

SUPPORTING AFTER SEPARATION

A Toolkit of Legal Information
and Resources for a Survivor's Friends
and Family Members



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ABOUT THIS TOOLKIT

If you are a family member or a friend of a woman with children who is leaving an abusive relationship, this toolkit is for you.

The abuse your loved one might be experiencing could include coercive control as well as emotional, psychological, financial and/or physical violence. For more information about the many forms of intimate partner violence, please see our Family Court and Beyond website: familycourtandbeyond.ca/your-experience/intimate-partner-abuse.

When a relationship ends, parents must sort out arrangements for the children that determine:

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

These issues are often difficult to resolve, especially when domestic violence is a major dynamic in the relationship. After separation, a woman must focus not only on keeping herself and her children safe but on navigating co-parenting arrangements and communications with her ex-partner. You have an important role to play in helping to support your loved one through this process, and this toolkit provides some of the information you will need to provide this support in an effective way.

The toolkit contains legal information and resources so that you are able to:

- ◆ Understand the impact that violence has on a family.
- ◆ Communicate with your family member or friend in healthy and effective way.
- ◆ Assist your loved one with the family law process.

If you are looking for a resource to share with your loved one about creating post-separation parenting plans, please see *The Law and Parenting Arrangements After Separation*: lukesplace.ca/wp-content/uploads/2021/12/The-Law-and-Parenting-Arrangements-Toolkit.pdf.

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 loved one's situation can provide legal advice.

This information is accurate and current to the date of publication. Please be aware that laws, their interpretation and their application can change over time.

ABOUT LUKE'S PLACE

This toolkit was created in 2023 by Luke's Place, a non-profit organization located in Durham Region, Ontario. 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.

This toolkit was written by the Luke's Place team of Brittney Taylor, Min Jin, Gabrielle Slater and Emily Murray.

Learn more about us at LukesPlace.ca. For more information about family court, see our website, FamilyCourtAndBeyond.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.

POST-SEPARATION ABUSE

The common myth about intimate partner violence is that it ends when the relationship ends. Unfortunately, we know that this is not the case. After separation, abuse often escalates, and your loved one may be subjected to various forms of post-separation abuse that will impact her and the children. This abuse may look different post-separation simply because the abuser no longer has as much direct access to the woman.

COERCIVE CONTROL

Coercive control is a continuing act or pattern of acts, including assault, threats, humiliation, intimidation or other forms of abuse that are used to harm, punish or frighten a woman. Controlling behaviour often starts slowly and subtly. A partner exerting coercive control seeks to eliminate a woman's sense of freedom and autonomy by isolating her, controlling the finances, monitoring her activities, repeatedly putting her down, threatening to harm/kill her or the children, threatening to post/share information about her, reporting her to police or authorities and/or damaging her property.

Often, the abusive partner is able to create and maintain his control without ever using physical force. Coercive control is now included in the definition of "family violence" in the laws that govern post-separation parenting, which are the federal *Divorce Act* and Ontario's *Children's Law Reform Act*. This means judges must take coercive control into account, along with other forms of abuse a woman and her children may be experiencing.

Some common post-separation abuse tactics in situations of coercive controlling violence are outlined below.

HARASSMENT

Harassment is repeated and unwanted direct and indirect contact made by a partner without a reasonable purpose. An abusive partner might also use stalking and surveillance through apps to track their partner's whereabouts. The intent of harassing behaviour is to maintain control and interfere with a woman's ability to live her life in peace. Other ways an abusive partner may monitor and harass their former partner is by questioning the children on the woman's new life/partner/activities, contacting the woman's family and friends, having family or friends contact the woman, continuously calling/emailing/texting the woman, and demanding that the woman report on her whereabouts/spending/activities.

LEGAL BULLYING

Legal bullying is the intentional misuse and manipulation of family laws and family court processes by the abuser to try to maintain his power and control over his former partner by intimidating, harassing and inducing fear in her. In some cases, the strategy is intended to deplete her financial resources and convince her to accept the legal outcome he wants. He may also be trying to coerce her into returning to the relationship.

