

STARTING OVER

WHAT YOU SHOULD KNOW ABOUT FAMILY LAW MATTERS



FAMILY VIOLENCE PREVENTION IN ABORIGINAL COMMUNITIES

SPLITTING UP

I'M LEAVING MY PARTNER – WHAT'S LAW GOT TO DO WITH IT?

Sometimes a relationship can become too unhealthy or dangerous, and one or both partners will decide to leave. This is called separation. Separation can lead to many legal issues for both partners, especially when it involves conflict.

If you have separated from your partner, or if you are considering leaving, especially if you have children, you will need some information about the family law issues you might have to deal with as you start your own healing journey. However, victims of abuse may be involved in both the criminal and family systems and this can add to the confusion about which legal system does what. Knowing about both can help everyone avoid this confusion.

IF MY PARTNER IS CHARGED WITH ASSAULTING ME, WON'T THE JUDGE SETTLE OUR FAMILY LAW CONFLICTS?

No, criminal courts do not handle family law matters. People often assume that all courts deal with all legal issues. This is not true. Different courts, and different court systems, deal with different issues. For example, the criminal law system deals with crimes reported to the police. Government lawyers, called Crown prosecutors, act on behalf of society to prosecute individuals accused of crimes.

The family law system is different. In many provinces and territories family law cases are dealt with in different levels of court. This includes marriages, divorces, adoptions, division of marital property, claims for spousal and/or child support and custody and access.

WHAT ISSUES ARE CONSIDERED FAMILY LAW?

The family law system deals with family issues such as:

- Separation (ad hoc arrangements, separation agreements, court-ordered separation);
- Parenting arrangements (custody and access);
- Support payments (child and/or spousal support);
- Divorce;
- Division of property and debts.

FAMILY LAW MATTERS

WHAT SHOULD I KNOW ABOUT SPLITTING UP?

When a couple splits up, it is called **separation**. You and your partner will have to work out matters like custody and access arrangements for the children, child and spousal support and how to divide the marital property and debts. If you and your partner agree on some or all of these matters, you can put your decisions into a separation agreement. A separation agreement is a contract between a separating or separated couple that sets out their rights and obligations to each other and the children of the marriage. The contents of the separation agreement will depend on the situation of the people involved. You can pay for a private mediator or see if there are mediation services offered through family court in your area to help you come to an agreement about the content. To make sure the agreement will be valid, both partners should consult separate lawyers.

If you are leaving an abusive relationship, you will likely not be able to sit down at the kitchen table and work out family law matters with your partner in a respectful and equitable manner. In such cases, mediation may not be an option so you may need to seek help from a lawyer.

CARE OF THE CHILDREN

WHAT SHOULD I KNOW ABOUT PARENTING ARRANGEMENTS?

Parenting arrangements are commonly referred to as “custody and access”. Custody means having the care and control of a child. During a common-law relationship or marriage, children are in the custody of both parents unless there is a court order or written agreement otherwise. When the relationship breaks down, parents need to decide on arrangements for the care of the children. Sometimes parents have verbal agreements about who will have custody of the children. Such agreements may work until one parent decides they no longer agree with the arrangements and the other parent disagrees. To formalize your arrangement, you should have a written separation agreement.

Your written agreement should set out details of custody and access, such as which parent(s) the child(ren) will live with; when they will be with each parent, and how decisions about the child's upbringing will be made. This can be the responsibility of one or both parents.

If you are leaving an abusive relationship, you should know that an abusive partner may try to use custody as a way to continue to control you. Generally, a non-custodial parent will have ‘reasonable access’ to the children. If parents cannot agree on what is reasonable, the court would make the decision based on the **best interests of the child**. If you are concerned about being harassed when your partner is picking up the children, you can ask the court to issue a restraining order, and arrange to have the children picked up at a safe place, like a grandparent's home or a social worker's office.

IF YOU ARE LEAVING AN ABUSIVE RELATIONSHIP, HERE ARE SOME THINGS YOU SHOULD KNOW . . .

