

The Law and Parenting Arrangements After Separation Under the *Divorce Act*

A National Toolkit of Legal and Safety
Information for Women Leaving Abuse



Luke's Place

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A National Toolkit of Legal and Safety Information for Women Leaving Abuse

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ABOUT THIS TOOLKIT

If you are a woman with children and are leaving a relationship in which your partner has been abusive to you, this toolkit is for you. The abuse could include controlling behaviour by your partner and emotional and/or physical violence.

When a relationship ends, parents must sort out arrangements for their children, including:

- ◆ When the children will spend time with each parent, and
- ◆ Who has decision-making responsibilities about important issues that affect the children.

Until these issues are resolved, the law sees both you and your partner as equally responsible for your children's care.

This toolkit contains legal information about the laws in both Canada and Ontario regarding arrangements for children after a relationship ends. Family courts do not always understand violence against women in the family, so you need to know as much as you can about these laws. Be prepared to play an active role in your family law case to ensure that you get the best possible outcomes for you and your children.

The toolkit also provides tip sheets and checklists so that you can:

- ◆ Use the law to help the family court understand the impact of violence in your family.
- ◆ Use the law to show the family court what will be best for your children after you and your partner separate.
- ◆ Communicate with your ex-partner in a safe and effective way.
- ◆ Plan for your safety and that of your children.
- ◆ Make changes in the future if necessary.

Safety and this toolkit

You may be able to fill in the checkboxes and areas for notes in this toolkit if you use the Adobe Acrobat program. The pages can also be printed and filled out by hand. Note that if you fill out the fields on your computer, the full field content may not be visible when you print the document.

Whether you fill out the toolkit on your computer or by hand, please take care that your former partner and your children do not find the document or any others pertaining to your family law case.

Legal information, not legal advice

The material contained in this toolkit is legal information and not legal advice. Only a lawyer who is aware of the facts of your situation can provide you with legal advice. We strongly encourage you to obtain that advice whenever possible before you make any major decisions about your case or agree to any suggestions made by your ex-partner or their lawyer.

The information presented here is accurate and current to the date of publication. Please be aware that laws, their interpretation and application, as well as services offered, change over time.

Looking for a lawyer?

- ◆ Connect with your local women's organization for recommendations of lawyers in your community who understand violence against women.
- ◆ Each province has a Legal Aid program that can be accessed by domestic violence survivors for free legal services.

About Luke's Place

Since 2003, we have provided legal support services to women who have left abusive relationships and are engaged with the family law process. We also work at the provincial and national levels, conducting research, developing resources, providing training and engaging in systemic advocacy. Learn more about us at <https://lukesplace.ca>.

Land Acknowledgement

Luke's Place Support and Resource Centre for Women and Children is located on the traditional territory of the Mississaugas of Scugog Island First Nation. As an organization, Luke's Place is committed to providing feminist, anti-oppressive and trauma-informed legal services.

DEFINING FAMILY VIOLENCE

The definition of family violence in Canada's *Divorce Act* is:

Family violence is defined as any conduct, whether or not that conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person—and in the case of a child, the direct or indirect exposure to such conduct.

The definition includes the following:

- ◆ Physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person
- ◆ Sexual abuse
- ◆ Threats to kill or cause bodily harm to any person
- ◆ Harassment, including stalking
- ◆ The failure to provide the necessities of life
- ◆ Psychological abuse
- ◆ Financial abuse
- ◆ Threats to kill or harm an animal or damage property
- ◆ The killing or harming of an animal or the damaging of property.

The term “family violence,” as with the terms “domestic violence” and “intimate partner abuse,” is gender-neutral and hides the reality that most violence in families is committed by men against their female partners. Such terms are most commonly used by court systems, because they must deal with everyone who comes before them in a neutral way.

Notes

UNDERSTANDING VIOLENCE WITHIN THE FAMILY

It is important for you to have a clear understanding of how violence may or may not manifest itself within your family as you think through separation and navigate the family court process.

- ◆ It is intended to induce fear, humiliation and control.
- ◆ It can occur in both heterosexual and same-gender relationships
- ◆ Abuse may occur during a relationship, while you and your ex-partner are breaking up or after the relationship has ended.
- ◆ It has negative effects on the health, well-being and development of women, children, families and the community .
- ◆ Abuse is not limited to any single act or behaviour but involves a pattern of coercive control that can include physical, sexual and/or psychological abuse perpetrated by a current or ex-partner.
- ◆ It does not have to include physical violence.

Violence against women is a prevalent societal problem occurring in all socio-economic, cultural, racial and religious backgrounds.

Family court decisions can create serious consequences for women who are abused and for their children.

Notes

ABUSE BEHAVIOURS

The following is a list of behaviours that are common in situations of intimate partner violence. This checklist is intended to assist you in identifying the kinds of abuse you have been subjected to. Many of the tactics below overlap with one another and may often fit in more than one category.

“Coercive control” is a term that appears in the federal *Divorce Act* and falls within the definition of family violence. Generally, it is a pattern of behaviour that, over time, causes the victim to fear for her physical safety or that of another family member, has a negative impact on her mental or emotional health or well-being or has a substantial adverse effect on her daily life. Most often, the abusive behaviours that form a pattern of coercive control include tactics from many of the categories we have listed here, which is why we do not have a category called coercive control.

Anger and intimidation

- ◆ Changes mood suddenly
- ◆ Gets angry when things don't go his way
- ◆ Gives you the silent treatment
- ◆ Engages in loud and aggressive behaviour, such as shouting, yelling, pounding fists on table or into walls, throwing, kicking or breaking objects out of anger, slamming doors, stomping out of the house
- ◆ Says he has “nothing to lose”
- ◆ Drives his vehicle in a frightening way
- ◆ Plays with weapons to intimidate/frighten
- ◆ Makes a scene in public by losing his temper or embarrassing you
- ◆ Is charming with others and aggressive with you

Psychological and Emotional Abuse

- ◆ Blames you for his problems or denies that he is abusive
- ◆ Blames you for the abuse
- ◆ Tells you that he is overreacting or being dramatic about his abusive behaviours
- ◆ Lies and makes you question your memory (e.g., “I never said that”)

- ◆ Denies you affection or personal care
- ◆ Puts down your physical appearance, education or social class
- ◆ Insults you in front of the children or others
- ◆ Calls you names and swears at you
- ◆ Attacks your self-esteem in other ways
- ◆ Makes repeated threats: to leave the relationship, to commit suicide, to have an affair, to damage your belongings, to take the children away, to come after you if you leave, to kill or hurt you, the children or other family members or a family pet or to have someone else kill them
- ◆ Forces you to do degrading or dehumanizing things (e.g., eating cigarette butts or licking the floor)
- ◆ Isolates and alienates you from others, including family and friends
- ◆ Restricts your access to transportation
- ◆ Controls and monitors your time, activities, dress, hairstyle, makeup, etc.
- ◆ Accuses you of having an affair
- ◆ Confines you to the family home or kicks you out of the family home
- ◆ Actively turns the children against you or threatens to do so
- ◆ Does not respect your privacy and goes through your personal things
- ◆ Restricts your access to different means of communication (e.g., phone, internet, assistive technology)
- ◆ Uses technology to monitor your social media accounts and offline activities

Physical abuse

- ◆ Throws or kicks things at you
- ◆ Pushes, grabs, slaps or shoves you
- ◆ Pulls your hair/twists your arms
- ◆ Pins you to the wall, floor or bed
- ◆ Chokes you
- ◆ Kicks, hits or punches you
- ◆ Burns, stabs or shoots you or threatens to use a weapon to hurt you

- ◆ Tries to run you down with a car or to throw you out of a moving car
- ◆ Poisons you
- ◆ Deprives you of sleep
- ◆ Uses violence against you in front of the children
- ◆ Physically abuses the children
- ◆ Hurts or kills animals

Sexual and reproductive abuse

- ◆ Accuses you of being promiscuous
- ◆ Makes you feel ashamed or humiliated about your sexual desires
- ◆ Denies you affection
- ◆ Coerces you to have sex or to engage in unwanted sexual behaviours, including pornography
- ◆ Secretly or openly photographs and/or videos intimate acts and then uses or threatens to use these images without your consent (“revenge porn”)
- ◆ Rapes/sexually assaults you
- ◆ Uses sex and intimacy to control you
- ◆ Forces sex as a condition to keeping the children safe/allowing you to see the children/returning them
- ◆ Exposes the children to pornography
- ◆ Sexually abuses the children
- ◆ Forces you into sex work and takes the money
- ◆ Lies about and/or infects you with HIV or another sexually transmitted infection
- ◆ Sabotages condoms or birth control and/or removes the condom without consent
- ◆ Prevents or coerces you into not using or stopping the use of birth control

SAFETY PLANNING

What is a safety plan?

A safety plan is an individualized plan that you can co-create with a support worker from a shelter or other violence against women organization or in consultation with close friends and family. The goal of a safety plan is to develop strategies that will reduce the risk of further abuse or other harms that you and your children might face from your abuser. Your safety plan should also include strategies on how to maintain basic human needs such as income, housing, health care, food, child care and education for your children.

The particulars of the plan will largely depend on your situation—whether you are living with or are separated from your ex-partner, whether you plan to leave or stay, your financial resources, housing options as well as whether or not you have children. These plans are likely to change as life circumstances change, and your safety plan should be reviewed and revised throughout the change process to ensure ongoing safety.

Safety planning when leaving

- ◆ Changing passwords and enhancing the privacy settings on all online accounts (banking, apps, social media, etc.) and electronic devices (including managing GPS features on your devices and those of your children).
- ◆ Ensure your lawyer knows how to safely contact you.
- ◆ Don't leave any information about your plan to leave in a place where your ex-partner or children can find it.
- ◆ Plan to leave when you know you have at least a few hours in the house while your ex-partner is elsewhere.
- ◆ Limit the amount of information the children have about your plans.
- ◆ Try to take everything you need with you .
- ◆ Have a safe place you can get to quickly.
- ◆ Leave a note for your ex-partner letting him know that you and the children are safe and that you will be in touch to make arrangements for him to have time with the children.
- ◆ Provide a copy of that note to the police so that they know you did not abduct your children.

Safety planning at work

The workplace can become a dangerous place after separation if you are employed outside of the home. While it is understandable that you want to keep the abuse in your family private, your safety at work will be enhanced if you tell at least one person in the workplace about it.

- ◆ Talk to a co-worker, supervisor and/or security staff about your concerns and what you need to feel safe at work (e.g., screening calls, secure parking, accompaniment to and from the parking lot, a prohibition on your ex-partner entering the premises).
- ◆ Increase privacy and security systems on workplace electronic devices.
- ◆ Change your transportation arrangements to and from work (e.g., take a different route, drive with a co-worker, use a different bus route).
- ◆ Circulating a photo of your ex-partner and his vehicle (if he has one) to your colleagues so that they can keep an eye out for him.

Safety planning while engaging in court

- ◆ Visit the court ahead of time so you know what it will look like and who the court officials are. Find out if there is a private room where you can sit away from your ex-partner and his family/friends.
- ◆ Know in advance whether your ex-partner will be represented.
- ◆ Have support on the day of court—an advocate, a friend or a family member.
- ◆ Arrive early to avoid seeing your ex-partner.
- ◆ Make safe transportation arrangements.
- ◆ Ask court security to walk you to your car.
- ◆ Carry a cell phone, if possible.
- ◆ Have a plan for leaving the court to get help if you are confronted by your ex-partner.

