

**Do you know
a woman
who is being
abused?**

**A
Legal
Rights
Handbook**



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Table of Contents

This handbook is a guide to the legal system for women in abusive relationships. The legal system is constantly changing. Each situation is unique and requires different solutions.

For legal advice concerning your particular situation, you should consult a lawyer.

People who speak French have rights to many government services and legal proceedings in French, including hearings before Francophone decision-makers. If you have a legal problem, you can ask a lawyer or community legal clinic about your French language rights.

Please note:

This publication has been reviewed and revised by CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario). All editions dated earlier than February 2013 should be discarded.

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Part One: Introduction

This handbook is for any woman in Ontario who is being abused, or who has been abused or assaulted by her partner. “Partner” for the purposes of this handbook means husband, spouse, common-law spouse, or boyfriend.

This handbook specifically addresses women with male partners, although most of the information also applies to women in lesbian relationships. Women experiencing same-sex partner abuse can get additional support, advice, and written materials from the Anti-Violence Program at the 519 Church Street Community Centre in Toronto. You can contact them by phoning 416-392-6874, faxing 416-392-0519, or visiting their website at www.the519.org.

Leaving an abusive relationship is difficult. Friends and family are not always understanding or supportive. Women may face financial hardship and a legal system that can be intimidating. There can be cultural pressures and feelings of isolation. There are a variety of legal and community resources to help women through this time. This handbook provides practical legal information, and gives an overview of what a woman can expect if she decides to leave her abusive partner or change her situation.

What does abuse mean?

When the terms “wife assault”, “battering”, or “domestic violence” are used, we often think of physical violence or injury. Abuse is not always physical. It can also be emotional, sexual, psychological, or financial. Abuse can include assault and battering, and other forms of mistreatment and cruelty, such as threatening or stalking. All types of abuse have one thing in common — they create fear.

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If your partner does any of the following things, you could be a victim of abuse. This list is only a sample, it does not include everything.

He might:

- not let you have any access to money or control of the family finances,
- cut off your contact with friends or family, and stop you from making new friends,
- read your mail,
- threaten to hurt you or your children,
- threaten to hurt or damage something that is special to you, like a pet or something you treasure,
- threaten to have you deported from Canada,
- withhold your identification or other important documents,
- punch, slap, or kick you,
- hit you with his hand or with an object,
- threaten to take the children away from you,
- threaten to call children's aid to report you as a child abuser,
- threaten to call welfare and tell them you are getting social assistance illegally,
- force you to do things you do not want to do for his sexual pleasure, or
- threaten to hurt himself if you do not do what he wants.

What kind of man abuses his partner?

Men who abuse their partners come from every part of society. They may seem like good citizens, husbands, or fathers. They might believe that they have a right to hit and control their partners. They may also be very jealous and possessive.

Abusers often blame others for their actions or make excuses, such as feeling under pressure at work. Some men believe that violence is an acceptable way to deal with anger. They might drink before they abuse, but drinking does not cause the violence. They might feel guilty when they see the damage or injuries they have caused, but this does not excuse them for what they have done or stop them from doing it again. Between the episodes of abuse they can be extremely loving and caring.

Some men change their abusive behaviour after going through the criminal system and getting professional help, for example, attending a male batterers' program. Their success depends almost entirely on their ability to recognize that they have a problem and their willingness to change. There are programs available in many communities. For more information contact the Assaulted Women's Helpline. It offers services in more than 150 languages. If French is your preferred language, you can call Fem'aide, a province-wide helpline for Francophone women. [See page 64.](#)

Will my immigration status be affected if I leave my partner?

Your spouse or partner might threaten to have you deported from Canada if you report his abusive behaviour. He might say he has this right because he sponsored you. *He does not have this right.* Only federal immigration authorities make the decision to deport someone.

But there are new rules about sponsorship of a spouse or common-law partner. In most cases, if you have permanent resident status, you cannot lose that status or be removed from Canada only because you have left an abusive relationship. This is true even if your abusive partner is your sponsor. However, if your partner reports to immigration that your relationship was not genuine or that it was fraudulent, immigration

officials may conduct an investigation which could result in your permanent residence status being taken away.