- The court will not consider past conduct, including abuse, unless the conduct is relevant to the person's ability to act as a parent. The court will give a child as much contact as possible with both parents if the contact is in the child's best interests. The court must consider whether a parent who wants custody is willing to encourage contact.
- Both parents have equal rights to custody of their children regardless of who left or ended the relationship. You do not lose your rights to your children when you leave an abusive situation, nor does the abuser.
- If you must leave the residence to find someplace safe to live, you can take your children with you. If you do not take the children, it may be more difficult for you to go back and get them. In either case, you should apply to the courts for custody as soon as possible.
- Many women stay in abusive relationships because they think it is best for their children to have two parents in the home. However, research shows that children who see or hear their mother being abused feel the effects. They are more likely to have emotional problems, anger or trouble in school. They may grow up to model the violent behaviour in their own adult relationships. Child protection laws in some provinces and territories recognize that exposure to family violence may be a reason to remove children from the home if their own development and security is at risk.
- If you think your partner might want to take the children away before you have settled custody issues, contact Child and Family Services on-reserve right away. Or, consider contacting a family lawyer or Legal Aid and tell them your concerns. They may be able to help you to apply to the court for an interim custody order.
- Once you have a custody order, **it is easier for** the police to help you if your partner takes your children.



GETTING CHILD OR SPOUSAL SUPPORT

WHAT SHOULD I KNOW ABOUT GETTING CHILD SUPPORT FROM MY PARTNER?

You are entitled to claim child support for the benefit of your children from your partner if you have custody of the children. Whether you were in a common law relationship or legally married, both parents have an obligation to support their children according to each parent's income.

HOW MUCH CHILD SUPPORT WILL I RECEIVE?

The amount of child support is based on the *Child Support Guidelines*. According to these guidelines, the amount of child support a person is required to pay is based on his or her annual income. If the income of the payor changes, the amount of child support may also change. If your partner has status under the *Indian Act* and is therefore not required to pay income tax, the amount of child support may be affected. You should seek legal advice to help you determine the amount of child support. Anyone who requires support can ask the Family Court Services to make an application to the court.

WHAT SHOULD I KNOW ABOUT SPOUSAL SUPPORT?

Spouses are not automatically entitled to spousal support. The court must give priority to child support above spousal support. The children's needs come first. When the court considers a request for spousal support, sometimes called alimony or spousal maintenance, the court looks at factors like the length of the relationship, the person's age, education and/or employment history. If one partner is found to be financially dependent on the other, then that person can be eligible for spousal support from the other partner. The court also looks at each spouse's ability to pay. The court may order payment of support periodically, in a lump sum, or both. The support may be temporary or permanent.

WHAT IF WE WEREN'T LEGALLY MARRIED?

Children have a right to support regardless of their parents' marital status. And, you can still ask for spousal support if you were in a common-law relationship. It depends on the length and nature of the relationship and whether you were financially dependent on your partner.

If you are leaving an abusive relationship, you should know that the courts do not generally consider past conduct, including abuse, when deciding whether one partner should pay spousal support to the other. You should also know that support and custody are two separate legal issues. This means that even though one parent may not have access to the children, he or she still has an obligation to support the children financially. This is also true when one parent tries to give up spousal and/or child support in the hopes of ending the other parent's access to the children – a court will not agree to prevent a parent from seeing his or her child just because he or she does not pay support to the other parent. The law requires that both parents contribute financially to the upbringing of their children.

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DIVIDING OUR PROPERTY

CAN I GET MY SHARE OF THE MARITAL PROPERTY?

If you live on-reserve, provincial marital property laws do not apply and the *Indian Act* does not deal with family law. That means that the courts have no authority in aboriginal family law cases concerning property. For more information about matrimonial property on-reserve, check out the reports and publications by Indian and Northern Affairs available on their website at www.ainc-inac.gc.ca. For specific information with respect to your particular situation, you should contact a lawyer for legal advice about any property or debts you or your partner may have.

WHAT ABOUT MARITAL PROPERTY OTHER THAN THE HOUSE?

Marital property legislation in some provinces may be limited to a man and woman who are legally married. If you are legally married and you separate or divorce, a Court might order your former spouse to pay you compensation for your share of the marital property. Also, the court can order your former spouse to pay you money to make up for his or her right to stay in the home. Such orders may be difficult to enforce. If the house is the only asset your partner has, the courts cannot force him or her to sell it.

WHAT IF I WAS IN A COMMON-LAW RELATIONSHIP?

Under the *Indian Act* a common-law partner is a person who has lived in a conjugal relationship for at least one year. However in some provinces and territories, common law partners may not have all of the same legal rights and obligations as married spouses. If you are leaving a common-law relationship, you should contact a lawyer for legal advice about any property or debts you or your partner may have.





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