Safety planning with children

It is important to involve children, in an age-appropriate way, in safety planning. Your child's safety plan should align with yours. The goal of the children's safety plan is for them to feel empowered and to know how to get help if they need it. A safety plan should focus on:

- ◆ Getting children to a safe place during violent episodes
- ◆ Choosing a code word so children know when to call for help
- ◆ Teaching children how to call 911 and what to say
- ◆ Helping children know which people are safe to talk to about abuse at home
- ◆ Protecting the online privacy and safety of children, which could include shutting down tracking functions and checking their devices regularly in case the abuser has installed spyware

Notes

ARRANGEMENTS FOR THE CHILDREN AFTER SEPARATION

Once a relationship ends, parents must decide:

- ◆ When the children will spend time with each parent, and
- ◆ Who has decision-making responsibilities about important things that affect the children.

Which laws govern arrangements for children in Canada?

The federal *Divorce Act* applies to anyone in Canada who is married and applying for a divorce.

Your province or territory will have its own legislation that will govern parenting arrangements for children when a relationship ends. This legislation applies to anyone, including those who are married, living common-law or were never in a relationship but have children with another person.

In Ontario, the governing legislation is the *Children's Law Reform Act (CLRA)*. As of March 2021, the CLRA and the *Divorce Act* are very similar. The same is not true of all provincial and territorial legislation, which may use different terminology and statutory tests.

The provincial and territorial legislation that deal with parenting arrangements are as follows:

ALBERTA

Family Law Act:

canlii.org/en/ab/laws/stat/sa-2003-c-f-4.5/latest/sa-2003-c-f-4.5.html

BRITISH COLUMBIA

The Family Law Act:

canlii.org/en/bc/laws/stat/sbc-2011-c-25/latest/sbc-2011-c-25.html

MANITOBA

The Family Maintenance Act:

canlii.org/en/mb/laws/stat/ccsm-c-f20/latest/ccsm-c-f20.html

NEW BRUNSWICK

The Family Law Act:

canlii.org/en/nb/laws/stat/snb-2020-c-23/latest/snb-2020-c-23.html

NEWFOUNDLAND AND LABRADOR

Children's Law Act:

canlii.org/en/nl/laws/stat/rsnl-1990-c-c-13/latest/rsnl-1990-c-c-13.html

NORTHWEST TERRITORIES

Children’s Law Act:

canlii.org/en/nt/laws/stat/snwt-1997-c-14/latest/snwt-1997-c-14.html

NOVA SCOTIA

Maintenance and Custody Act:

canlii.org/en/ns/laws/stat/sns-1994-95-c-6/latest/sns-1994-95-c-6.html

NUNAVUT

Children’s Law Act:

canlii.org/en/nu/laws/stat/csnu-c-c-70/latest/csnu-c-c-70.html

ONTARIO

Children’s Law Reform Act:

canlii.org/en/on/laws/stat/rso-1990-c-c-12/latest/rso-1990-c-c-12.html

PRINCE EDWARD ISLAND

Children’s Law Act:

canlii.org/en/pe/laws/stat/rspei-1988-c-c-6.1/latest/rspei-1988-c-c-6.1.html

QUEBEC

Civil Code of Quebec:

canlii.org/en/qc/laws/stat/cqlr-c-ccq-1991/latest/cqlr-c-ccq-1991.html

SASKATCHEWAN

The Children’s Law Act:

canlii.org/en/sk/laws/stat/ss-2020-c-2/latest/ss-2020-c-2.html

YUKON

Children’s Law Act:

canlii.org/en/yk/laws/stat/rsy-2002-c-31/latest/rsy-2002-c-31.html

It is also important to note that various provinces and territories have specific legislation dealing with family violence and providing authority for courts to make protective orders. For more information, and to see a list of the relevant statutes, please visit the Government of Canada’s webpage called “Family Violence Laws” —justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html.

For the purposes of this toolkit, we will be using language from the *Divorce Act*. It is important to keep in mind that the *Divorce Act*, even though it applies across Canada, may or may not apply to your case, depending on whether you were married to your ex-partner and are applying for a divorce. It is important that you familiarize yourself with the relevant provincial or territorial legislation in your particular jurisdiction.

Additional Information

Do I have to go to court?

Often, parents are able to sort out how they make decisions about their children on their own. Such arrangements may be quite informal.

However, when one partner is abusive to another person in the relationship, that may not be possible. If this is your situation, you may need to go to court to get an order setting out how decisions are to be made.

The court can order that one parent have all the **decision-making responsibilities** or that you and your partner share this responsibility. (In some situations, another person who has played a significant role in your child's life—for example, a grandparent or other family member—may be given decision-making responsibilities.)

The court will consider what is in the **best interests of your child** when making an order about how decisions are to be made.

What does “decision-making responsibility” mean?

Decision-making responsibility means the responsibility for making significant decisions about your child in four key areas:

1. Health
2. Education
3. Culture, language, religion and spirituality
4. Significant extracurricular activities

Notes

What does “best interests of the child” mean?

Courts are to consider only what is best for children when making any child-related decisions. The best interests of the child test appears in the *Divorce Act* and contains a number of factors that courts must take into account.

For example, a judge may consider:

- ◆ What support systems you have in place to care for your child (e.g., help from close family members).
- ◆ Whether your child has strong ties to where you live.
- ◆ Whether they are involved in extracurricular activities.
- ◆ How settled in school they are.
- ◆ How you will encourage and facilitate a relationship between your children and your ex-partner.

We will talk in more detail about the best interests of the child test later in this toolkit.

Sole vs. joint decision-making

Sole decision-making responsibility: If one parent is awarded sole decision-making responsibility, it means that they can make all decisions for the child without the need to consult or come to an agreement with the other parent. There are a few exceptions. For instance, you make a decision to move. To do so, you need the consent of your ex-partner or a court order if your relocation affects your ex-partner’s parenting time with your children.

If you have sole decision-making responsibility, your ex-partner plays only a minor role in making decisions about your child, such as in emergency situations where you are unavailable. Your ex can also make day-to-day decisions during their time with the child.

Joint decision making: In this arrangement, you and your former partner work together to make major decisions related to your child. Joint decision making may not be an appropriate arrangement if your partner has been abusive and controlling towards you or if you cannot communicate or problem-solve effectively together.

When there is abuse

If your partner has been abusive to you in your relationship and/or is still being abusive, discuss your concerns with your lawyer.

The abuse may mean that joint decision-making responsibility is not appropriate. Either of these arrangements creates openings for your former partner to continue to control, harass or intimidate you.

Your ex-partner might:

- ◆ Object to any decision you want to make just to show you that they are still in charge.
- ◆ Refuse to discuss important issues in the child's life.
- ◆ Bully you into making the decision they want, even if you do not think it is best for the child.
- ◆ Make a decision about one area of your child's life (e.g., health) that conflicts with a decision you have made about another area of your child's life (e.g., education).

It is important for you to think about and share your thoughts with your lawyer about:

- ◆ What arrangement works best for you, and
- ◆ The abuse your partner has engaged in.

You and your child need a decision-making arrangement that is in your child's best interests but which is also safe for you.

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PARENTING PLANS

A parenting plan is a written document that sets out the details of how your children will be raised and how parenting and decision making will work after you and your partner separate.

A clear and detailed parenting plan will minimize your former partner's ability to find loopholes to exploit in order to exercise power and control over both you and the children. This will help to keep you and your children safer.

Family courts use parenting plans, in accordance with the best interests of the children, to help determine the most suitable parenting arrangements. While preparing and presenting a parenting plan is not required by law, including one that is clear, detailed and thorough provides very helpful evidence.

We have created this tip sheet to help you think about what you might want to include in your parenting plan. If you work with a legal advocate, she can assist you in the preparation of your parenting plan.

TIP SHEET: WRITING A PARENTING PLAN

General considerations

- ◆ A parenting plan needs to be:
 - ◆ Clear, concise and written in plain language. The judge will respond positively if yours gets to the point and is accessible. Use a clean, easy-to-read font, and consider using headings to separate the sections that deal with different issues/considerations.
 - ◆ Specific and detailed. You don't want to leave room for confusion or loopholes, especially if the other parent was/is abusive in any way.
 - ◆ Child-focused. Demonstrate that your primary goal is the best interests of your child.
 - ◆ Honest and realistic. Don't try to impress the judge by making big promises. Don't say that you're happy to be in constant communication with your ex-partner or that you think it will be easy to cooperate with each other if that isn't truly how you feel.
 - ◆ Reviewed by a lawyer if possible.
- ◆ A parenting plan needs to have evidence attached. Don't just say "My ex-husband was abusive" or "I am concerned about leaving Maria alone with my ex because I do not think he is a good parent." Spell out exactly what happened and why you feel that way.

- ◆ Evidence do's and don'ts:
 - ◆ Include: photographs (e.g., bruises on you or the child), diaries/journals, emails (printed), text messages or social-media posts (screenshot and printed out), legal documents, police records, medical records, calendars, credible witness accounts.
 - ◆ Don't include: hearsay, gossip, baseless gut feelings, anything that is not attached to a proper affidavit, any exaggerated or misleading information about the other parent's past conduct that is not directly relevant to the legal issues with which you are dealing.

How will you and the other parent communicate?

- ◆ What specific things will you and the other parent need to communicate with each other about?
 - ◆ For example, do you need to share the child's report card or medical information with the other parent? Does your ex need to inform you when they start dating someone new?
- ◆ What method will you use to communicate with the other parent?
 - ◆ It could be email, phone, text message, a video-conferencing app such as Zoom or Skype, social-media apps, a communication book or a co-parenting app.
- ◆ How often will you and the other parent communicate?
 - ◆ For example, will your ex-partner only be allowed to text you once a week or under specific circumstances?

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- ◆ How will the parents communicate with the children?
 - ◆ Will there be communication between the child and the other parent while they are with you, and vice versa? How and when? Does there need to be a schedule? For example, “Dad is not allowed to call or text the children while they’re at school” or “Mom can talk to Megan on the phone for up to one hour every day when Megan’s at Dad’s house.”
- ◆ Emergencies
 - ◆ How will parents communicate in the event of an emergency, such as the child being hospitalized? How will the children contact each of you in an emergency?

Was there family violence?

- ◆ Has there been any violence or abuse within the family? Who did what?
- ◆ Are you concerned for your safety or your child’s safety because of the family violence?
 - ◆ Note that even in family violence cases, courts generally think it is in children’s best interests to have a relationship with both their parents, so it is unusual for a parent to be awarded no parenting time. If no parenting time is the outcome you want, you need to present very strong and compelling evidence that the child having any relationship whatsoever with the other parent would be dangerous and damaging to the child.
 - ◆ Where you have concerns about your child’s safety or the other parent’s parenting ability as a result of family violence, you need to include information about this in your parenting plan, as well as a realistic plan for how the child will spend time with the other parent.

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- ◆ Given a history of violence, is it appropriate, realistic and reasonable to expect you and the other parent to cooperate and communicate?
- ◆ How does the family violence affect your ability to co-parent with your ex?
- ◆ Do special safety measures need to be put in place, such as third-party supervision of child exchanges and/or parenting time?
- ◆ Does the child need to be exchanged through a third party?
- ◆ Does there need to be an arrangement that doesn't involve face-to-face interaction between you and the other parent?

What parenting-time arrangements do you recommend?

- ◆ Where will the child live? Will they primarily live with one parent and have visits with the other parent, or will they spend roughly equal time with both parents?
- ◆ Will they spend time with one parent during the other's parenting time?
- ◆ What is the parenting-time schedule?
 - ◆ Will the child spend one week with you, then one week with their other parent, then come back to you again? Will they live primarily with you and see their other parent every weekend? Will they live primarily with their other parent but, for instance, come to you every Wednesday after school until 8:00 p.m. and overnight every other weekend from Friday after school until Monday at 7:30 a.m.?
- ◆ Is there any flexibility for emergencies and/or special occasions such as Mother's Day, Father's Day, birthdays, graduation, religious/cultural/spiritual celebrations or rituals?