The new immigration rules create a “conditional” permanent resident status for some sponsored spouses or partners. Permanent resident status will only be conditional if, when the sponsorship application was made, you and your spouse or partner did not have children in common or your relationship existed for two years or less. In this situation, permanent resident status will be “conditional” for the first two years after your arrival as a sponsored spouse, during which time you are expected to live with your sponsor. This means that permanent resident status is not actually permanent, and that if you separate from your sponsor less than two years after becoming a permanent resident, you will risk losing that status and you might not be allowed to stay in Canada.

However, if you separated because of abuse or neglect by your sponsor or by a member of his family, you can ask for an exception to this rule. You will have to show that the abuse took place and that it led to the breakdown of the relationship. The abuse or neglect might be aimed at you, your child, or a family member who usually lives in your household. You should get legal advice about your situation.

You need legal advice if you are thinking of leaving your partner or you have already left, and your status is not permanent in Canada. This includes if you have conditional permanent resident status, or if your partner has threatened to report to immigration that your marriage is not genuine. You may be able to apply for permanent resident status on “humanitarian and compassionate” (often called H & C) grounds. The rules on who can apply for status on H & C grounds have recently changed. If you have made a refugee claim that was denied, you

cannot make an H & C application for one year from the date of the negative refugee decision. There are exceptions to this one-year rule where a child’s best interests would be affected by your removal from Canada or if your life is at risk due to a lack of medical care in your country.

This can be very complicated and you should see a lawyer. In emergency situations, victims of domestic violence can ask a women’s shelter or community legal clinic for a free two-hour advice consultation with an immigration lawyer. This helps women get free legal advice in emergency situations.

Even if *you* called the police for help, they might contact immigration authorities to ask about your status. The police computer system will show if there is an immigration warrant in your name. An immigration warrant is issued when you do not show up for a hearing or appointment with immigration.

If you have made a claim for refugee protection based on your partner’s fear of persecution, you may have difficulty having your claim accepted if you separate. You should get legal advice from your own lawyer. This is very important because the rules regarding refugee claims recently changed. If you separate, you will need to decide whether to continue with the refugee claim or whether you should make an H & C application. You cannot do both at the same time. If your refugee hearing has already started, you may not be able to withdraw your refugee claim. This means that you may not be able to make an H & C application. The new rules are complicated and you need to get legal advice to help you determine which application is best for your situation.

If immigration authorities have ordered your removal from Canada, you cannot make a refugee

Part Two: Preparing to leave

claim, but you may be able to apply for a pre-removal risk assessment (PRRA). This is an assessment of the risk you would face if you are sent back to your country.

How your immigration status will be affected if you leave your partner is complicated and beyond the scope of this handbook. For more information about refugee law issues, see CLEO's website, Refugee Rights In Ontario, at www.refugee.cleo.on.ca.

Issues affecting Aboriginal women

It can be difficult for Aboriginal women to get provincial family court orders enforced on First Nations (on reserve). This includes orders for exclusive possession of the family home, restraining orders, and orders for custody, access, and support. The Indian Act applies to on reserve property, but does not deal specifically with matrimonial property. This is why the issue of ownership of matrimonial property on First Nations is so complicated.

The Chief and Council have the authority to decide which laws and orders can be enforced on the First Nation. Sometimes they decide that provincial family court orders should not be enforced. This is very difficult for a woman who has a restraining order or an order for exclusive possession of the family home.

For more information on this and other issues affecting Aboriginal women, visit the Native Women's Association of Canada website at www.nwac.ca.

For information on health, justice, and family support, contact the Aboriginal Healing & Wellness Strategy, or visit the Ontario Federation of Indian Friendship Centres' website at www.ofic.org. See page 63.

It is difficult to leave an abusive relationship and it is often a process that takes time. There are many decisions to make and problems to overcome. You need to think about protecting yourself and your children, finding a place you can stay in the short term and long term, and getting financial support.