There are many forms of legal bullying, ranging from passive (not retaining a lawyer, not responding to or filing documents, filing incomplete documents, missing court dates) to active (meeting with available lawyers and discussing the case in detail so that these lawyers are “conflicted out” and cannot be retained, bringing repeated motions on meritless or already decided issues, providing dishonest financial disclosure, lying about the abuse, changing lawyers repeatedly, representing himself when he has no financial need to do so, disregarding court orders).

COUNTER-PARENTING

Counter-parents intentionally work against the parenting techniques of the co-parent to undermine, alienate and/or spite them. An abusive ex-partner may make illogical decisions that are not in the best interest of the children as a way to maintain power and control. Anger that an abusive partner feels towards the woman is directed to the children, and they prioritize “winning” above the responsibility of making good choices for their children. Counter-parents will often permit children to do things the other parent prohibits, withhold information about children, blame or badmouth the other parent in front of the children, prevent the parent from speaking to children during visits, tell the children the other parent doesn’t care about them and disobey court orders regarding parenting times and exchanges.

ESCALATION OF VIOLENCE

The risk of serious injury or death is at its highest for women and their children who have been subjected to family violence in the first three months after separation. The abusive ex-partner may directly or indirectly make threats of bodily harm, engage in or threaten sexual assault, threaten suicide or threaten family members and friends who get involved. If threats and/or physical or sexual violence is escalating, you should advise the woman to contact police, a lawyer and/or go to a shelter for support.

SUPPORTING A LOVED ONE WHO IS BEING SUBJECTED TO POST-SEPARATION ABUSE

GUIDING PRINCIPLES

First, listen. Listening while reserving your own thoughts, opinions and feelings can help your loved one feel more comfortable confiding in you. You may be the first person she is being open with. Create a safe space and time to talk without distractions and interruptions.

Second, believe. Believing your loved one's story means affirming that she is not at fault for abuse she experienced. Abuse is often perpetrated behind closed doors, and many women do not disclose violence for fear of not being believed. Gaslighting is a frequent tactic of abusive people to make women think that the violence they lived through was in their head or their own fault. Do not minimize her experience or pain. Remember, the abusive ex-partner may have portrayed a different version of themselves to outsiders and saved their anger and control for your loved one.

Third, ask. Before making offers of support, ask your loved one what they need in the moment. Sometimes they might need a listening ear, and other times they might need help with the children's pick-up and drop-off from school. Ask your loved one, "What would be the most helpful thing I can do for you right now?"

Fourth, empower. Empowering your loved one to make her own choices will enable her to regain power and control over her own life. You may wish to take on the role of advocate, protector, problem solver or coach, but it is important that your loved one leads the process of separation. This will build up her confidence, help her rediscover her voice, establish boundaries with her abusive ex-partner and allow her to trust herself again.

Fifth, help. Offering help may look like many different things and does not require an all-or-nothing approach. Sometimes "small" or "simple" tasks can make the biggest difference in your loved one's life. Help might be bringing over a cooked meal, babysitting the children while she works on court documents or calling and checking in with her to offer emotional support. Be patient with her, and try not to offer unsolicited advice.

Last, and most importantly, take care of yourself. You will feel many different emotions when trying to support a loved one who has experienced intimate partner violence. You may feel angry, stressed, relieved, drained, helpless and frustrated. You may even find that you have mixed emotions towards your loved one and wonder how much longer you can help. This is normal. There is no simple solution to family violence; please be gentle with yourself. Take an assessment of your own personal capacity, and be honest about the level of support that you can provide.

SAFETY PLANNING

Safety plans are an important part of navigating post-separation parenting with an abuser. A safety plan is a set of strategies designed to keep a woman and her children safe. It should include specific steps to be taken if certain events unfold. It should also address things like how the woman will meet basic needs like housing, child care and education for herself and the children. The plan should focus on the woman's and children's physical and emotional safety and should be updated frequently as circumstances change.

You can play an important role in encouraging your loved one to maintain an updated safety plan by being a key source of safety and support within the plan itself.

A helpful resource for your loved one on how to create a safety plan can be found on our Family Court and Beyond website: familycourtandbeyond.ca/keep-safe. You can also help to connect your loved one to a local shelter or other violence against women organization in your community for support in creating a detailed safety plan.