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- ◆ How will you incorporate the child's social life into the parenting-time schedule? Who will pay for related expenses, such as bus tickets and birthday presents? Who transports the child to and from social events?
- ◆ What child-care arrangements are needed, and who will pay for what?
- ◆ When, where and how will child exchanges take place?
 - ◆ Will the exchanges be supervised?
 - ◆ Will you and your ex do the exchanges, or will grandparents or others be involved? If you are concerned that your ex-partner may bring other people along in order to harass and intimidate you, make sure the parenting order is clear about who can accompany them or whether they must arrive alone.
 - ◆ Will the child be exchanged at the library? At your home or the other parent's home? At school or day care?
 - ◆ How will the child be transported between your homes? Who will pay for transportation expenses? Will you drive the child to and from the other parent's house while they chip in for gas? Will the child take the bus or train? Who will pay the fare?
 - ◆ What should be provided during the exchange? For example, who is responsible for bringing the child's car seat, stroller and/or snacks?
- ◆ Will the child's belongings move between your homes, or will they have what they need at each home? Who pays for what?

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What are the children's relationships with other family/community members?

- ◆ If you have more than one child and more than one parenting arrangement, how will you support the siblings' relationships? Will your parenting time make room for them to spend time together? For example, if Moe is at your house and Mariam is with the other parent, do Moe and Mariam get a scheduled visit with each other during that time?
- ◆ How will you support and encourage the child's relationship with their grandparents? For example, do they see your parents when they are with you and the other grandparents when they are with your ex?
- ◆ How will you support and encourage the child's relationship with other family members who play a significant role in their life? For example, if the child is very close with their cousins on the other parent's side, how will you ensure they get to spend time with those cousins?
- ◆ Are there other members of the community who play an important role in your children's lives? If so, how will you support and encourage those relationships?

What will happen during vacation time?

- ◆ Can the parenting schedule be altered so that each of you can take the child on vacation?
- ◆ Under what circumstances can each of you travel with the child?
- ◆ Are there any specific restrictions? For example, is the other parent allowed to take the child to Ottawa to visit extended family but not out of the province/territory or country? Can you take the child to the U.S. by plane but not by car?

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- ◆ How much notice is required for these trips?
- ◆ Who will manage the child's passports and other documents? Where will they be stored? Who can apply for them?
- ◆ Who will be responsible for basic travel costs, such as plane tickets?
- ◆ Who will be responsible for additional travel costs, such as travel insurance or unforeseen expenses due to a delay/disruption/emergency?

What about the children's schooling?

- ◆ Who makes decisions about things like where the child goes to school and whether they enroll in special programs, such as gifted education or French immersion? Will it be you, the other parent, or will it be a collaborative decision?
- ◆ Who pays for school-related costs such as tutoring, calculators, binders, pencils, pens, erasers and field trips?
- ◆ Who can access school records and report cards? When and how? Are there special conditions? For example, do you need to keep your address confidential?
- ◆ Who attends parent-teacher conferences? Will both parents go together? Will you take turns?
- ◆ Who picks up/drops off the child?
- ◆ Who can authorize absences and under what circumstances?
- ◆ Who signs permission slips for activities such as labs and field trips?

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- ◆ Who attends/volunteers at school events such as plays, field trips and bake sales?
- ◆ Who will the school call in an emergency?
- ◆ Does there need to be a special arrangement for homework, such as a requirement that the other parent ensures that homework gets completed on time during their parenting time?

What about the children's extracurricular activities?

- ◆ Will decisions about extracurricular activities be made by you, by your ex-partner or by both of you?
- ◆ Who pays for what?
- ◆ Who transports the child to and from extracurricular activities?
- ◆ Who attends events such as recitals, games and plays? Can you both go? Will you take turns?

What about the children's religion, culture, language and Indigeneity?

- ◆ Will decisions about religion be made by you, by your ex-partner or by both of you?
- ◆ How will each parent's religious and cultural beliefs and customs be accommodated and respected? For example, if you are a vegetarian because of your religion and want to raise the child as a vegetarian as well, does the other parent have to agree not to serve them meat?

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- ◆ Can the parenting schedule be modified to accommodate things like church services and cultural festivals?
- ◆ What language(s) will be spoken in each home?
- ◆ Is it important to address issues related to Indigeneity in the parenting plan? Should each parent make an effort to ensure that the child stays connected to their Indigenous culture? If either parent lives on a First Nation, are there restrictions/factors that could cause challenges in the parenting schedule? For example, there may be a lack of public transportation, or non-Indigenous persons may not be allowed to visit. Will an Indigenous community organization, Elder or other Indigenous-specific resource be consulted about the parenting plan?

What about the children's health and medical care?

- ◆ Who makes health-care decisions in relation to the child? When and how?
- ◆ What will you do if there is a major disagreement about health care? For example, what if you want the child to be vaccinated, but your ex-partner does not? What if you feel that the child needs counselling, but your ex-partner won't sign the consent forms?
- ◆ Who selects the child's doctor, dentist, counsellor, specialist, and so forth?
- ◆ Who transports the child to medical appointments? Who pays for these costs?

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- ◆ Who pays for health-related fees such as dentist appointments, counselling, braces or glasses/contacts?
- ◆ During a health emergency such as a broken tooth or an anaphylactic reaction, who makes medical decisions? Will these situations allow for exceptions to the usual rules or schedule? How will the other parent be notified? Who notifies other people, i.e., who calls the child's school to inform them that the child is in the hospital and therefore won't be in class?
- ◆ Who can access medical records? What, when and how?
- ◆ Where will the child's health card be stored? Will it move between homes with the child?
- ◆ Whose health/dental insurance will the child be on? Who submits claims? Who pays for any necessary extra insurance?
- ◆ How will medications be coordinated? Who picks up prescriptions and when? Who is in charge of making sure the child takes their medication? Will the child have a set of medication at each home, or will the medication travel with them?
- ◆ What happens if either parent has a health emergency?
- ◆ Does the child's other parent have a mental health and/or a substance-abuse problem that may affect safe parenting? How can this be taken into account? Are special restrictions needed (e.g., no alcohol or other drug consumption around the child; regular drug or alcohol testing and supervised parenting time if the results are positive; mandatory counselling; a requirement to take prescription medication properly)?

Notes

What will happen if one parent needs to relocate?

- ◆ How will proposed moves, with or without the child, be handled?
- ◆ Are there any additional requirements beyond what is laid out in the *Divorce Act* and the *Children's Law Reform Act*?
- ◆ How would you incorporate a potential move into the parenting schedule?
- ◆ How will you continue to support and encourage the child's relationship with the other parent after a move? For example, would you offer to pay for the child's travel costs to visit the other parent once a month?

Might there be special considerations related to a parent's occupation?

- ◆ Does one parent have a job that puts them at an increased risk of contracting COVID-19? How will this be taken into account in terms of the child's health and safety? For example, will that parent be required to wear a mask and/or maintain a distance of two metres when visiting the child? Will parenting time temporarily take place remotely (e.g., through video chatting or phone calls)? Will parenting time take place outdoors, and how will inclement weather affect that? At what point would this modification end?
- ◆ Does one parent have seasonal or shift work? How will the parenting schedule accommodate this in a manner that is best for the children?
- ◆ Does one parent have a job that requires them to travel a lot or for a long time? How will the parenting schedule be adjusted to accommodate this? Will the child travel to see the parent? If the parent is in the military, how would deployment be handled?

Notes

What will happen if one parent has a new partner?

- ◆ Does the other parent need to inform you about new partners and/or vice versa? Under what circumstances?
- ◆ When and how will new partners and their children be introduced to the child?
- ◆ How will moving in with a new partner be handled?

Are there any other issues you may want to include?

- ◆ How will conflicts be resolved? For example, will you consult with a mediator? A parenting coordinator? A family therapist? A religious leader? Who will pay for these consultations if there are costs involved?
- ◆ How will proposed changes to the parenting plan be handled?
- ◆ Health and safety requirements: For instance, at what age is the child allowed to be home alone and under what circumstances? Is the child allowed to take public transportation alone? Are both parents required to ensure the child wears a helmet when riding a bicycle, a seatbelt in the car, a mask to the grocery store during the pandemic, sunscreen at the beach?
- ◆ Who will pay for large purchases, such as a new laptop?
- ◆ Technology and media: Which media and technology may the child use and under what circumstances? Are the parents expected to monitor the child's social-media or electronic use? Are the parents allowed to post pictures of the child on social

Notes

media? Are there limits on how much time the child can spend using social media, playing video games, watching television, etc.? Are there specific things the child is not allowed to do (e.g., use chat rooms, use video chat, watch a certain TV show, play violent video games)?

- ◆ Discipline, lifestyle, boundaries and rules: When is the child's curfew? Are they allowed to date? Are there specific rules about dating? Are they allowed to wear makeup, nail polish, certain clothes, choose their own hairstyles, use hair dye, get piercings? Do they receive an allowance? What chores are they expected to do? What happens if they break the rules or don't do their chores? Can they have a part-time job, and if so, how will that affect the parenting schedule? What sort of diet will the child have?
- ◆ How will pets be handled after separation? Will they live with one parent or move between homes with the child? If the pet lives with one parent and the child is very attached to the pet, will you make arrangements for the child to spend time with the pet? Are there any rules about the pets? Who pays for pet-related expenses such as kibble, grooming and vet appointments?
- ◆ Are there other relevant considerations?

Notes

THE BEST INTERESTS OF THE CHILD (BIC) TEST

Family courts use what is called the best interests of the child (BIC) test when they make parenting decisions. Under the *Divorce Act*, the judge will consider the following 11 factors in the BIC test as they make decisions about the children:

1. The child's needs based on their age and stage of development
2. The nature and strength of the child's relationship with each parent, sibling and grandparents and any other person who plays an important role in the child's life
3. The parent's willingness to support the child's relationship with the other parent
4. The history of care of the child
5. The child's wishes, depending on the child's age and maturity
6. The child's heritage, including Indigenous upbringing and heritage
7. Any plans for the child's care
8. The ability and willingness of each parent to meet the child's needs
9. The ability and willingness of each parent or person with a contact order to communicate and co-operate on matters affecting the child
10. Any family violence and its impact on:
 - ◆ The ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child
 - ◆ 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
11. Any court proceeding, court order or condition (e.g., a bail condition) that is relevant to the safety, security and well-being of the child

It is important that you provide evidence to the court that relates to each of the 11 factors in the BIC test. In the following checklist, we set out each factor with some questions for you to consider. This will help you find the evidence you need to make a strong case to the court.

Additional Information

CHECKLIST: BEST INTERESTS OF THE CHILD (BIC)

We use the term child throughout this checklist because that is the language used in the law, but you can add multiple responses if you have more than one child.

1. **BIC FACTOR:** CHILD'S NEEDS, GIVEN AGE AND STAGE OF DEVELOPMENT, ESPECIALLY THE NEED FOR STABILITY

My child's age and stage of development:

Needs specific to my child, such as allergies, medications, mobility issues, personality traits:

What is important to my child?

Steps I have taken/am going to take to maintain as much stability for my child as reasonably possible (e.g., keeping them in the same school, finding ways for them to remain connected with friends and extended family, maintaining extracurricular activities and family traditions):

OTHER:

2. **BIC FACTOR:** CHILD'S RELATIONSHIP WITH PARENTS, SIBLINGS, GRANDPARENTS AND OTHER PEOPLE WHO PLAY AN IMPORTANT ROLE IN THEIR LIFE

When you answer these questions, it's important to include enough information for the court to be able to really understand your family's situation, so you should include specific details in your notes. If the child's relationship with the person is good, provide some information about why, and give examples of what the child does with that person, how often they see them, whether they get emotional support from the relationship, and so on. If the relationship is not good, explain why, with examples.