You may want help making these and other decisions. If you are not ready to leave, you can talk with someone you trust such as a friend, doctor, nurse, lawyer, or social worker. You can also contact the Assaulted Women's Helpline, Fem'aide if French is your preferred language, or other agencies that offer support and advice. Be aware that some professionals have to report the situation to a children's aid society if they believe the children need protection. See page 64.

You know your partner. You need to assess the risk you face whether you stay or leave. Abusive men often become more dangerous when they know their partners are planning to leave or have already left. Only share information with people you can trust to keep it confidential. Be very careful about what you tell your children or what they might overhear. It can be difficult for them not to share information with your partner.

Planning is very important. Whether or not you choose to leave your partner, your safety is the most important thing. You need to think about what to do and what to expect, and how you can protect yourself and your children. It is a good idea to get legal advice as soon as possible.

Your partner may try to monitor your phone calls, emails, or website visits. For privacy and safety information, visit www.owjn.org and click on "COVER YOUR TRACKS".

What is a good safety plan?

Protection while you stay

- Tell people you can trust about the abuse.
- Ask neighbours or friends to call the police if they hear fighting, loud noises, or see anything suspicious.
- Call a counselling agency or crisis helpline to discuss your situation and how to create a safety plan when you leave (you do not have to give your name).
- Memorize the telephone number of a local shelter.
- Be prepared to call 911 or the police if you or your children are in danger.
- Develop a safe escape plan.

Safe escape plan

Think about a place you can go where you will be safe, or where he will not know to look for you, such as:

- a friend's or relative's place, if it is safe,
- a shelter or hostel, or
- another town or city.

Before you go, try to:

- put some money away in a safe place a little at a time,
- move some of your things out a little at a time (for example, photo identification, your passport, and other things you think he will not notice),
- keep a diary and record the abusive incidents if you can do this safely, and
- get legal advice about your situation.

There are services in many cities that have special staff, such as transitional support and housing workers, who help women to develop

safety plans. Their knowledge and expertise can be useful in helping you to assess the risk that you may be facing and to create a safety plan to protect yourself and your children. Contact the Assaulted Women's Helpline to get the contact information for agencies that have these workers. [See page 64.](#)

Can I take my children with me?

If you and the children need to leave right away for safety reasons, speak to a lawyer as soon as possible after you leave. If it is not urgent, check with a family lawyer before you leave. Shelters can give you a referral to a lawyer who is sensitive and knowledgeable about domestic abuse and help you get an emergency legal aid certificate. Tell them whether there is an order for custody and access.

If it is safe leave a note for your partner that says you have left with the children, that they are okay, and that you will contact him soon to arrange for him to see the children (keep a copy of this note).

If it is not safe leave a message for your partner once you are in a safe place, but be careful to take steps so that he cannot trace where you are.

When you go, try to bring:

- clothes for a few days for you and your children,
- your children's favourite toys or blankets,
- things like toothpaste, diapers, and soap,
- money and keys,
- any medication you or your children need,
- identification, including birth certificates, health cards, passports, immigration documents, your driver's licence, and credit cards,
- any documents from family court and criminal proceedings, such as bail conditions, a restraining order, or a custody and access order,

- other documents, such as the deed for your house or lease for the apartment, pay stubs, social assistance cheque stubs, Social Insurance card, and marriage certificate,
- any proof of the abuse, such as photos, threatening notes, recorded telephone messages, or your diary, and
- names and badge numbers of police officers you have called in the past.

What happens when I call the police?

When the police arrive, let them in. They cannot enter your home without permission unless:

- they have a warrant or reasonable grounds to believe that a crime has occurred, or is about to take place, or
- 911 was called by you or someone else.

You can tell the police:

- you want to talk to them privately,
- exactly what happened, whether you were assaulted, threatened, or suffered any other form of abuse,
- if it has happened before,
- what, if any, weapons were used and whether there are other weapons in your home,
- if there are children or others who need assistance,
- if anybody saw or heard the incident or assault, and
- if you are afraid for your safety.