TIP SHEET: HOW TO LISTEN AND WHAT TO SAY

Breathe and let her lead

Remaining calm and moving at your loved one's pace will focus the conversation and give you time to process the information coming at you. Breathing will also keep you in a more mindful and present state.

Notice your body language

Most of our communication is non-verbal and signals whether we are listening attentively and with empathy. Some areas to pay attention to are:

- ◆ Posture and body position
- ◆ Head movements
- ◆ Eye gaze
- ◆ Facial expressions
- ◆ Gestures
- ◆ Hand movements
- ◆ Touch
- ◆ Nonverbal vocalizations (such as laughs, moans, sighs, fillers, etc.)

Give encouraging verbal cues

Verbal statements and minimal encouragers can go a long way to making your loved one feel understood. Some examples would include:

- ◆ Minimal encouragers: “Yes, I see” or “Mmhmm” or “I understand.”
- ◆ “This is not your fault”/“You’re not to blame.”
- ◆ “You are not responsible for managing his behaviours/feelings.”
- ◆ “You are so resilient”/“You can do this.”
- ◆ “It’s okay to cry.”
- ◆ “You’re not alone.”
- ◆ “I’m glad you told me”/“I would like to help you.”
- ◆ “Your safety is a top priority; you have the right to be protected.”

There are some things you should avoid saying to your loved one. While well-intentioned, they may make her feel shame and guilt and incompetent. She might feel that she has to manage your emotions on top of her own. Examples of comments to avoid are:

- ◆ “I told you this would happen, I never liked him anyway.”
- ◆ “I knew it, I could see the signs a mile away.”
- ◆ “I can’t believe this, he was always so nice.”
- ◆ “I know exactly how you feel.”
- ◆ “Well, here is what you should do...”
- ◆ “Why don’t you just tell him off?”
- ◆ “The next time I see him, he’s got something coming.”
- ◆ “Maybe you should try a little harder to be compassionate with him.”

Be as non-judgmental as possible

Avoid labelling. Stick to providing emotional and practical support that focuses on your loved one’s needs. Try to practise being open, neutral and as non-judgmental as possible. Share your thoughts and opinions in a way that is friendly and not preachy.

Respond appropriately

Occasionally, there may be an opportunity to share your thoughts and feelings with your loved one. Here are some things to consider when it is your time to speak:

- ◆ Ask open-ended questions: "What do you think is the best way for you to communicate with him?"
- ◆ Summarize her thoughts: "What I'm hearing you say is..."
- ◆ Validate her feelings: "You're right, no one should be spoken to like that."
- ◆ Reflect on how you can provide support: "I know it doesn't solve the problem, but I could..."

Offer help

There are many ways to offer support. Below are some questions you can ask yourself that may help you identify how you can practically help your loved one:

- ◆ How much time do you have to give?
- ◆ What type of time commitment can you make?
- ◆ What else is going on in your life?
- ◆ Are you dealing with major life stressors?
- ◆ Is intimate partner violence a difficult topic for you to talk about?
- ◆ What skills/knowledge can you offer?
- ◆ Do you feel comfortable helping with the legal process?
- ◆ Are you willing to be a part of your loved one's parenting plan?
- ◆ Are you able to help with the children? If yes, in what ways?
- ◆ Are you able to assist financially? If yes, in what ways?

WHO ELSE MIGHT OFFER SUPPORT

There are several different sources that your loved one can go to for support. If she has a multiple people in her support network, her emotional, financial, physical, and legal needs can be met by multiple different sources. It is important to identify your loved one's allies so that you do not experience burnout. Other sources of support that you can refer your loved to one include:

HEALTH PROFESSIONALS

- ◆ Family doctor or nurse practitioner
- ◆ Hospitals
- ◆ Professional therapist (registered psychologist, psychotherapist, social worker, or nurse)
- ◆ Occupational therapist