My child's relationship with me:

With my ex-partner:

With siblings, half- or step-siblings (e.g., half-sibling from my or my ex-partner's previous marriage):

With my parents:

With my ex-partner's parents:

With my new partner, if applicable:

With my ex's new partner, if applicable:

With other extended family on my side:

With other extended family on my ex's side:

With Elders and other important community members:

OTHER:

3. BIC FACTOR: EACH PARENT’S WILLINGNESS TO SUPPORT AND ENCOURAGE THE CHILD’S RELATIONSHIP WITH THE OTHER PARENT, REGARDLESS OF THEIR PERSONAL FEELINGS ABOUT THAT PARENT

How willing and able do I honestly feel about doing this?

Do I have major concerns about my child’s relationship with my ex, i.e., reason to believe that my child’s other parent being involved in their life would be unsafe or damaging for them?

What steps can I take to help myself put my (understandably) negative feelings about the other parent aside, at least temporarily, for the sake of my child?

What steps have I taken to show that I can do this for my child’s sake?

How willing and able do I think the other parent is to do this?

Has the other parent engaged in parental alienation and/or accused me of doing so?

Has the other parent said/done anything to suggest that they are unwilling and/or unable to do this? Have they asked my child to spy on me for them, said mean and/or untrue things about me to them, interfered in their relationship/time with me, threatened to make sure I never see them again, shared inappropriate information with them, such as details about the breakup or the court case?

OTHER:

Notes

4. BIC FACTOR: HISTORY OF THE CHILD'S CARE

Historically, who stayed home with the child when they were sick?

Who changed their diapers?

Who took them to the doctor and dentist?

Who helped with homework?

Who picked them up from school/day care/extracurriculars?

Who attended parent-teacher conferences? Volunteered for field trips?

Who shopped for holiday and birthday presents?

Who arranged the child's social life, such as play dates and birthday parties? Who drove them to social activities? Knows the child's friends and friends' parents? Picked them up from a slumber party at 2:00 a.m. because they wanted to come home?

Who packed school lunches?

Who did their laundry?

To whom did they go for help or advice?

When the child needed comforting, was one parent loving and supportive and emotionally available while the other ignored them or said things like "grow up" and "stop crying"?

If applicable, who taught them how to drive? Paid for driver's education classes?

Who played with them?

Who spent the most time with them?

Who made sure the children were ready for school on time? Walked them to the bus stop?
Tucked them into bed? Made sure they brushed their teeth? Went to the school to drop off the
homework they forgot?

Was there one parent who was largely uninvolved while the other was responsible for a
disproportionate amount of child care and housework?

Was either parent a stay-at-home parent?

OTHER:

Notes

5. BIC FACTOR: CHILD'S VIEWS AND PREFERENCES, WEIGHED ON THE BASIS OF THE CHILD'S AGE AND MATURITY

Is my child old enough to form and express a consistent opinion?

Is my child notably (im)mature for their age?

Has my child expressed a strong preference about the parent they want to live with or how often they want to see the other parent?

Does my child refuse/not want to see either me or my ex-partner?

OTHER:

6. BIC FACTOR: CHILD'S CULTURAL, LINGUISTIC AND RELIGIOUS/SPIRITUAL BACKGROUND, INCLUDING INDIGENEITY

Does one parent share a cultural/linguistic/religious/Indigenous background with the child that the other parent does not?

What steps am I going to take to uphold my child's ties to their culture/language/religion/heritage/Indigeneity?

How important is my child's background/identity to them?

Are there relevant cultural factors that the judge should be aware of and take into account?

Has my ex-partner failed to be supportive of these factors in the past? For example, have they not allowed the child to participate in religious activities, forced them to participate in such activities when they did not want to or made racist/negative comments about the group they identify with?

OTHER:

7. BIC FACTOR: EACH PARENT'S FUTURE PLANS FOR THE CARE OF THE CHILD

Do I have a clear and detailed parenting plan based on the BIC test?

What are my child-care plans for my child, especially if I was previously a stay-at-home parent but now need to work outside the home?

What about education and extracurricular activities?

Health/medical care?

Culture, language, religion?

Other important parts of my child's life?

Has my ex-partner failed to demonstrate the same?

OTHER:

8. BIC FACTOR: ABILITY AND WILLINGNESS OF EACH PARENT TO MEET THE CHILD'S NEEDS

How have I demonstrated that I'm *able* to meet my child's needs?

How have I demonstrated that I'm *willing* to meet my child's needs?

Has my ex-partner said/done anything to suggest that they aren't? For example, have they refused to allow the child access to counselling or medication, failed to provide the child with a car seat or use seat belts? Have they failed to feed the child during visitation?

OTHER:

9. BIC FACTOR: ABILITY AND WILLINGNESS OF EACH PARENT TO COOPERATE AND COMMUNICATE ON MATTERS RELATED TO THE CHILD

All things considered, is it realistic and appropriate to expect my ex-partner and me to successfully do this? Why or why not?

Have I made attempts to be cooperative and to communicate with the other parent? Have I suggested the use of a co-parenting app, emailed updates about the child to keep the other parent informed and connected, asked the other parent for permission even when I'm not legally required to do so, maintained civility when they are not civil and might even have tried to provoke me?

Has my ex failed to be cooperative and communicate about the child with me? Has my ex failed to respond to emails about important child-related issues, unreasonably refused to sign consent letters for the child's activities or travel, purposely undermined my parenting, sworn at me or called me names, blocked me to prevent me from being able to contact them?

OTHER:

10. BIC FACTOR: ANY CIVIL OR CRIMINAL PROCEEDING THAT IS RELEVANT TO THE CHILD'S SECURITY AND WELL-BEING

Has your ex-partner ever been arrested, charged or sued in relation to the abuse?

Have the police ever been called about the abuse by me, my ex-partner, the child, a concerned neighbour, the child's teacher, our family doctor or anyone else?

Has my ex-partner ever been arrested/charged/sued for something that might be considered relevant to this? For example, for drunk driving, any crime of a violent or sexual nature or any crime involving any child or a vulnerable person?

OTHER:

11. BIC FACTOR: IMPACT OF ANY FAMILY VIOLENCE

Do I know or have reason to suspect that my child knew/knows about the abuse to which I was subjected? Did they overhear verbal abuse, see the aftermath of physical abuse or ask me about injuries?

Was/is my ex ever abusive to me in front of the child? Did they hit me, yell at me, point a gun at me, throw things or intentionally frighten me or the child?

Has my ex damaged our family home or possessions that the child was aware of?

Has my ex involved a child in their abuse of me? Have they asked the child to spy on me or encouraged the child to treat me disrespectfully?

Has my child ever tried to intervene on my behalf or prevent my ex's abusive behaviour?

Do I know or have reason to suspect that my ex has ever been abusive to the child in any way?

Do I know or have reason to suspect that my ex has ever been abusive in any way to another family member, a current or former romantic partner other than me, a pet and/or any child?

Has my ex taken (or failed to take) steps to stop their abusive behaviour? Have they shown sincere remorse, participated in therapy/counselling, anger management, parenting classes or substance-use cessation programs?

Has my ex's abuse of me made it more difficult for me to parent? This could include things like the impact of fear or trauma on me, such as lowered self-esteem and self-confidence, depression or anxiety.

OTHER:

ANY OTHER DIRECTLY RELEVANT FACTORS

Notes

COLLECTING AND PRESENTING EVIDENCE

The outcome of your family law case will depend on the strength of the evidence you collect and present to support the outcomes you are seeking. Family courts have not always responded well to cases involving family violence, especially for families from economically marginalized, racialized or Indigenous communities.

Nonetheless, you can emerge from your court case with outcomes that allow you and your children to move on to lives that are free from abuse. This is especially true now, as a result of changes to the *Divorce Act* and the *CLRA* that define family violence and require its consideration when courts determine what is in the best interests of children.

Standard of proof in family law

The standards of proof in family and criminal court are different. In criminal law, before an accused person can be found guilty, the Crown Attorney must prove beyond a reasonable doubt that a crime has taken place and that the accused is the person who committed it.

In family law, the standard of proof is somewhat more relaxed: To get the outcome you want, you must prove your case “on a balance of probabilities.” In other words, when weighing the evidence, the judge needs to find what you say to be more believable than not.

This distinction between family law and criminal law is important to remember because even if your ex-partner is found not guilty in criminal court of abusing you, your evidence about that abuse is still relevant in family court.

Notes

TIPSHEET: FAMILY COURT EVIDENCE

What evidence should I gather?

DO NOT HIDE YOUR FEAR

If you are afraid of your ex-partner, let the court know, and give specific examples. Keep a journal, and record any signs of distress or abuse you observe in your children, especially as it relates to any time they spend with their other parent. Although it is not essential, independent third-party witnesses can verify your evidence if they are available and willing.

FOCUS ON FACTS

Present neutral facts, and let the judge draw their own conclusions. Avoid judgement and opinion. Do not exaggerate or distort evidence. Prepare detailed descriptions, exact quotes where possible, photographs of physical injuries or items your partner has damaged and any evidence of violence towards others, including animals. You can provide information such as:

Medical facts (for both you and your children)

- ◆ Hospital records (especially emergency room reports)
- ◆ Counsellor reports
- ◆ Dental records (can reflect evidence of child neglect or direct abuse/injury)

Child-related facts

- ◆ Child welfare reports that are related to your partner's abuse of you and/or the children, any action child welfare agency has taken and any steps that you and/or your ex-partner are expected to take, along with evidence to show what steps you have taken to follow through
- ◆ School report cards (evidence of children's grades or attendance)
- ◆ Information from any extracurricular activities the children are involved in that speaks to signs of or responses to the abuse
- ◆ Letters of support from counsellors/therapists the children are seeing that can speak to the impact of the abuse on them
- ◆ If your partner refuses to allow the children to see a counsellor/therapist, this is important evidence to include

Criminal facts

- ◆ Gun records (evidence your ex-partner is keeping firearms in the home, threatening to use them against you, proof that the weapons are there illegally or that they are stored within reach of the children)
- ◆ 911 transcripts or police incident reports
- ◆ Past criminal charges and/or convictions (if available)
- ◆ Bail or probation conditions
- ◆ Crown disclosure package
- ◆ Peace bonds
- ◆ Speeding tickets or proof of car accidents/drunken driving (evidence of risk-taking behaviours)

Technology-abuse facts

- ◆ Email exchanges, SMS texts and voice recordings, social-media posts (collect only the information pertinent to the issue at hand)
- ◆ Phone records/call logs (especially if your ex is harassing you by calling frequently)
- ◆ Photographs or videos of physical or verbal assault
- ◆ Home-surveillance cameras (evidence your ex is visiting the home when you are not there)
- ◆ Proof that your ex is using technology to monitor you
- ◆ Evidence that your ex is involving the children in using technology to harass and/or monitor you (e.g., having the children show your home during video-conference visits, using the children's devices to track your location)

Financial facts

- ◆ Proof of being cut off from joint accounts and financial control by your ex-partner
- ◆ Cancelled credit cards
- ◆ Bankruptcy
- ◆ Lack of child-support payments or efforts to negotiate out of paying them (e.g., keeping children all summer)
- ◆ Evidence that you have given or have been bullied to give all your earnings to your ex
- ◆ Tenancy agreements/housing and utilities contracts, unpaid bills or late fees
- ◆ Receipts showing extravagant and frivolous spending by your ex, when there is no money for necessities like diapers or food

Workplace facts

- ◆ Evidence from your co-workers or supervisors about your ex-partner's behaviour
- ◆ Any order prohibiting your ex from coming near you or your workplace
- ◆ Workplace records and/or security footage of your ex's calls/visits/harassment
- ◆ Evidence your ex has lost their job or been disciplined for anger issues
- ◆ Any complaints filed about your ex-partner at their workplace
- ◆ Impact of the abuser's job on their parenting (e.g., extended absences from home, erratic work schedules that interfere with scheduling regular parenting responsibilities)

Notes

Community facts

- ◆ Evidence from neighbours about your ex-partner's behaviour
- ◆ Evidence from religious leaders (including evidence that you have attended pastoral or couples counselling)
- ◆ Evidence from other community representatives or institutions

Miscellaneous

- ◆ Calendars or other evidence of unreasonable visitation schedules that disrupt the children's routines or of your ex-partner arriving for visitation when they are intoxicated or otherwise not in an appropriate condition to be with the children
- ◆ Evidence of abusive behaviour from previous partners of your ex-partner
- ◆ Veterinarian reports about harm inflicted on animals
- ◆ Proof your ex has changed locks on the car or house to unfairly remove your access
- ◆ Evidence that someone else has filed a lawsuit against your ex-partner

Work with a counsellor or legal support worker to identify the kinds of abuse to which your ex-partner has subjected you, and then find supporting evidence.