It is not up to you to “press charges”. If there are reasonable grounds to believe an offence has been committed, the police are required to lay criminal charges. The police may ask you to go to the police station so they can make a video of your

statement. Even if they do not lay a charge, they are supposed to complete an “occurrence report”. If the police do not lay a charge, you may be able to lay one yourself.

You can ask the police:

- for the information in the “occurrence report”,
- to take pictures of your injuries,
- to help you leave or take you to a shelter,
- to give you their names and badge numbers, and
- to contact the local Victim Crisis Assistance and Referral Services (VCARS) program, available in many Ontario communities.

See page 66.

What if I am hurt?

If you are physically hurt, ask the police to call an ambulance or take you to a hospital, a doctor that you know and trust, or a Sexual Assault/Domestic Violence Treatment Centre if there is one in your area. These centres are hospital departments that specialize in helping victims of domestic and sexual assault. They offer 24-hour access and follow-up care, crisis counselling, referrals to shelters, as well as legal and financial assistance. **See page 66.**

You can go to a centre on your own, even if you have not contacted the police. They will photograph and document your injuries. This information can be used as evidence in charges against your partner, or it can be kept in case you need it in the future.

If you are unable or not ready to leave the relationship, there are community agencies that offer counselling and support to help you decide what you need to do. Many have services in different languages. **See pages 63-64.**

Where can I go next?

There are shelters where people who understand your situation can help you and give you a place to stay. There are often other women with children living there who have left abusive relationships and are making decisions about their next steps. Counselling is available for you and there are programs for children. They are safe and secure places to stay. There is no charge to stay there. **See page 64.**

You might want to stay with family or friends. Be careful about staying with someone who does not fully understand the situation. They might encourage you to return to your partner which could lead to more violence. Think about whether you will feel safer with friends or at a shelter. Your partner might be able to find you if you stay with someone he knows.

If there is no shelter in your area or you do not wish to contact a shelter, you can call the Assaulted Women's Helpline (or Fem'aide if French is your preferred language). They can provide help in many languages and refer you to community resources and services. You do not have to give your name. **See page 64.**

What can I do next?

As soon as possible after you arrive at a safe place, try to make careful notes of what happened, including times, dates, names, and what everyone said. If you are able to keep a diary, it can help you to remember.

If you were threatened, but not physically assaulted, write down exactly what he said to you and describe the situation. If he threatened to harm the children, write this down too.

If you were injured, write down all the details including:

- exactly where you received your injuries (for example, your upper thigh or the back of your neck),
- how you were hurt (for example, with his open hand, fist, or boot),
- how many times you were hit,
- how severe your injuries were (for example, bruises, cuts requiring stitches, or broken bones), and
- if there were witnesses, and their names.

These notes are very important. Keep them in a safe place. You can use them to refresh your memory when you are interviewed by the police, when you talk to a lawyer, or if you testify in court at a later date. These notes will help you to provide information as clearly as possible.

If the police lay a charge against your partner, a police officer will prepare the case and a crown attorney will present the evidence in court. You need to make sure the police and the crown attorney are aware of all of the available evidence. The police may ask you to sign a consent so they can get medical evidence of your injuries from the doctor or hospital that treated you. Keep any evidence of the assault that the police do not take such as:

- photographs of your injuries,
- recordings of threats,
- torn clothing or property that was damaged during the assault, and
- names of witnesses.

Medical and personal records

If you are seeing a doctor or receiving counselling, your partner's defence lawyer can apply to get copies of your medical, counselling, or other personal records. **See page 31.**

Part Three: The criminal process

Victim/Witness Assistance Program

In most areas, there is a Victim/Witness Assistance Program in or near the court. The staff will help you understand the court process and will provide you with updates on the court case. They will help you to communicate your needs to the crown attorney and the police. In some cases, they can set up a pre-trial interview with the crown attorney. They can let you know what to expect on the day of court and may give you a tour of the court. They can also request a copy of your police statement for you to review before the trial. They can refer you to other services that may offer you support, such as help to plan for your safety. Throughout the court process they can provide you with emotional support. You can call the Victim Support Line toll-free at 1-888-579-2888, or 416-314-2447 in the Toronto area, to find the Victim/Witness Assistance Program in your area. [See page 67.](#)

In Ontario, the police are required to lay charges in all cases of domestic violence where they have reasonable grounds to believe a criminal offence has occurred.