LEGAL PROFESSIONALS

- ◆ Family law lawyer
- ◆ Family court support worker
- ◆ Parenting coordinator

SOCIAL SERVICE PROVIDERS

- ◆ Victim services
- ◆ Shelters
- ◆ Transitional housing workers
- ◆ Case managers
- ◆ Employment counsellors
- ◆ Financial assistant programs
- ◆ Newcomer/settlement services
- ◆ Crisis/help lines
- ◆ Children's Aid/Child Protection Services

COMMUNITY SUPPORTS

- ◆ Support groups for women and children
- ◆ Children playgroups
- ◆ Religious institutions
- ◆ Community centers
- ◆ Food banks

FAMILY LAW PROCESS

All parents have to make arrangements regarding their children upon separation. Often, parents are able to sort out how they make decisions about their children and where their children will be on their own without the need for a court order. These decisions may range from informal verbal arrangements to formally signed separation agreements.

Once a relationship ends, parents must decide:

- ◆ When the children will spend time with each parent, which is called “parenting time,” and
- ◆ Who should make major decisions about the child, which is called “decision-making responsibility”

In some situations, another person who has played a significant role in the child’s life, for example, a grandparent or another family member, may be able to apply to the court to be allowed to make decisions for a child or to spend time with a child.

The court will consider what is in the best interests of the child when making any kind of parenting order.

WHICH LAWS GOVERN ARRANGEMENTS FOR CHILDREN IN CANADA AND IN ONTARIO?

Both the federal *Divorce Act* and the *Children’s Law Reform Act (CLRA)* set out how parents are to manage making decisions about their children:

- ◆ The *Divorce Act* applies to anyone in Canada who is married and applying for a divorce.
- ◆ The *CLRA* applies to anyone in Ontario who is trying to make plans for children, usually after a relationship ends. This includes married people, people who lived common-law and people who are not in a relationship but have children together.

WHAT DOES “DECISION-MAKING RESPONSIBILITY” MEAN?

Decision-making responsibility means the responsibility for making significant decisions about the child(ren) involved in four key areas:

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

The court can order that one parent have sole decision-making responsibility or that this responsibility is joint between parents, meaning they make major decisions together.

WHAT DOES “PARENTING TIME” MEAN?

Parenting time refers to the time that the child will spend in the care of their parents. Parenting time arrangements should specify:

1. Where/with whom the children will live primarily (will they live with one parent, split time between both, live with someone else).
2. How often they will spend time with each parent, including a regular schedule and a separate schedule for holidays and major events, such as birthdays.
3. What schedule the parenting time will follow.
4. Whether the parenting time is supervised.
5. The location of parenting time exchanges.

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 both the *Divorce Act* and the *Children's Law Reform Act* and contains a number of factors that courts must take into account. For example, a judge may consider:

1. What support systems parents have in place to care for the child (e.g., help from close family members).
2. Whether the child has strong ties to where the parents live.
3. Whether the child is involved in extracurricular activities.
4. How settled in school the child is.
5. How parents will encourage and facilitate a relationship between the children and the ex-partner.

The violence your loved one has experienced is also a factor that the court has to take into account under the best interests of the child test. This is called “family violence” in the legislation, and it is defined very broadly to include any conduct by a family member towards another which is violent or threatening or which constitutes a pattern of coercive and controlling behavior or which causes the other family member to fear for their own safety or for that of another person.

WHEN THERE IS ABUSE

If your loved one has been in an abusive relationship and/or is still being abused, the process for separation will be extremely challenging.

The abuse in the relationship may mean that joint decision-making responsibility is not appropriate, supervised parenting time or parenting-time exchanges is necessary and strict communication boundaries with the abuser are essential.

Post-separation parenting arrangements may also create openings for your loved one to continue to be controlled, harassed or intimidated by their abuser. It also means that resolutions outside court may not be possible.

SUPPORTING A LOVED ONE DURING THE FAMILY LAW PROCESS

There are many ways you can support your loved one during the family law process. These include the following:

ASSIST WITH FINDING A FAMILY LAWYER

Lawyers will help to provide legal guidance on what post-separation parenting arrangements should be made in your loved one's case. Should your loved one retain a lawyer, it is important to choose the right one. Finding a lawyer can be very difficult, and your loved one may need your assistance with finding the right family law lawyer for her particular circumstances and case.