KEEP IT RELEVANT

Your evidence should be clear, relevant and sufficiently detailed. Do not bring up anything that is not directly related to the issues in your case.

DON'T HIDE ANYTHING

If you have any issues that might raise concerns for the court, be sure to identify them up front and honestly. You may feel uncomfortable doing this, but your ex-partner will almost certainly tell the court about these issues, and you will look better for having raised them first. This way, you take control of your own narrative and set the context for your challenges and personal growth.

For example, if you have struggled with substance-use difficulties, be transparent about it; show the court the steps you are taking to get help. Be upfront about any prior cases of involvement with a child welfare agency, even if it was about children from a prior relationship. If you have ever been charged with or convicted of a crime, include this information in your evidence.

HOW SHOULD I GATHER EVIDENCE?

Stay safe

Safety is always the number-one consideration. A support worker, legal advocate or women's counsellor can help you document your partner's abuse and gather evidence in a way that is safe and effective. In Ontario, we have Family Court Support Workers (FCSW) who are trained to assist you to navigate the court process and create a safety plan for you and your children. Find out if there is a similar program in your jurisdiction for women who have been abused.

Many shelters also have legal advocates or support workers. While they do not have the same training as FCSWs, they are highly experienced in supporting women in family, child-protection and criminal-court proceedings, and they can likewise assist you in putting your case together and creating a safety plan.

While neither FCSWs or legal advocates/support workers can provide legal advice, they do provide legal information, help reduce your risk throughout the court process and connect you with lasting help through community supports and resources.

Get support

If it is too difficult for you to read abusive text messages or emails from your ex-partner or your ex-partner's lawyers, have a trusted friend, family member or your own lawyer filter and set them aside for you.

Create a timeline

Keep a journal and a record of events. Focus on the most recent events and go chronologically backwards in time. This task is easier if you keep detailed records and journals that track dates and times. Your ex-partner may use tactics to make you doubt yourself. Having recorded details of exact quotes and actions all laid out in front of you can help validate your understanding of events.

Notes

Find witnesses

Independent third-party witnesses can verify your personal evidence. The more independent these witnesses are, the better (for instance, the testimony of a schoolteacher will have more weight than that of your sister). Keeping in mind the examples below, take time to make a list of all of the people who might have seen signs of family violence against you and your children.

- ◆ Community religious leaders
- ◆ Co-workers and/or your supervisor
- ◆ Neighbours
- ◆ Schoolteachers
- ◆ After-school sports coaches
- ◆ Music teachers
- ◆ Health-care providers
- ◆ Babysitters, etc.

Keep your evidence safe

Keep backup copies of any written evidence. If you are still living with the abuser or if they have access to your house, keep a copy of your evidence stored in a locked safe box somewhere away from your home. Whenever it is possible to do so safely, create backup disks of electronic files and communications.

Always keep a backup

You may be tempted to delete abusive files that your ex-partner has sent you. However, if you do not keep copies of your communications, your ex can present them to the court in a one-sided manner. That may involve excluding key segments of conversations or taking them out of context to portray you in a bad light and make them look good. For the same reason, you should keep images/photos of the abuse to which your partner has subjected you. Consider creating a backup copy of the images and storing them with a trusted friend or in a safe location so you don't have to look at them every time you use the device where you have been storing them.

Find tech support

With so much of our personal data shared online and subject to potential hacking and harassment, it can be especially useful to have help documenting digital evidence of abuse and monitoring/threats. Creating backups, encrypting data, changing passwords and protecting yourself from technology monitoring may require specialized tech support. It is important to know how to collect digital evidence about your ex-partner in a way that is both ethical and safe.

Your ex-partner may try to collect evidence on you

Your ex may attempt to install spyware or other forms of surveillance apps or devices (such as drones) to track and monitor you and your children. Attempting to remove a surveillance app will alert your former partner, and they may increase their abusive behaviour. Contact the police or a women's organization for help about what to do if you think that your ex is monitoring you. It may result in criminal charges against them.

For more information on how to avoid, manage and collect evidence of tech abuse, see our resource: [LukesPlace.ca/tech-abuse](https://www.LukesPlace.ca/tech-abuse)

Notes

HOW DO I PRESENT EVIDENCE?

Most of your evidence will be in the form of written affidavits. Just as it is when you swear an oath or affirm to tell the truth in court, when you or any of your witnesses write an affidavit, that person swears or affirms that the contents are true to the best of their knowledge.

Create a picture in the judge's mind

Present evidence in a way that helps the judge see the full picture. It is not enough to simply say that your partner was abusing you; you need to provide specific examples, with details.

Your case will be stronger if you show the court what things were like both during the relationship and since you and your ex-partner separated, as well as how your ex-partner's abuse has affected your plans for the future. Provide the court with a brief chronology of the abuse.

It is important to connect your ex-partner's abuse to the issues you want the court to decide: parenting arrangements, financial and property issues and safety concerns. In parenting cases, be sure to tie evidence of abuse to what is best for the children (see the Best Interests of the Child Test section).

With respect to parenting time, for example, present evidence about how the abuse affects your ex-partner's parenting (e.g., your ex is so aggressive with you that the children are scared), your ability to co-parent and how it affects the children. Explain why this means you are the more appropriate primary parent. Always tie what happened to you to what is best for the children.

Notes

Show the steps you are taking to meet your children's needs

Present evidence that shows how you have cared for yourself and helped your children cope. Include information about your positive parenting and the impact it has had on your children. If you were the parent who picked them up from school, took them to doctor's appointments and went to parent-teacher interviews, show this positive evidence to the court.

Present a balanced picture of your ex-partner

Don't be unnecessarily critical about your ex-partner. Avoid name-calling and full-scale character assassination. Your story will resonate more strongly with the court if you let the facts about what your ex has done speak for themselves. If you paint an entirely negative picture of your ex, the court may see you as vindictive and dismiss all of your evidence as not credible.

Review

Have a look again at your evidence: Does it help prove your claim? Remember, you just need to make the judge understand that your story is more probable than not. However, the judge in your case may not understand trauma or the nature of intimate partner abuse. Finding a lawyer who understands the nature of violence against women or working with a support worker or women's advocate can help you describe your partner's abuse in a way that keeps you safe and helps the court understand the gravity of your claims.

Notes

COMMUNICATION

TIPSHEET: EFFECTIVE COMMUNICATION

Communication between two people who have separated is often challenging. When there has been abuse, it will almost certainly be a challenge and may create safety concerns. You may find that your ex-partner is using contact with you as a way to continue the abusive power dynamic that you are trying to leave behind.

Your situation is unique, and only you know what is best for you. The below tips are offered as suggestions. We hope that at least some of them will be helpful in your situation.

Guiding principles

First, take care of yourself.

Prioritize safety for you and your kids. Pull together your support networks around you. Work on your healing. You need to be strong and healthy to take care of yourself and your children. This will help you to see things more clearly, including ways to safely navigate communication with your abusive ex-partner.

Second, remember that you have choices.

You cannot choose the way your ex-partner acts towards you or the way they communicate with you. But you do have a choice about how you respond, and that can never be taken away from you. Try to stay focused on the choices you have and the places where you have control, and let go of the things that you cannot control.

Third, keep learning about abuse.

Keep unravelling the patterns of abuse from your relationship and learning what triggers you. The better you are able to recognize the traps that your ex is setting to lure you into an emotional war—the put-downs, gaslighting, stonewalling, use of intimidation, lying, shaming, blaming and ongoing threats—the better you will be able to detach yourself and react neutrally and less emotionally.

Fourth, know that it is about your ex-partner's need for control.

Before beginning any conversation, know that the hurtful things your ex may say to you are about your ex and not you. Through their communication with you, they are trying to recreate the control they had over you while you were together.

Fifth, things will get better.

Even if it seems like this will never end, things will improve. You will get stronger and be able to move forward with your life. Remind yourself of this when communication with your ex is especially difficult.

Last, and most importantly, believe in yourself.

You took the brave step to leave a harmful relationship. That took courage and willpower. You sought help when you needed it and made yourself and your children safe. You are a survivor. Always remember that.

Suggestions for managing conflict

- ◆ Your ex-partner may try to provoke you or get you to say things you'll regret. This is a ploy to give them ammunition to use against you in court. Try to avoid getting drawn into any such provocations.
- ◆ If you feel frustrated or angry or think your ex is trying to provoke you, don't be afraid to end the conversation or take a break. Walk away from the messaging or email exchange, and reply when you've had time to cool off. Say something like, "I need to call you back later" or "I am going to hang up unless you stop calling me names."
- ◆ If necessary, don't hesitate to involve a mediator, lawyer, social worker or therapist to help resolve the conflict.
- ◆ It's usually not a good idea to involve third parties who are not qualified professionals in the conflict. This includes new partners, co-workers, friends and family—*especially* the children.

Notes

Strategies for communicating

- 1. BREATHE:** Begin every communication (face-to-face conversation/email or letter/ phone call) by taking a deep breath with a long, slow exhale. Find something to ground yourself—maybe hold onto an object that makes you feel safe. Take a break to clear your head. As you speak/write to your ex, continue to breathe and remind yourself that you are safe.
- 2. BE NEUTRAL:** Communicating with an abusive ex-partner can be triggering and traumatic. Set realistic goals for the communication ahead of time that take into account any difficult behaviours you anticipate. This may help to minimize your emotional reaction if they do happen, and you can maintain a calm neutrality in your communication, avoiding triggers and staying focused on what you want to get out of the exchange.
- 3. BE AS NON-JUDGMENTAL AS POSSIBLE:** Avoid labelling. Stick to descriptions of facts or observations without judgment (e.g., “As you know from Sam’s doctor, Sam’s asthma is triggered by cigarette smoke”). Focus on the children’s needs and not your ex’s rights or your rights. Remember that communication is about body language and not just words. Keep a pleasantly neutral facial expression and a non-judgmental tone.
- 4. BE CONCISE:** Use as few words—verbal or written—as possible. Avoid language or details that could be twisted and used against you in court or other legal settings. Every word can be taken out of context, so write and speak carefully and briefly.
- 5. BE CLEAR:** Make sure your language is clear. State your reasons for writing or needing to talk. If there are time-sensitive needs, be clear about timing. Be clear and honest about your expectations and objectives.

Notes

6. **KEEP A RECORD:** Record anything they say or write to you. Document everything, and try to get evidence of any ongoing abuse by your ex-partner.
7. **LISTEN AND PLAN FOR NON-CONFRONTATION:** One way to diffuse a potentially aggressive interaction is to mirror the other person and reflect back what they have said and what they seem to be feeling. This does not mean that you agree with them. It simply means you are listening, and that in itself can sometimes help defuse violence. Learn to neutrally paraphrase their words:
 - ◆ “I hear you saying...”
 - ◆ “What I think you are saying is...”
 - ◆ “It sounds like you’re concerned about...”
 - ◆ “Let me make sure I understood you correctly...”