If you call 911 because you want the police to talk to your partner or to give him time to “cool off”, the police might arrest him and charge him, even if that is not what you wanted.

If you fear for your safety, call 911.

What charges might be laid?

There is no specific charge for wife assault or woman abuse. If the police charge your partner, they will use one or more of the offences described in the Criminal Code. These offences include:

Assault

Assault includes “the direct and indirect intentional application of force to another person without their consent”. An assault charge may be laid, even when there is no physical injury, if there is the use of force or an attempt or threat to use force.

Assault charges include assault, assault with a weapon, assault causing bodily harm, and aggravated assault.

Sexual assault

Depending on what your partner did, the police may charge him with sexual assault. Sexual assault is “any assault that violates the sexual integrity of the victim”. Sexual assault includes “any sexual activity committed without the

consent of the other party”. This may include kissing and touching, fondling, and rape (forced penetration). Being married does not protect an abuser. A husband can be charged with sexually assaulting his wife.

Adult sexual assault charges include sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm, and aggravated sexual assault.

Other charges

Your partner could be charged with forcible confinement, making threats, or criminal harassment. Criminal harassment includes stalking, harassing phone calls, or uninvited visits where you live or work. The police will have a better understanding of your situation if you give them background information and details about this and previous incidents or criminal convictions. Your partner can also be charged and prosecuted for past episodes of violence.

Can I also be charged?

When the police arrive at the scene, they are supposed to question you and your partner separately. The police will investigate to determine whether or not a criminal offence has occurred. In all cases, the police should file a report. The investigation could lead to charges being laid if a criminal offence has occurred.

Any statement you give to the police about the incident must be truthful, and will be treated seriously, whether it is at the scene or at the police station. Recordings of 911 calls can be used as evidence.

The police are supposed to consider the history of your relationship to decide who is the “dominant aggressor” before deciding whether to lay a charge. The dominant aggressor is the partner who has caused most of the violence in the relationship.

Even if you have been physically aggressive towards your partner, the police should not charge you if your partner is the dominant aggressor.

You may have to explain all of the circumstances of the assault against you, including any actions you may have taken to protect yourself.

The police may want to make a video of your statement at the station. If an officer takes your statement, you can ask to review it, make any changes, and sign it. You can also ask for an interpreter if you need one.

The police have professional interpreters available to provide accurate translation so that family members or friends do not have to act as interpreters.

The police are responsible for investigating the whole story, which includes any history of abuse, police involvement, court orders, and information from witnesses to determine if anyone has committed a criminal offence. This is very important, especially if you do not have any physical marks or injuries.

What if I am charged?

If you are arrested, you have the right to know the reasons for your arrest and the right to remain silent. You also have the right to contact a lawyer right away.

If charges are laid against you, get legal help immediately. You can apply to get a legal aid certificate to hire a lawyer to represent you, but this can be difficult. To get legal aid, you must qualify financially. Legal Aid Ontario will also assess whether there is a chance that you will get a jail sentence if you are convicted. If they decide that this is not likely, they may not give you a certificate. **See page 60.**

You may also want to talk to someone at a shelter or a community agency to get a referral to a lawyer who may help you free of charge. If you are not able to hire a lawyer, you will be able to get help from criminal duty counsel at the court.

If you are not a Canadian citizen, it is very important that you also speak with an immigration lawyer. Criminal charges or convictions may have serious consequences for a person making a refugee claim.

What will happen to the children?

The police have a duty to report any concerns about the children's safety to a children's aid society. This can include a child who has witnessed domestic violence, even if the child was not physically harmed and there were no charges laid. **See page 43.**

A children's aid worker might visit your home. Children's aid societies have staff who are trained to work with women in abusive relationships. If your worker is not helpful, ask to speak to a supervisor.