Where to Look

- ◆ Contact your local courthouse duty counsel.
- ◆ Check Legal Aid websites for a list of lawyers.
- ◆ Ask a family court support worker (more details can be found below).
- ◆ Attend community legal clinics.
- ◆ Register with JusticeNet.
- ◆ Use the Law Society Referral Service.
- ◆ Search Google, newspapers, social media and advertisements.
- ◆ Ask other family members, friends, neighbours and acquaintances.

Check Qualifications

- ◆ Only contact lawyers who specialize in family law.
- ◆ Search the Law Society's directory to check the lawyer's status and determine whether they have been suspended or disbarred.
- ◆ Call the Law Society to ask specific questions about a lawyer.
- ◆ Look at online reviews.

Get Prepared for Meeting

- ◆ Help your loved one create a list of questions to ask the lawyer.
- ◆ Offer to babysit the children during the appointment.
- ◆ Help your loved one explain any needs or concerns they have, such as accessibility issues, interpretation needs, safety concerns, immigration and/or criminal legal issues.

In addition to helping your loved one find a lawyer, you may also want to help her connect to a local violence against women organization that provides family court support. Family court support workers can:

- ◆ Provide general legal information about the family court process.
- ◆ Help survivors prepare for family court proceedings.
- ◆ Refer survivors to other specialized services and supports in their local community.
- ◆ Help with safety planning.
- ◆ Accompany the survivor to family court proceedings and lawyer appointments, where appropriate.

For a detailed list of organizations throughout Ontario who provide family court support services, please visit the Government of Ontario's website: ontario.ca/page/family-court-support-workers

ATTEND LEGAL APPOINTMENTS FOR EMOTIONAL SUPPORT

Your loved one may ask you to attend a legal appointment with them. This can be a great opportunity for you to communicate that she doesn't have to go through the separation process alone. If you are going to support her during her legal meetings, consider the following tips.

Your Role

You are present to provide emotional support. You can do this by:

- ◆ Asking your loved one how she would like you to support her prior to the appointment.
- ◆ Remaining calm during the appointment.
- ◆ Encouraging her to speak about difficult topics that might be important for her lawyer to know.
- ◆ Using gentle physical touch to ground her in the room and remind her that you are there.
- ◆ Re-explaining what a lawyer is saying in different words, if necessary.
- ◆ Taking notes for your loved one to review later.

- ◆ Offering tissues and water when necessary.
- ◆ Taking part in activities such as eating food together or going for a walk after the appointment is finished.

Confidentiality

Solicitor-client privilege means that your loved one's lawyer is obligated to keep any shared information confidential. You can be a trusted confidante who helps to support this important privileged relationship in the following ways:

- ◆ Do not share any information that you heard in the meeting with any other person.
- ◆ Do not speak to your loved one's lawyer without her present.
- ◆ Do not go to another legal professional to get a second opinion without your loved one present.

Things to Avoid

Sometimes the presence of a family member or friend is not helpful in legal appointments. Your voice should be the least heard in the room. Please ensure that you avoid doing the following:

- ◆ Become too emotionally invested in the process
- ◆ Dominate the conversation
- ◆ Try to instruct the lawyer
- ◆ Interrupt your loved one or the lawyer
- ◆ Raise your own personal questions and concerns
- ◆ Rant about your grievances with the ex-partner

Notes

TIP SHEET: NOTE-TAKING

Communication and preparation are probably the two most important elements of making a relationship with a lawyer work well. Your loved one will have to spend time preparing for the legal appointment. Note-taking is a great way to support her while she discusses various topics with her lawyer. You can use the chart below to help you structure your notes.

Type of appointment:

Name of lawyer:

Date:

Time:

Who was present:

Topic discussed:

Conclusion:

Action items:

TIP SHEET: NOTE-TAKING

Type of appointment:

Name of lawyer:

Date:

Time:

Who was present:

Topic discussed:

Conclusion:

Action items:

TIP SHEET: NOTE-TAKING

Type of appointment:

Name of lawyer:

Date:

Time:

Who was present:

Topic discussed:

Conclusion:

Action items:

HELP WITH PARENTING-TIME EXCHANGES

Your loved one may ask you for assistance in facilitating parenting-time exchanges. You may be able to assist by picking up and dropping off the child at the other parent's home or by being present while your loved one drops off or picks up the child.