Another effective technique is simply to repeat back one to three words, usually the last three words they’ve said:

- ◆ Ex-partner: “I want you to give up your shares in the company in exchange for time with Fatima.”
- ◆ You: “Time with Fatima?” (wait for them to elaborate).
- ◆ Ex-partner: (demanding voice) “I’m keeping Fatima, you can have her on weekends.”
- ◆ You: “On weekends?” (said neutrally as a question. Pause, wait for them to elaborate).

You can follow this up by naming the emotion or underlying unmet need: “It sounds like you really want to be more involved in Fatima’s life” (wait for them to elaborate). Listen and let your ex speak; it will give you more insight into their perspective.

8. **PROJECT CALM CONFIDENCE:** Remember your strength. Abusers thrive on projecting weakness onto you. They enjoy knowing they are getting under your skin and making you feel bad about yourself. Don’t give them the impression they have rattled you, even when they have. Believe in you. Your self-worth is the best armour you can have against their ongoing criticisms and belittling behaviour.
9. **REFRAME:** If your discussions are at a standstill, try to frame the discussion in a different way, maybe one that aligns with your ex’s goals or self-image. If there are any points of agreement, focus on them.
10. **CREATE ALTERNATIVES:** When thinking about alternatives, think about them on a scale that ranges from the best possible outcome to what you could live with to the minimum you are willing to accept. Do not go below that.

11. STAY POSITIVE: Include helpful and positive or neutral comments in the communication whenever possible:

- ◆ "I like how you said that..."
- ◆ "I think we may have drifted off topic..."
- ◆ "I'm grateful for your willingness to..."
- ◆ "Another possibility might be for us to consider..."
- ◆ "It's reassuring for me to hear that..."
- ◆ "Yes, we agree that..."
- ◆ "That's interesting..."

12. LET YOUR EX-PARTNER ARRIVE AT THE SOLUTION: "What do you think?" Depending on your ex's personality and their need to maintain control, the more they know you want something or the more you persist, the more they will resist. Don't "should" on anyone (including yourself!). Make polite requests.

13. BE SAFE: Choose public venues for communication. Never meet for discussions in either of your homes.

14. USE THE 24-HOUR RULE: Unless it is an urgent matter (e.g., it concerns the immediate safety of your children), don't respond until 24 hours has passed. This allows your emotions to settle. You can better plan your response with a clear head after you have slept on it.

Notes

- 15. BE MINDFUL OF YOUR CHILDREN:** Do your best to avoid any difficult conversations while your children are within earshot. This is not always easy if you are living in tight quarters with little privacy. Try to schedule these talks for times when the children are asleep, fully occupied or away from the house.
- 16. BE PREPARED:** Plan what you are going to say ahead of time, and stick to it. Rehearse if you need to. Try not to let the exchange get derailed. You can make better decisions when you are feeling safe and unthreatened, rather than in the heat of a conversation when you aren't thinking straight. Consider consulting others beforehand to help you decide on what you should and should not say.
- 17. DON'T HIT REPLY:** Never use the reply button when responding to your ex-partner's emails. Save the original email, then create a new email titled "Reply to your email of [date]." By saving all of your emails individually, you can protect yourself if your ex-partner is tempted to make changes to your original email content in the email thread in an effort to make you look bad when they reply to you.
- 18. USE A COMMUNICATION BOOK:** If your ex-partner refuses to control their electronic communication with you, ask the court for an order that all communication must take place through a communication book. This book can be passed between you and your ex during the child exchanges. It can be put in a locked pouch so the children can't see what's written in it. Take a picture of the book or photocopy it regularly in case your ex-partner withholds it at some point. Using a communication book can reduce stress for you because you will not be receiving emails from your ex on a constant basis.
- 19. MAINTAIN BOUNDARIES:** Even if your ex continues to disrespect boundaries, maintain them whenever possible. Agree on a method of communication, and then stick to it. Set healthy boundaries and expectations.
- 20. UNDERSTAND YOUR OWN REACTIONS:** Learn to recognize the feelings and trauma reactions that are going on inside you. Journal about it, or tell a good friend. Be clear with yourself about the unmet needs at the root of your emotions, and focus on the needs rather than the emotions.
- 21. DO NOT SINK TO YOUR EX-PARTNER'S LEVEL:** If they use emotion or are angry with you, try to deflect with neutrality and detachment. Use deep breathing to help keep your mind calm and centred: Take a deep breath and pause before you respond. If you are communicating by email or text, take time before responding. If you are talking to one another, you could deflect by suggesting a short break.
- 22. KEEP WORKING ON YOUR OWN TRAUMA:** Your emotional blocks or fear/pain centres may be getting in the way of your ability to listen or to react neutrally. Be gentle with yourself: Your body's survival response from past harms is there to protect you from future harm.

- 23. BE PREPARED TO WALK AWAY:** Sometimes your ex-partner will be violent, deny everything you say or refuse to communicate. Your safety—physical and emotional—comes first. If the conversation is too abusive, unhealthy or unproductive, even after you’ve employed every strategy you can think of, consider disengaging and walking away. You can always revisit the subject later. You might find it useful to say something like, “It’s getting late, how about we revisit this tomorrow or next week?” Plan ways to stay safe if you have no choice but to have this conversation in a face-to-face encounter.
- 24. FIND SUPPORT:** If direct communication remains too toxic or dangerous, you may need to find some support. This should not be family or friends and should never be your children. Seek help where possible from Family Court Support Workers or women’s legal support workers, lawyers or therapists. You can have a friend screen your emails, but only if you absolutely trust them to make the right call and to respect your privacy.
- 25. FIND SELF-FORGIVENESS AND SELF-COMPASSION:** One of the ways to ensure that you have the distance and presence of mind to employ all of these strategies when you need them is to find ways of being happy and fulfilled in other areas of your life. Consider talking with a therapist to help you think about where you want to be in five years. Ask for help in getting the abuser’s voice out of your head. Know that you are doing your best. Find your own source of daily joy. Give yourself permission to have fun. Read a book. Go for a walk. Spend time in nature. Find a sport or a hobby. Visit loved ones or friends. Carve out space where none of the above is on your mind. If you take good care of yourself, you will be stronger and thrive no matter what challenges life (or your ex-partner) throws your way.

Notes

TOOLS FOR POST-SEPARATION SAFETY

CHECKLIST: HOME SAFETY AND SECURITY

Abuse does not always end just because the relationship does. Having a safety plan for after you leave your partner will help you and your children both be and feel less vulnerable. The checklist below offers suggestions for things you may want to consider when planning for your safety. For more detailed information about safety for you and your children, both while you still live with and after you leave your partner, see: FamilyCourtAndBeyond.ca/keep-safe

Is there a neighbour you trust enough to tell about your ex-partner's abusive behaviour? Will they agree to keep an eye out and let you know and/or call the police if they see your ex-partner or their vehicle near your residence?

Does everyone who has a key or regular access to your home (e.g., babysitter, roommate, landlord, tenant, friend with a spare key) know about the situation? Can you give them a photo and/or a description of your ex-partner and their vehicle and perhaps a copy of any orders that prohibit your partner from being on or near your property? Do they know what to do if your ex-partner shows up?

Do you have an exclusive possession order?

Do you have a restraining order or peace bond?

Have you changed the locks since your ex-partner moved out?

Have you changed the home security system, including the alarm code?

Have you changed the garage door code?

Do you have blinds on the windows that you remember to close at dusk?

Do you have bars and/or alarms on the windows?

Do you have a spare key? If so, have you changed its location or considered getting rid of it altogether?

Do not keep the key in an obvious place, such as in the mailbox or under the welcome mat. If possible, consider keeping it somewhere with an extra layer of security.

Do you have caller ID?

Do you have security cameras of any kind? Keep in mind these could decrease your safety if your ex-partner breaks or hacks into them.

Have you talked to the local locksmiths, explained the situation and made it clear that they are not to let your ex-partner into your home even if their ID still has your address on it? If there is a restraining order, a peace bond and/or an exclusive possession order, you should consider giving the locksmiths a copy and/or taping a copy to the inside of the window or some place very visible so that they will see it right away.

Notes

TIP SHEET: BUILDING A NEW CO-PARENTING RELATIONSHIP

- ◆ What boundaries do you have with your ex-partner?
- ◆ How will you communicate with your ex-partner in a way that is physically and emotionally safe?
- ◆ Don't meet with your ex in person if you don't need to.
- ◆ If you must meet with your ex in person:
 - ◆ Do it in a public place with witnesses and security cameras.
 - ◆ Don't meet at either your home or your ex-partner's home.
 - ◆ Select a place to meet that is neither deserted nor busy and loud. A library or quiet coffee shop would be good locations.
 - ◆ It's usually safer to meet inside a public place rather than outside or in the parking lot.
 - ◆ If you're very concerned, consider meeting at a police station.
 - ◆ Consider bringing someone with you, but be sure you trust them, and be aware that this encounter could potentially put them at risk.
 - ◆ Make sure someone knows the details about your meeting—who you're meeting, where, why, when, what time you expect to be home, when they should expect to hear from you, when they should become concerned—and ask them to stay in touch with you by text.
- ◆ Be polite and cordial but brief and to the point.
- ◆ Many women find email is the best way to communicate with an abusive ex-partner. The advantages of email are:
 - ◆ It creates a written record, preventing "he said/she said" situations.
 - ◆ It's easier to take time and think carefully about what you want to say, reducing the chances your ex-partner will be able to trip you up and get you to say something they can turn around and use against you in court.
 - ◆ There is less expectation of immediate responses.
 - ◆ Unlike text messaging, email doesn't typically involve read receipts.
- ◆ When communicating by email, don't use the "reply" button. Send a new email and title it "Reply to your email on [DATE] at [TIME]."

CHECKLIST: TEACHING YOUR KIDS TO BE SAFE

If the children are old enough to be left home alone, have you talked to them about home-alone safety? Do they understand what they need to do if your ex-partner shows up?

Be aware that even if children understand that the other parent is a threat and they are not allowed to let them in, abusers are skilled manipulators, and children are vulnerable to this. Your ex-partner may say scary and upsetting things (including threatening to self-harm or burn the house down), guilt-trip the children, fabricate an emergency, put on a very convincing emotional display and/or find a way to trick the children into letting them in—and your ex-partner likely knows your children well enough to know exactly what to say to them.

Do the children know not to answer the phone if it's the other parent or a blocked/unknown number?

Make sure they know to just let the phone ring and go to voicemail. Declining the call lets the abuser know that there has been a response on the other end.

Do the children have “safe adults” they can trust—a teacher, doctor, friend’s parent, religious leader, an Indigenous Elder, their sports coach or an extended-family member?

Do you have a comprehensive safety plan with the children?

Do you have a code word? Do the children know what to do when they hear it? Do they know that the code word is a secret?

Have you discussed a plan for what you’ll do if the abuser breaks in or shows up at the home and won’t leave?

Do the children understand that children cannot protect adults? Do they know that if there’s an emergency, their job is to keep themselves safe and, if possible, go for help?

Notes

Do you have a plan for what to do if the other parent abducts or tries to abduct the children?

Is there a safe room where the children can hide if they're unable to safely get out of the home? Preferably, it should be:

A room that locks from the inside.

A room that has more than one exit, even if the exit is a window.

Not a kitchen—there are too many knives and other potential weapons.

Not a bathroom—the window is likely very small, there's no phone, there are a lot of hard surfaces, and there's probably nothing they can hide behind.

Equipped with a phone to call 911.

Do the children know your address, how and when to call 911, and what to say when they get through?

Do they know that if it's not safe to speak or they're too scared to speak, they can leave the phone off the hook and the dispatcher will send the police?

Do they know not to hang up after they're done talking to the dispatcher? This way, there's no danger the dispatcher will call back and alert the abuser.