What is my role if charges are laid against my partner?

Once charges are laid by the police, a court date is set. The case will be prosecuted by a crown attorney. The crown attorney is a government lawyer who is responsible for presenting the case in court, and is not *your* lawyer.

If your partner is charged, this means you will have to appear as a witness if the case goes to trial. You will not be responsible for proving that your partner abused you. That is the job of the crown attorney who will decide how to proceed with the charges.

The crown attorney will ask the police to notify you about when you have to go to court. If your partner threatens you to try to make you drop the charges, you can tell him he should not be contacting you, you have no control over the case, and you are only a witness. You should tell the police if this happens. He may be charged with another offence such as:

- failing to comply with the conditions of his release,
- intimidation,
- uttering threats, or
- making indecent or harassing phone calls.

What if the police do not lay charges?

If the police do not lay charges, ask them why. Ask to speak to another officer, such as the officer in charge of the police station or the domestic violence co-ordinator, if there is one there.

If you are not satisfied with their response, make a note of their names and badge numbers. You can make a complaint to the Office of the Independent Police Review (OIPRD) Director. You can call OIPRD toll-free at 1-877-411-4773 or visit www.oiprd.on.ca.

You should get advice from a lawyer or a community legal clinic before you make a complaint and during the complaint process if you decide to go ahead. This is a serious step and there may be more productive ways to address your concerns.

Laying a charge yourself

You can lay a charge against your partner for an assault that has just happened or that occurred in the past, whether or not the police were called at the time. If the police were called and they did not lay a charge, they should have made an

“occurrence report”. You can use this report to lay a charge yourself, but it is not necessary. *Act as soon as possible after the assault because the court may question why you waited.*

It can be dangerous to stay with your partner after a charge has been laid because he may become more violent.

To lay a charge or to get a peace bond, you must see a justice of the peace. Contact your community legal clinic for more information about laying a charge yourself, or to find out what you should do if your partner lays a charge against you. If they cannot help you, they should be able to refer you to someone who can.

What happens after the arrest?

If your partner is arrested and charged, he will be taken to the police station. Depending on the circumstances, he may be released almost immediately, with conditions. Before your partner is released, staff from the Victim/Witness Assistance Program will try to contact you to ask you for information, such as safety concerns, that you would like the crown attorney to know. **See page 67.**

Ask the police to tell you when he is being released because they may not automatically do this. You can also contact the Victim/Witness Assistance Program to help you get this information.

In some cases, your partner will be released after he signs a written agreement to appear in court at a later date, and to follow certain conditions. There are different types of releases and many kinds of conditions.

If you fear for your safety, tell the investigating officer. Ask that a “no contact” condition be put on your partner’s release, and ask to be notified as soon as there is a decision to release him.

This is a common provision in a release in a domestic violence case.

The police may detain your partner until a bail hearing can be held if they have reason to believe that he will not show up for his trial or that he might commit another offence.

What is a bail hearing?

If the police have concerns about releasing your partner, they must take him before a justice of the peace for a bail hearing. This is also called “judicial interim release”. At the bail hearing, a decision will be made to release him while he waits for his trial or to keep him in custody until the trial.

If he does not get released and he is waiting for his trial in jail, the court can order that he not communicate with you or your children. If you want this type of no contact order, tell the crown attorney, police, or Victim/Witness Assistance Program staff. If the court makes a no contact order and he contacts you or the children, call the police.

You do not have to go to the bail hearing.

Tell the investigating officer what you want the justice of the peace to know about your partner. You can suggest conditions you want on his release when you give your statement, or as soon as possible. This is important, especially if you are afraid for your safety. If you need help explaining your concerns, you can call the Victim/Witness Assistance Program, a shelter, or a sexual assault/domestic violence treatment centre for help.

Can he be released?

Yes. There are several different ways that your partner can be released while he waits for his trial, and different names for each type of release.