Parenting time exchanges can take place anywhere: at a parent's residence, in a parking lot, at a public library, at the children's schools, etc.

Exchanges with an abusive ex-partner can be tense, antagonistic and even dangerous. You are under no obligation to offer assistance if you feel it would put you at risk. Because exchanges directly involve the child, they should be uneventful, and the child should not experience any distress.

Before committing to attending exchanges with or on behalf of your loved one, please consider the following:

- ◆ The time of the exchange. Is it during a time when you are not consistently available?
- ◆ The location of the exchange. Do you feel safe in that location? Is this location too far from you?
- ◆ The frequency of the exchange. How many times a week or month are you expected to attend an exchange?

If you believe that attending parenting-time exchanges is a task you are able to support your loved one with, the tips below can help you be a helpful presence:

- ◆ Arrive on time.
- ◆ Be neutral.
- ◆ Be a de-escalating presence.
- ◆ Do not address the ex-partner.
- ◆ Remain at a distance and observe.
- ◆ Have a cellphone on you at all times.
- ◆ If there is any threat or risk of physical abuse, call 9-1-1.
- ◆ Takes notes or make a record of the dates and times you assisted with the parenting-time exchanges. Also, keep a record of any events that occurred during the exchanges—make a note, for instance, if the other parent made disparaging comments about your loved one or arrived late for the pick-up or drop-off.

You may be asked to help facilitate parenting time in other ways. For instance, your loved one may consider dropping the children off at your home and leaving before their ex-partner picks them up.

There are professional Supervised Access Centres throughout Ontario that provide services for supervised parenting time and exchanges. However, these facilities may not be available or accessi-

ble to all families. For instance, there may be issues of cost or there may be a wait list. Some centers have screening processes and may decline services if families do not meet certain criteria. In these cases, you may be asked to facilitate parenting-time exchanges.

It is important to remember that your involvement is voluntary. If you agree to provide this assistance, it could become part of a court order. It is also possible that once you become involved in parenting time, you may be asked to attend court to provide evidence of what you observed while in this role. This is where the notes you have taken about your involvement in parenting-time exchanges will be helpful in terms of refreshing your memory of events that have taken place.

HELP GATHERING EVIDENCE

Before a judge can decide what parenting order is in the best interests of the child, they need to consider the evidence presented by both parents. The judge may want to see evidence on questions such as:

- ◆ Who attended the doctor's appointments and parent-teacher interviews?
- ◆ Who took responsibility for the day-to-day tasks like preparing meals, bathing, bedtimes, etc.?
- ◆ What is the status of the child's relationship to extended family members and other individuals in their life?

You can support your loved one in gathering helpful evidence for her case. This would include evidence about:

- ◆ The history of abuse, her concerns about ongoing abuse and the impact on the children.
- ◆ The reasons the father's parenting time is or should be limited.
- ◆ The extent to which your loved one was involved in the children's care to date, including pre- and post-separation.

Some things you can do to help support your loved one to gather evidence include:

- ◆ Helping her to create a detailed chronological timeline of the abuse she endured during and after the relationship.
- ◆ Helping her to think about sources of corroborating evidence where possible, for instance, police occurrence reports, CAS notes/records, emails and texts messages, social media posts, photographs or doctor's notes or reports, information from teachers or day-care providers, etc.
- ◆ Helping her to organize her evidence in a way that will make it easy for her to find information and present it to the court.

PROVIDING EVIDENCE TO THE COURT

Given your involvement with your loved one and her family, you may be asked to provide evidence in support of your loved one's case.

If you are asked to provide evidence in an ongoing family court case, you should focus on what you witnessed or experienced first-hand rather than what was told to you by someone else. For example, you may have witnessed incidents where your friend or family member experienced abuse. It is important to provide details of what you saw or heard during those incidents. Another example may be a time when your friend or family member confided in you about the abuse. In these scenarios, it is important not to just repeat what was said to you but also to provide details about what you observed at the time (for example, did you see any bruises or injuries?). If you have been helping to facilitate parenting-time exchanges, you may be asked to provide evidence on what you have observed in this role.

