law lawyer if a judge is likely to think your explanation is reasonable.

If you had to unexpectedly deny parenting time, get legal advice as soon as you can. Ask your lawyer or someone else you trust to write to the other parent. Give your reasons for denying the visit(s) and to say how long this will last. Tell the other parent that you can deny access under s.62 of the Family Law Act.

My children have seen my ex-partner abuse me. What can I do to help them?



Witnessing abuse hurts children and can affect them emotionally. If your children saw you being abused, you can get free help for them through the Children Who Witness Abuse program.

Call the BC Society of Transition Houses at:

- » **604-669-6943** (Greater Vancouver)
- » **1-800-661-1040** (no charge, elsewhere in BC)

Or visit their website at **bcsth.ca** to find the program nearest you.

What if my children tell me they were hurt or abused?

Don't:

- Underreact (for example, by telling your children that they're imagining the abuse or by pretending it didn't happen).
- Overreact (for example, by showing them how angry you are).
- Criticize or blame them.
- Don't ask for details or ask leading questions (examples below). This could cause problems later in a police or child protection interview, especially with younger children.
 - Don't say, "Did your dad touch your private parts?" Instead ask, "Where did your dad touch you?" "Can you show me by pointing or drawing it on this picture of a person?"
 - Don't say, "Did it happen at Dad's home?" Instead ask, "Where were you when these things happened?" "Whose house were you at when this happened?"
 - Don't say, "Did this happen many times?" Instead ask, "How many times did this happen?"

Do:

- Tell them it's good that they told you about the abuse.
- Tell them the abuse isn't their fault and you'll help them.
- Call the Ministry of Children and Family Development from anywhere in BC at **310-1234** (no area code needed) or call your local police.
- Tell your children that you need to tell someone about the abuse because you need to keep them safe.
- Tell them that it's okay to tell the truth to the social worker or police officer. Children can call Kids Help Phone at **1-800-668-6868** (no charge) for more support.
- Take them to a doctor (a walk-in clinic is fine) if you can see any injuries (for example, bruises). Let your child tell the doctor about the injury. Ask the doctor to put the injuries on the child's medical record (medical records can be used as evidence in court).
- Talk to your lawyer about your concerns.

My ex-partner won't pay their child support. Can I stop their parenting time or contact?

Child support and parenting time are separate things:

- A parent can't stop paying child support because the other parent won't let them see the child.
- A parent can't stop parenting time because the other parent won't pay child support.

A child has the right to see both parents and to be **financially supported** (to have the basic things in life paid for).

If you have a child support order or agreement, but your ex-partner isn't making payments, talk to an advocate, transition house worker, or your lawyer about enrolling in the Family Maintenance Enforcement Program.

The judge has asked for a Section 211 report. What does this mean?

A judge orders a **Section 211** (previously a Section 15) **report** when they need more information to decide what parenting arrangements are best for a child. A judge takes this report very seriously. You or your ex-partner can also ask the judge to order a Section 211 report.

Family justice counsellors can write this report for free. Psychologists will prepare the report for a fee of \$5,000 to \$12,000. Sometimes Legal Aid will pay half the cost of the report, but this doesn't happen very often. Ask your legal aid lawyer to apply for payment.

To prepare the report, the family justice counsellor or psychologist meets:

- with you, your ex-partner, and the children separately, and then
- with each parent with the children present.

Sometimes the person preparing the report will visit each parent's house. Psychologists might ask you to do some tests to

find out more about you. They might also talk to friends, family, teachers, and daycare workers about your family.

The person making the report only sees the parents for a short time. The parents will probably try to be on their very best behaviour during this time. This means that the person making the report might not see from the interview that an ex-partner is abusive. It's important to ask a lawyer if a Section 211 report is a good idea for you. Ask them who they think would be the best person to prepare the report.

Tips for Your Section 211 Report Interview

- The report writer isn't your friend. Their job is to **assess** you and how you are as a parent, to make **recommendations** (suggestions) to the court.
- Dress in nice work clothes for your meetings with the report writer.
- Prepare what you want to say. Try to speak clearly. Think before you speak.
- Try to be calm, collected, and reasonable. Try not to get upset.
- Don't say only negative or bad things about your ex-partner.
- Tell them what you're worried about, but focus on the children.
- Bring evidence of abuse. For example, bring a list of witnesses' names and be prepared to give the report writer their contact information.
- Some people believe that abuse ends when you leave your ex-partner. Talk about abuse from the past, but spend more time talking about what's happened recently or since you left your ex-partner.
- If you find it hard to understand or speak English, ask for an interpreter.
- Focus on how the abuse has affected your children. Don't focus on yourself.

My ex-partner says that they're the victim of "parental alienation syndrome." What does that mean and what should I do?

If your ex-partner's claiming to be a victim of **parental alienation syndrome**, it means that they believe you're "alienating" the children (making them not like your ex-partner).

Sometimes one parent does try to make the children think that their other parent is a "bad person." But there are many reasons why the children might not want to see an abusive parent:

- They're afraid of the parent.
- They've become **estranged from** (no longer feel close to) the parent. This can happen if the parent isn't spending time with them when they visit. Or, your ex-partner may use parenting time to ask about you or talk badly about you.