He may be released on:

- A “promise to appear”. This is his written promise to appear in court on a future date. It has no conditions and is rarely used in domestic violence cases.
- An “undertaking” with conditions. This is his written promise to appear in court on a future date and it has conditions. This agreement is usually made at the police station.
- A “recognizance without sureties”. This is a document he must sign that guarantees he will pay the court a fixed amount of money if he does not appear for his court date, or if he breaks any conditions of his release.
- A “recognizance with sureties”. This is a document he, and another person (the surety), must sign that guarantees that the surety will pay the court a fixed amount if he does not appear at his court date, or if he breaks any conditions of his release.

A recognizance or guarantee is also called a “bond”.

Whether he is released on an undertaking or a recognizance, it is the conditions set by the court that are the most important.

It could take several days before you are notified about the conditions made at the bail hearing. You will be notified by the Victim/Witness Assistance Program, the Victim Crisis Assistance and Referral Services, or the police, depending on the practice in your area.

You can contact the police or the court administration office after the hearing to find out if there were conditions attached to your partner’s release, and what they are. You can also ask the Victim/Witness Assistance Program for help. **See page 67.**

Conditions on his release

There are a number of conditions that may be ordered as conditions on your partner’s release. The following are some examples. He might be ordered:

- not to contact you,
- not to contact you through another person,
- not to contact you, except through another person agreeable to both of you, to arrange for access to your children,
- not to contact the children, except as set out in a family court order, or at the discretion of the children’s aid society you are dealing with,
- not to go onto or into certain property, including your home and your workplace, and to stay a certain distance away from these locations,
- to live with his surety,
- not to use alcohol or drugs,
- to report to the police station regularly,
- to continue any counselling program he is already attending,
- not to possess any weapons, and
- to follow a curfew.

If you have a family court order giving your partner access to the children and the crown attorney does not know about it, the bail conditions could contradict the access order. Tell the police officer about any family court orders. If possible, show them to the officer.

You should also tell the family court or your family lawyer that your partner was arrested and has been released on bail with conditions. Talk with your lawyer about how to make access arrangements that are safe for you and the children. For instance, the family court could order that any access to the children be supervised, or that exchanges of the children be supervised. [See page 46.](#)

What happens if my partner breaks a condition?

If your partner does not obey a condition, call the police. He can be charged with another criminal offence known as “breach of recognizance” or “failure to comply with a condition of undertaking or recognizance”. Be sure to follow your safety plan. His breach is a warning for you to be careful to take steps to protect yourself.

Call the police as soon as possible if your partner breaks any of the conditions.

He might be arrested and held in custody until his trial, or he might be released with new and tougher conditions. He can be charged if he does not obey the conditions.

If your partner returns home, he may be breaking one of the conditions of his release. His return could put you and the children in danger.

In some situations women feel pressured to take their partner back. For example, they may be afraid or intimidated about not doing what their partner wants, or he might have promised to give them custody of the children if they drop the conditions. Women in this situation could have family pressuring them to take their partner back, or they may genuinely want him to return home. These situations are complicated.

If you are thinking of allowing your partner to come back, you need to discuss your situation with the police, a Victim/Witness Assistance Program worker, or a lawyer as soon as possible. In an emergency, you can ask a women’s shelter or community legal clinic for a two-hour *advice* certificate to consult with a family or immigration lawyer. This type of legal aid certificate helps women get free legal advice in emergency situations when they are unable to get to a legal aid office to apply for a legal aid certificate.

What court will hear the case?

If your partner has assaulted you and you report it to the police, it becomes a criminal law matter. The Ontario Court of Justice deals with most criminal matters. The most serious criminal offences are dealt with by the Superior Court of Justice.

Domestic violence courts

There are specialized domestic violence courts in most parts of Ontario. These courts are meant to make the criminal justice system more sensitive to domestic violence matters. They have specialized teams of crown attorneys, Victim/Witness Assistance Program staff, and police who work together to support the victim and provide for her safety.

The domestic violence courts have a program called “early intervention”. It offers first-time offenders who have pleaded guilty an opportunity to have their case resolved quickly. They must be willing to take a 16-week Partner Assault Response (PAR) program. It must be a first offence where no significant injuries occurred and no weapons were used. The PAR program focuses on holding offenders responsible for their actions, and teaches them non-abusive ways to resolve conflict.