You may be asked to provide evidence in writing or orally by testifying at court. Typically, a judge will make temporary decisions in a family court case using written evidence and final decisions at trial by hearing sworn testimony from witnesses in court.

Affidavit evidence

In some cases, you may be asked to provide your evidence in an affidavit. An affidavit is a written sworn statement from you that a judge will read and consider as evidence when making their decision. Most of the time, it is not mandatory to attend court in person when you have provided affidavit evidence. You can of course attend voluntarily as support for the friend or family member who has asked you to provide the affidavit. On rare occasions, a judge may direct that the person who provided an affidavit be available for questions from the other party or their lawyer through cross-examination. During cross-examination, the other party or their lawyer may ask you questions about your evidence to try and make it less believable and persuasive to the judge.

You might also want to attach documents to your affidavit. These are called exhibits and could include things like text messages or emails you have received or photos that you have taken. It is important to explain what these exhibits are and provide some details about how you obtained them. For example, you may have personally received text messages or emails from the abuser containing threats. Instead of just attaching the message as an exhibit, you should explain when you received them and how you know who sent them. You should also provide information on the context surrounding the conversation (for instance, were you communicating with the other parent about facilitating a parenting-time exchange?). This will assist the judge in understanding your evidence.

The affidavit and any exhibits attached to it will need to be sworn, which means you swear under oath or affirmation to a commissioner of oaths that the contents are true. The commissioner of oaths then signs the affidavit. It is important for you to understand that it is a criminal offence to knowingly provide false information in an affidavit.

Oral evidence

In some cases, you may be called as a witness to provide oral evidence directly to the judge in court. This usually happens at a trial. You should receive notice in advance of when you are expected to attend court.

When you attend court, you will be asked to wait outside until it is your turn to testify. When you are called in to the courtroom, the first thing you will be asked to do is to swear an oath or affirmation that you will be providing truthful evidence. The court clerk will administer this oath/affirmation, and you must follow their instructions. It is important for you to understand that it is a criminal offence to knowingly provide false information while under oath.

After the oath or affirmation, you will be asked questions by the person who called you to be a witness. This will likely be your loved one or her lawyer, if she has one. This is called a direct examination. Then the other lawyer, or the other parent if they do not have a lawyer, will ask you their questions. This is called cross-examination. On some occasions, the judge will ask their own questions after the lawyers/parties have finished with their questions.

ATTENDING COURT

Another way you can be involved in your loved one's court case is by accompanying her to court as an emotional support and as part of her court safety plan. Keep in mind these responsibilities when you attend court:

- ◆ Your role is as an emotional support only. You should not attempt to address the judge or insert yourself in any communication between your loved one and her lawyer and/or your loved one and the other parent/other parent's lawyer.
- ◆ You can help by taking detailed notes of things said by the judge and things said by the other parent/the other parent's lawyer. This will allow your loved one to focus on listening and participating in the hearing as opposed to taking detailed notes.
- ◆ You can help your loved one to stay safe at the court appearance, whether it is taking place in person or virtually. The first thing you can do is encourage her to create a court safety plan.
 - ◆ For in-person court attendances, you can help your loved one connect to court security and find a private consultation room that is away from the other parent. You can also walk her to and from her car/transit before and after court that day.
 - ◆ For virtual court attendances, you can help your loved one find a private and safe place to attend virtual court, create a code word that she can use with you if she starts to get anxious or afraid during the hearing, help her to blur her background for privacy, and encourage her to put a sticky note over the picture of the other parent during the hearing if that makes her feel more secure.

- ◆ You can help to ensure your loved one stays hydrated and has something to eat before court. She will not be able to eat or drink during the hearing.
- ◆ You can help your loved one ensure she is well prepared and organized for the court date and has all of her court documents handy.

BECOMING A “PARTY” TO THE COURT PROCEEDING

Sometimes, it may become necessary for a person who is not the parent of a child to become directly involved in the court case as a “party.” By becoming a party, you are asking the court to make an order directly between yourself and the child. This can be done in the form of asking the court for a contact order or, more generally, a parenting order.