To make sure that your ex-partner doesn't accuse you of alienating the children, be careful not to speak badly about your ex-partner. Do this even if your children say out loud that they don't like them. For example, if your child says, "I'm afraid of Dad," you can:

- say, "I'm glad you can talk about your feelings," or
- repeat what your child said, such as, "You're feeling afraid of Dad."

You could also ask your children if they'd like to talk to somebody who can help with those feelings (for example, a counsellor from the Children Who Witness Abuse program).

If the children say they feel badly about your ex-partner, take them to a counsellor who can speak to a Section 211 report writer. This way, you won't get blamed.

Can I leave our community with my children?



Family law tries to do what's best for the children. A judge will usually want to keep a child in the same community, in the same school, and around the same people if the child is happy and stable.

To **relocate** (move) with your children, you must ask the other parent for permission 60 days before you want to move. Make sure your request is in writing.

The other parent has 30 days to **file an application** (make a legal request) to stop the move. If they don't, you can move.

If the other parent applies to stop the move, a judge decides if you can move. The judge considers:

- Is the move in the best interests of the child?
- Will the move give the child a better life?
- Will the move allow both parents to stay in the child's life in a meaningful way?
- Has the parent who wants to move made an offer for parenting time that is reasonable?

Remember: Abuse isn't your fault. If things start to get too much for you, ask for help. If your family and friends are finding it hard to help, go to a women's centre or transition house. They can help you. Hold on to your belief in yourself!

Other Resources

If you're Aboriginal, see the Aboriginal Legal Aid in BC website at **aboriginal.legalaids.bc.ca** for information about your rights. Topics include your family, abuse and family violence, your home on reserve, and more. The website also has links to publications such as *Clear Skies*, a graphic novel about leaving abuse.

- For help making a safety plan, see the MyLawBC website at
» **mylawbc.com**

This website has a guided pathway about abuse and family violence that can help you think about what you need to do to stay safe. It also has links to publications about leaving abuse, including *Surviving Relationship Violence and Abuse*.

- For information about family law, see the Family Law in BC website at
» **familylaw.lss.bc.ca**

This website has step-by-step self-help guides for court processes, such as doing your own divorce, plus:

- fact sheets
- frequently asked questions
- definitions of legal terms
- videos

- For legal information, see the Clicklaw website at
» **clicklaw.bc.ca**

This website has links to useful publications on family law and other matters, such as:

- sponsorship and immigration (including sponsorship breakdown)
- violence in the home
- First Nations issues

Checklist:

What to Take When You Leave

- ☐ Birth certificates (yours and the children's)
- ☐ Social insurance cards
- ☐ BC Services Card (Care Card/ medical coverage forms)
- ☐ Driver's licence and/or photo identification
- ☐ Status cards
- ☐ Passports
- ☐ Permanent residence card/ immigration permits/visas
- ☐ Any documents from another country to do with you or your children
- ☐ Marriage certificate
- ☐ Custody/family law orders
- ☐ Legal protection or restraining orders
- ☐ Medical records for all family members
- ☐ Children's school records
- ☐ Investment papers/records and bank account numbers
- ☐ Rental agreement/lease or house deed
- ☐ Car title, registration, and insurance information
- ☐ Cash (it might take months to get support payments)
- ☐ Credit cards
- ☐ ATM card
- ☐ Cheque book and bank book
- ☐ Keys for the house, car, and safety deposit box or post office box
- ☐ Pre-paid calling card for long distance calls
- ☐ Cell phone/laptop computer/tablet (some ex-partners might use these to find you, so leave them with someone you trust)*
- ☐ Address book
- ☐ At least one month's supply of all medicines you and your children need
- ☐ Copies of prescriptions
- ☐ Jewellery or small objects you can sell
- ☐ Pictures (make sure you have a picture of your ex-partner so you can serve legal papers)
- ☐ Keepsakes
- ☐ Children's treasures (for example, stuffed animals or special blankets)
- ☐ Clothing for you and the children

**Cell phones, computers, tablets, and cars may have tracking systems in place. Your ex-partner might be able to use these systems to find you. Leave these items with a trusted friend or family member at first. Then take them to an expert to see if there's tracking software that has to be deleted.*

If you leave a computer behind,

you might want to clear the search history on your computer so your ex-partner can't see what you've been looking for (for example, information about transition houses). If you're not sure how to clear your history, go to **google.ca** and type "how to clear your history" in the search bar.

How to get this and other free Legal Aid BC publications

Read: mylawbc.com/pubs

Order: crownpub.bc.ca
(under Quick Links, click BC Public
Legal Education & Information)

Questions about ordering?

604-601-6000
distribution@lss.bc.ca

Feedback on this publication?

publications@lss.bc.ca



Legal
Services
Society

YWCA Metro Vancouver

For more resources or information or to learn
about the YWCA Metro Vancouver's legal education
services, please visit ywcavan.org/legaleducator.



@legalaidbc
@YWCAVAN