Do the staff at the child's school, day care, extracurricular activities and other relevant people/places know about the situation? Do they have a copy of relevant legal documents, such as a restraining order or parenting order? Do these contacts understand that the other parent is not allowed to pick up the child? (Note that this is not the case if there is no permanent or temporary parenting order.)

Notes

CHECKLIST: TECH SAFETY

Have you changed your voicemail greeting to an automated greeting, one that uses someone else's voice, and/or one that simply says something like "The person you have called is unavailable right now" instead of your name?

Have you checked your home, vehicle, devices, belongings and children's belongings for hidden cameras, microphones or GPS trackers?

Have you changed the passwords on all your accounts (social media, banking, email, etc.)?

Have you considered creating a new email address that your ex-partner won't know and using your old one for communicating only with your ex?

Have you considered changing your phone number or getting a new phone with a new number and keeping the old one to use only for communicating with your ex-partner?

If you suspect your ex-partner has tampered with your devices, are you able to get a new one?

Social media

Have you changed your privacy settings?

Have you changed your screen name/username/display name?

Have you unfriended/removed/blocked your ex-partner on social media, along with anyone your ex might use to try and spy on you?

Are you being mindful of what you post, especially location "check-ins," anything depicting illegal/dangerous/controversial activities and anything to do with your children, your ex-partner, the breakup/divorce, the abusive person's behaviour or the court case?

Are you aware that your social-media and technology activity—including Facebook posts, Snapchat stories, emails, text messages and more—are potentially admissible evidence in court and could end up being viewed by the judge and/or influencing the outcome of the case?

It's absolutely understandable that you are angry, want to vent and/or have negative feelings about your ex-partner, ex-partner's family, the court case, child welfare, etc. But you should think carefully before you create any digital or written record of these feelings, because that record could be used against you in court. Talking to a counsellor or calling a trusted friend to vent is a better choice.

Before you post photos online, have you checked to make sure the location metadata (date, location) is not attached? That information may allow someone to download the file and see the coordinates of where the photo was taken. You can avoid this risk by making a copy of the original or taking a screenshot and posting that instead of the original.

Avoiding spyware

Don't download any file your ex-partner sends you—it could contain spyware. If your ex needs to share documents/files with you, ask them to do it through another method such as fax, regular mail, a co-parenting app or a file-sharing app like Google Docs or SharePoint, which are less likely to infect your device with spyware.

Have you read about spyware and the warning signs? Some examples are:

Your device gets very warm.

Your device runs very slow.

Strange apps/files appear that you don't remember downloading.

There may be abnormal device behaviour (e.g., the device turns on or off by itself, the volume changes by itself, the browser refreshes by itself, the cursor moves by itself).

There are strange texts or notifications.

The browser history is either missing or strange (e.g., it says you visited websites you didn't—cookies have been cleared, but you don't remember doing that).

There is static or strange noises during phone calls.

Your phone or data bill inexplicably increases.

Your ex-partner knows things they shouldn't, including things for which you didn't create a digital record (e.g., details about a conversation you had with your lawyer in person). These could indicate the presence of a hidden camera or microphone or evidence that your ex-partner has hacked your phone and is listening in.

Your ex-partner "coincidentally" shows up where you and/or the children are.

CHECKLIST: MANAGING LEGAL BULLYING

Do you have a lawyer?

If you cannot afford a lawyer, have you contacted Legal Aid and/or looked for legal clinics and pro bono lawyers?

Do you have documentation of your ex's legal bullying? For example:

Times they failed to complete paperwork or did it incorrectly to delay the proceedings?

Times they filed inappropriate motions or repeatedly took you to court over very minor things?

Times they threatened to get sole decision-making responsibility and never let you see the children again?

Have you spoken with your lawyer about your concerns?

Have you connected with an advocate or support worker?

Notes

EXCHANGES

TIP SHEET: EXCHANGING CHILDREN SAFELY

Exchanging your child can be stressful in situations where you have been subjected to violence in your relationship. Your ex-partner may use exchanges to control or intimidate you and to try to set the tone for your post-separation relationship.

To avoid unwanted and unnecessary interactions with your ex-partner, arrange for the child exchanges to take place in a public location rather than your home whenever possible. By conducting these exchanges away from your home, you can maintain a sense of privacy and reaffirm your personal boundaries.

Children can often become a tool used by your ex-partner to continue to intimidate or harass you. The following tips may help you think about how to structure contact time with your ex-partner. If you have a lawyer, you can share these suggestions with them.

Boundaries and location

Select a few neutral locations between where you and your ex-partner each live as options for exchanges. For example, consider exchanging your children at a public library, an entrance to a mall or outside a local Tim Hortons or McDonalds. Often these locations will be busy with plenty of foot traffic. This way, you have potential witnesses if you have safety concerns because of your ex-partner's history of being abusive or intimidating. As a last resort, consider exchanging your children at a local police station.

Agree upon a neutral location in advance and in writing, including when and where the exchanges will be so there is minimal opportunity for confusion or intentional misinterpretation by your ex-partner.

Notes

Ask a third party to attend

- ◆ If you are concerned about your ex-partner's behaviour during exchanges, and you think you may be at risk of emotional or physical harm, ask a neutral third party to attend the exchanges with you.
- ◆ Be mindful of who you choose to assist with this, as your ex-partner may view your friend or family member as an extension of you and consequently be abusive towards them.
- ◆ If you are exchanging your children during the school year, consider asking your child's teacher or teaching assistant to take part in the exchange.

Stick to a schedule

- ◆ Once you and your ex-partner agree to a schedule or the court order sets out an arrangement, it is important to stick to it, as this will help to ensure that exchanges go predictably.
- ◆ If you are going to be late, make sure you let your ex-partner know immediately so as not to cause issues. Do so in writing (text or email) so you have a record of what you tell them and when.

Notes

No-contact exchange

- ◆ A no-contact exchange occurs when you and your ex-partner do not see each other during the exchange.
- ◆ No-contact exchanges may be a good idea if you have been subjected to violence in your relationship with your ex-partner.
- ◆ Some examples of no-contact exchanges are:
 - ◆ If your children are school-aged, one parent will drop off the child in the morning and the other parent will pick up the child after school. If the children are involved with extracurricular activities, one parent can drop off the children at a piano lesson or hockey game and the other parent can pick them up. This type of exchange means you and your ex-partner do not have to interact with each other.
 - ◆ If your children are old enough, and you are meeting in a public place, your children can walk from your vehicle to your ex-partner's without either of you having to leave your car.
 - ◆ If you are involving a third party such as a grandparent or a family friend to help facilitate access, consider dropping the children off at the third party's location and leaving before your ex-partner picks them up.

Notes

Supervised visitation centres

Supervised visitation centres help separated families deal with some of the problems related to parenting-time arrangements for their children, particularly when there are safety concerns for either the primary parent or the children. To find out about centres located in the jurisdiction where you reside, you may wish to visit your provincial or territorial government's website, which may provide you with additional information.

When is supervised visitation appropriate?

You may consider using the supervised access program in your local community if:

- ◆ You do not believe your children will be safe with the other parent.
- ◆ You are worried that your ex-partner will not return your children after an exchange.
- ◆ You have concerns about your own personal safety.
- ◆ It has been a long time since your children last saw your ex-partner.
- ◆ Your ex-partner has a drug or alcohol problem that could endanger the children.

There are fees for using these services, and these are normally shared between the parents unless your court order sets out a different arrangement. At some centres, fees may be set on a sliding scale and can be waived if you or your ex-partner are unable to pay.

Additional Information

Keep a record

- ◆ Document all issues that may arise in connection with the exchange. For example:
 - ◆ Did the abuser yell at or behave aggressively with you and/or the children during the exchange?
 - ◆ Did the children return with any complaints about the visit?
 - ◆ Were there any suspicious injuries?
 - ◆ What comments, if any, did the children make about the visit?
 - ◆ Was your ex-partner late or early picking up the kids? Did your ex fail to show up at all?
 - ◆ Did the kids say your ex talked about you with them or with others when they were around?
- ◆ If, based on the issues that have come up during the exchange, you are fearful about your children seeing your ex-partner, share your concerns with your lawyer immediately.

Who to contact when you have issues about the exchange

- ◆ If you have a lawyer, contact them as soon as possible.
- ◆ If you have serious safety concerns for your children or if your spouse is withholding your children, call the police.
- ◆ If your children come back with visible and unexplained bruises or if their behaviour is unusual or otherwise concerning, consider calling your local child protection agency.

Notes

MANAGING PARENTING TIME WITH THE ABUSER

If you and your ex-partner have children together, you will likely face challenging situations as you manage the parenting issues that will arise. This resource provides suggestions and tips on how to anticipate and manage those challenges in ways that are safe for you and your children and can lead to outcomes that are good for the children.

Remember a couple of general guidelines:

- ◆ Don't meet with your ex-partner alone or in either of your homes.
- ◆ Avoid making informal or verbal agreements with the abuser.
- ◆ Insist that any agreements you make be in writing. This can be as simple as an email exchange in which you both confirm whatever arrangement you are agreeing to.

Anticipating and managing challenges

- ◆ **BE PREPARED FOR CONFLICT:** Have a comprehensive parenting plan with special sections related to managing conflict. If at all possible, you should prepare this with the help of a lawyer, and/or have a lawyer review the parenting plan before you present it to the judge.
- ◆ **GET PROFESSIONAL SUPPORT:** Don't be afraid to involve a third-party professional, such as a lawyer or mediator, to help resolve disputes about parenting time.
 - ◆ It's not usually a good idea to unnecessarily involve third parties who are not qualified professionals in disputes between you and the other parent. This includes co-workers, new partners, friends, family and, especially, the children.
- ◆ **MAKE PREDICTIONS BASED ON PATTERNS AND PAST BEHAVIOUR:** For example, does your ex-partner have a drinking problem? You should anticipate that it's possible that they may show up intoxicated to pick the children up and/or consume alcohol inappropriately during their parenting time. You should have a plan for this, including a means of documenting their behaviour, calling the police or child welfare agency if necessary, not allowing them to drive away with the children if they appear to be intoxicated and taking them to court to change the parenting order if there has been inappropriate alcohol consumption during parenting time.

- ◆ IS CHILD ABDUCTION A POSSIBILITY? Has your ex-partner ever threatened to abduct or withhold the children, specifically by taking them to another country and not bringing them back? Do you have reason to believe that this is a credible threat, perhaps because your ex has connections in that country or has applied for passports in the children's names? Have you consulted with a lawyer? Have you taken protective measures like withholding parenting time or calling border authorities and explaining the situation? Keep the phone number of your child welfare agency handy so you can call them if you believe your ex-partner has abducted your children.
- ◆ ARE THE CHILDREN AT RISK? Has your ex-partner ever harmed or threatened to harm the children in any way? Has that been documented? What was the nature of the harm or threat(s)? Is your ex-partner engaging in problematic behaviour with respect to the children during their time together? If so, document such behaviours by your ex-partner as:
 - ◆ Showing up very early or very late to pick up/drop off the children.
 - ◆ Returning the children dirty, unfed, dressed inappropriately for the weather, with their homework incomplete and/or with unexplained injuries.
 - ◆ Inappropriately leaving the children alone or without appropriate supervision.
 - ◆ Using unreasonably harsh discipline.
 - ◆ Engaging in unreasonably lax parenting, such as letting a 7-year-old stay up until 2:00 a.m. or letting a 12-year-old drink alcohol.
 - ◆ Saying mean and/or untrue things about you to the children.
 - ◆ Using substances inappropriately during parenting time.
 - ◆ Behaving abusively towards the children.
 - ◆ Storing potentially dangerous items improperly, i.e., leaving them where the children could get access to them. Even if you think your child is old enough to know better than to play with a firearm or to mistake prescription drugs for candy, these are items to which children should not have access.