A contact order is an order for the visitation between a child and a non-parent. This could be brought by a non-parent, such as a grandparent or close family friend, who wants to spend time with a child but for some reason is being prevented from doing so. In situations where parents have separated, an application by a non-parent may become necessary where the parent with primary parenting and decision-making responsibilities decides to eliminate contact between the child and the non-parent. In general, court’s will expect that your contact with a child will take place during your loved one’s parenting time. However, this may be problematic in situations where your loved one has limited or no contact with the child.

A parenting order is much broader and may address issues such as the allocation of decision-making responsibility, communication requirements and any other matter deemed necessary. This could be brought by a non-parent who has or will be standing in the place of a parent for a child and is seeking decision-making authority for a child. For example, a family member may have stepped into the role of caregiver and made the decisions for the child while one or both parents were unavailable for reasons of illness or incarceration. This family member may consider formalizing this role as caregiver and decision maker in the form of a parenting order that sets out decision making and contact with the child.

Both the *Divorce Act* and *CLRA* contain provisions for non-parents to apply for parenting and contact orders. The *Divorce Act* is applicable when the parents are already divorced or are seeking a divorce. Under this legislation, a judge must grant the non-parent permission to bring the application for a parenting or contact order. The *CLRA* is applicable when the parents were not married or have chosen to separate without a divorce. This legislation does not require a judge to grant permission to a non-parent before they bring an application.

Regardless of which legislation your application falls under, the best interests of the child test will be applied.

When applying this test in the context of a non-parent, the judge will often consider some of the following factors:

- ◆ The position of the parent(s) with decision-making responsibility on the non-parent's request regarding the child. Courts often place a great deal of weight on parental autonomy when it comes to deciding when and if a child should have contact with a non-parent. Parents are presumed to be acting in their child's best interests and have the right to decide when and if the child should spend time with a friend or family member.
- ◆ The closeness of the relationship between the child and the non-parent and the benefits of a continued relationship
- ◆ Why contact can't take place during your loved one's parenting time
- ◆ The child's views and preference, where appropriate

Typically, the court will defer to a primary parent's decision regarding non-parent contact unless the following questions can be answered in the affirmative:

1. Does a positive relationship between the non-parent and child already exist?
2. If so, has the parent's decision imperilled this positive relationship?
3. Has the parent acted arbitrarily? (i.e., is the parent making decisions that are based on considerations of things other than what is best for the child?)

If all of the answers to the above questions are "Yes," then the court will go on to consider whether a contact order would be in the best interests of the child.

If you have a negative relationship with your loved one's ex-partner, who is the child's primary parent, this will be considered by the court in making a decision about your application. The court will want to avoid placing the child in the middle of any ongoing conflict due to the negative impact that will have on the child.

If you are a non-parent and are considering bringing your own court application, you should speak to a lawyer about what options may be available to you.

ADDITIONAL RESOURCES WITH GENERAL INFORMATION

Steps to Justice, "I'm a grandparent. Do I have the right to spend time with my grandchild?" stepstojustice.ca/questions/family-law/im-grandparent-do-i-have-right-spend-time-my-grandchild

Luke's Place blog post dated June 10, 2023 "What are the rights of grandparents who want access to their grandchildren?" lukesplace.ca/what-are-the-rights-of-grandparents-who-want-access-to-their-grandchildren

Centre for Research & Education on Violence Against Women & Children, "Neighbours, Friends and Families" neighboursfriendsandfamilies.ca/friends-and-family/index.html

WHAT'S NEXT?

We hope this toolkit has been helpful to you as you support your loved one as they navigate post-separation parenting arrangements with an abusive ex-partner. This is not an easy task, especially if your loved one is still being subjected to post-separation abuse.

We encourage you to help your loved one connect with advocates in her community, such as support workers, legal advocates and women's counsellors, who can provide important support as she navigates the family court system. It is also important that your loved one connects to a family law lawyer for legal advice specific to her situation.

You also need to remember to take care of yourself. You will undoubtedly be impacted by the violence and trauma, and you should take steps to ensure you are looking after yourself while also continuing to support your loved one.

Notes