Notes

- ◆ **KEEP ALL COMMUNICATION:** Although messages from your ex-partner may be upsetting, and it's understandable if you want to delete them, don't. At the very least, have a backup somewhere—for example, before you delete an email, take a screenshot and upload it to Google Drive so you'll still have a "paper trail" but won't have to look at it every time you open your email account. This helps to avoid "he said/she said" situations in court.
- ◆ **COMPROMISE WHEN REASONABLE:** Even in a healthy relationship, parents disagree from time to time about parenting. Be prepared to make reasonable compromises.
- ◆ **REMEMBER:** Although you cannot make another person behave as you might like them to, you can choose how you react to that behaviour. Your job is to act in a way that clearly shows you are willing to put any hard feelings aside to be cooperative and communicative for the children's sake, even if you cannot make the other parent do the same.

Following/enforcing orders and agreements

- ◆ **GET IT IN WRITING:** As much as possible, get everything in writing. The last thing you want is to be accused of abduction because the abuser "forgot" that they verbally agreed to allow you to take the children camping for the weekend.
- ◆ **DETAILED PARENTING ORDER:** Make sure your parenting order is as thorough and detailed as possible, so there is no small loophole or gap for your former partner to find and exploit.

Notes

- ◆ WHAT TO DO WHEN AN ORDER IS BREACHED:
 - ◆ You want a parenting order that specifies consequences for breaching it.
 - ◆ Make sure you know exactly how enforcement works and who to contact if the other parent breaches an order.
 - ◆ If you breach the order, be prepared to present a detailed explanation of why you felt it was necessary and in the children's best interests, and include evidence, if possible. For example, if you withheld parenting time, be prepared to explain to the judge that it was because your ex-partner smelled of drugs or alcohol when they came to pick up the children, and you felt it would be dangerous to let them drive away with the children. If relevant, include a copy of the police report from your ex-partner's previous impaired driving arrest to add credibility.
- ◆ RISK OF ABDUCTION OR HARM? If you have reason to believe that your ex-partner is going to harm or abduct the children, apply for an emergency motion as soon as possible. It's best to do this before parenting time occurs. Contact your child welfare agency and explain why you believe your children are at risk. You should also call your lawyer right away.

Police involvement

Until there is a temporary or permanent parenting order in place, both parents have equal rights and responsibilities. This means, for instance, that the other parent is legally allowed to take the children out of school at any time, and there is nothing the school or the police can do to stop them.

If the judge is satisfied that a parent has abducted the children, the judge can order the police to find and return the children, even if the parent has parenting time and/or decision-making responsibility.

The police can enforce peace bonds and restraining orders. If you have either of these orders, call the police immediately if your ex-partner breaches one or both.

If your parenting order contains a clause stipulating that the police can enforce it, they can step in if your ex-partner breaches the order by, for example, withholding the children without cause at the end of their parenting time.

Be aware that:

- ◆ Once the police are called, you lose control over what happens. For example, they may decide to press charges against your ex-partner, even if you do not want this.
- ◆ The police can and will report you and/or your ex-partner to the local child welfare agency if they feel that it is warranted.

Reporting to child welfare

Child welfare, child protection, children's services, CAS and Children's Aid are different names for the agencies that have the duty to protect children from harm. One of the principles of child welfare is that it is in the best interests of children to remain with their family of origin when possible and to have minimal disruption in their lives. In practice, this is not necessarily every family's experience, especially in racialized, Indigenous or otherwise marginalized communities.

Naturally, you will want to know whether there are any safety concerns for the children while they are with their other parent. Here are some guidelines for that conversation:

- ◆ A gentle approach is the best way to have your children open up to you about anything that makes them uncomfortable.
- ◆ Ask them how their visit went and whether they had fun. Use open-ended questions like, "So what did you guys get up to this weekend?"
- ◆ Avoid interrogating them as soon as they walk in the door. Don't ask questions that are looking for a specific answer.
- ◆ If you get answers that set alarm bells ringing, you can follow up with some more direct questions. But if your child becomes uncomfortable, you should stop and return to the topic later.

If you suspect that your ex-partner is abusing or neglecting the children during parenting time, you should report them to child welfare as soon as possible. Failure to do so may leave your children at risk and could make you look negligent. Remember that:

- ◆ You can make a report to child welfare without being absolutely certain that there has been maltreatment.
- ◆ You will not get in trouble for doing this, provided the report was made in good faith rather than to waste child welfare's time or to get back at your ex.
- ◆ As it is with contacting the police, child welfare involvement is serious, and once they are involved, you no longer have control over what happens. There can sometimes be very serious consequences, such as the termination of parental rights.

Understand that anyone who has reason to suspect that a child is at risk or has been abused, neglected or trafficked/exploited is required by law to report it. If you tell your counsellor, doctor or legal advocate that you think your ex might be abusing the children, they may have a legal duty to call child welfare if they believe that your children are being harmed or are at risk of being harmed. If you have taken reasonable steps to protect the children—for instance, by moving into a shelter with them and starting a family law case to sort out parenting arrangements—child welfare will take this into account when deciding whether to intervene in your family.

NAVIGATING CHANGES

TIP SHEET: CHANGING ORDERS

Your family is likely to change over time. Your children will get older, you may take a new job, or you and/or your ex might decide to become involved with a new partner. These are all circumstances where you may need to change your family court order.

If your post-separation relationship with your ex-partner is going reasonably well, and you do not have any safety concerns, think about discussing any changes you want directly with your ex. For example, if you are thinking of enrolling your child in an extracurricular activity that may be costly, consider broaching the subject with your ex-partner in the following ways:

- ◆ Discuss what the extracurricular activity is and why it may be beneficial for your child well in advance of when your child may need to register for the activity (e.g., skills development, socializing with friends, a creative outlet, etc.).
- ◆ Let your ex-partner know about the duration of the activity (e.g., that it will last a few weeks over the summer or on a weekend day).
- ◆ Let your ex know about the cost of the activity. Who will cover the cost and how? Will you both share the expenses? Is there a discount if you register your child early?
- ◆ Ensure that the activity does not interfere with your ex-partner's time with your child. If it does, consider offering another time for your ex-partner to have parenting time with your child.
- ◆ If you are able to come to an agreement, consider confirming in writing either via email or text message as a way to avoid potential conflicts.

If you have safety concerns or your ex-partner is reacting poorly to any suggestions you have made about changing the family court order, you may need to consult a lawyer and potentially return to court.

Notes

Variation of orders

If you want to change a final court order about parenting time, decision-making or support, and your ex-partner will not agree to the change, you will need to seek a variation of the order from the same level of court that made the original order.

A variation is often sought in situations where one partner wishes to change support payments. For example:

- ◆ The support payor is making more money than they were when the order or agreement was made.
- ◆ The support payor was making less money than when the order or agreement was made.
- ◆ Your child has finished school, married or moved out on their own.
- ◆ Your child or children are now living with the payor or with a different person.
- ◆ You no longer need spousal support because you can support yourself.

A variation can also be sought when you want to change the terms of a parenting order. For instance, perhaps you want to relocate with the child or you want to change the parenting schedule.

You may also need to change your court order for safety reasons. Perhaps you started dating someone and your ex-partner's response has been to stalk and harass you for moving on. You may need to go to court and get or amend a protection/restraining order against them.

If negotiating with your ex-partner is not safe or productive, you should get in touch with a lawyer to find out more about your rights and the best way for you to proceed safely in seeking a change to a court order.

It is important for you to understand that in order to change an existing court order, there needs to be evidence that there has been a change in circumstances since the original order was made.

If you are planning on moving

Whether you want to move so you can be closer to your family, take a new job or for some other reason, you must provide your ex-partner with notice of your intention to move before you do so.

In some situations, your final court order may have addressed options to move, including the types of notice you must provide or steps you must take in order to move outside your jurisdiction.

If your ex-partner opposes your move, you will have to go to court to present evidence to support your position. You will need to show that the move is in the best interests of your child, explain how you will support a long-distance relationship between your child and your ex-partner and describe how your ex-partner's time with the child will not be significantly interfered with, among other issues.

Changing an order

Before you take any steps with respect to your existing order, it is important for you to talk with a lawyer. Your lawyer will explain why the changes may or may not be beneficial to you and how they could impact you legally in the short and long term.

For example, if your former partner is seeking to reduce the amount of child and spousal support payable to you due to a reduced income, your lawyer will be in a better position to advise you on whether this is an intentional under-employment, if it is a temporary situation or if it would result in a significant change in your situation. Your lawyer may also advise you on whether you are obliged to go to court or whether you and your ex-partner could simply arrive at an agreement on your own.

Whatever your circumstance, it is important to discuss the matter with a lawyer before you decide to respond to or bring a motion to change your existing order.

Notes

GETTING A LAWYER

Anyone dealing with a family law problem should have a lawyer. The issues that arise at the time of family breakdown are complex, feelings and emotions are running high, and outcomes can have long-term implications for everyone, including the children.

This is especially true for women who leave abusive partners. In addition to the legal issues faced by anyone, you can face ongoing abuse, harassment and intimidation by your ex-partner. Trying to manage a family law case without legal representation can be a nightmare and can result in outcomes that do not reflect the very real safety concerns that you have for yourself and your children.

While more and more people are without representation in family court, women who have been subjected to abuse face serious and specific challenges.

Hiring a lawyer may be your first step in the legal process of moving on from a relationship where abuse is present. Choosing the right lawyer is extremely important. Whenever possible, shop around and examine your own comfort level with your potential lawyer rather than settling on the first person who is willing to take your case.

Shelters and other services that work with women may be the best source of information about lawyers who are knowledgeable about violence against women.

Friends and family may provide suggestions about lawyers they know. However, the lawyer/client relationship is a very personal one, and a lawyer who meets the needs of one person will not necessarily be appropriate for another.

What to look for in a lawyer

A family law lawyer should have the kind of experience you need.

- ◆ Lawyers often practise in a wide range of fields. Question potential lawyers about their experience in family law and about other areas of their practice.
- ◆ Ask questions related to violence against women. Does the lawyer have experience working with women who have been abused and do they understand issues presented by abuse, especially after separation?
- ◆ Ask specific questions about what information related to violence against women will be included in court documents.

A family law lawyer should be a good listener.

- ◆ Lawyers should listen and ask questions. A lawyer should show an interest in defining your goals in order to advise you about your legal options.
- ◆ It is also important to remember that it is not a lawyer's role to provide counselling and emotional support with your lawyer.
- ◆ Be organized and specific when sharing background information and defining objectives with your lawyer.
- ◆ If the lawyer is distracted or does not have time to really listen in an initial appointment, chances are that behaviour will continue.

A family law lawyer should be honest.

- ◆ If the situation is beyond their abilities and experience, they should say so.
- ◆ When discussing legal options, a lawyer should be honest right from the beginning about what is and is not possible, even if it is not what you want to hear.

Above all things, trust your instincts with respect to how comfortable and confident you feel with the lawyer you are interviewing. If you do not feel heard or do not like the lawyer's perspective, you may need to keep looking.

Notes

WHAT'S NEXT?

We hope this toolkit has been helpful to you as you work to sort out and manage arrangements for your children with your ex-partner. This is not an easy task, especially if your ex is not ready to give up their power and control and is using child-related issues as a way to try to show you that they are still in charge of your family.

The legal information, tip sheets and checklists in this toolkit can assist you to make plans for your children that follow the law and that keep you and your kids as safe as possible.

We encourage you to connect with advocates, such as support workers, legal advocates and women's counsellors, who may be available in your jurisdiction and can provide important support as you navigate the family court system.

Have confidence in your ability to make the decisions that are best for your family, and always remember that by leaving your abusive partner, you have taken the most important step towards building lives free from violence and abuse for you and your children.

Notes