Part Four: The criminal trial

If your partner enters the PAR program, a counsellor will contact you. The counsellor will ask you about your safety, and give you information about services and supports you may need. The counsellor will also tell you what is being taught in the PAR program. In some cases, your partner can return home during the program, if that is what you want.

Offenders who go through the regular court system can also enter a PAR program as part of their probation.

Court-ordered protection

If you are afraid that your partner is going to harm you, your children, or your property, and there have been no charges laid, you can ask for a peace bond. It is a court order to “keep the peace” and obey other conditions. A peace bond can be made by a criminal court judge or a justice of the peace.

See page 40.

You can also apply for a restraining order to keep your partner away. This is done at family court, which also deals with support, custody, access, divorce, and division of family property. **See page 35.**

What happens at the trial?

The trial takes place in a courtroom that is usually open to the public. There are formal rules followed in court, for example, everyone must stand whenever the judge or justice of the peace enters or leaves the room.

Children at court

It is best to have someone else care for your children instead of bringing them to court. You often spend a lot of time waiting, which can be difficult for children. In many cases, children are not allowed in the courtroom because of concerns that they might disrupt the proceedings. Even more importantly, it can be very distressing for them.

Crown attorney’s role

The crown attorney is a lawyer who works for the government. It is the government’s job to protect society. Any criminal act is considered an act against society. If criminal charges are laid against your partner, you will only be involved as a witness.

The police gather the evidence. But it is the crown attorney’s job to use the evidence and present the case against your partner.

The time between arrest and trial can be very long, with many court appearances where new dates are set. You do not have to be at all of these appearances. Contact the Victim/Witness Assistance Program to get help and support before you go to court.

Plea bargains

When the accused is charged, he can plead guilty to the charge(s) and be sentenced at any stage of the proceedings. Sometimes a later date is set for sentencing after a guilty plea is made.

During the criminal proceedings, the crown attorney and the defence lawyer may negotiate what charges the accused will plead guilty to and the sentence that will be proposed to the judge. The judge will make the final decision about what the sentence will be. The charge and the sentence might be less serious than what the crown attorney originally wanted. When negotiating a plea, the crown attorney considers a number of factors, including the strength of the case, any injuries, and whether or not the accused shows remorse. The crown attorney usually asks for your views, but they do not need your consent to accept a plea.

Courtroom procedure

At the trial, the crown attorney presents their case first. Then the defence lawyer presents the case for the accused. Each side presents evidence and witnesses to support their version of the event. Each witness must swear an oath on a holy book, or affirm (promise) that they will tell the truth. Aboriginal witnesses can use an eagle feather for this.

What if I am asked to testify?

The victim's testimony is always important and usually necessary to get a conviction. Before the trial, the crown attorney will probably introduce themselves to you and give you information regarding the trial process, the evidence they have, and when they will call you to testify. If you provided a statement to the police at the time of the incident, a police officer is also likely to provide you with a copy of your statement to review before the trial.

The Victim/Witness Assistance Program can help you to get a meeting with the crown attorney, and can review your testimony with you before the trial. You may want to go to the court at least an hour before the trial so that you have time to have these conversations before the trial starts. **See page 67.**

If you provided a statement to the police at the time of the incident, you can review it before testifying to refresh your memory. You will probably not be able to keep the statement with you while you testify.

Sometimes an abuser makes threats to try to stop his partner from testifying in court. For example, your partner might threaten to take the children from you, or try to convince you not to testify by promising never to hurt you again. Your partner can be charged for making this type of threat. If he does this, call the police.

If you have been given a "subpoena" (a document that orders you to attend court), you must attend. If you do not come to court to testify on the date on the subpoena, the crown attorney can ask for a warrant to be issued for your arrest to bring you to court.

If you want to read through your statement or see the video of your statement before the day of the trial, you can go to the police station where the officer in charge of the case works and ask to see a copy there or at the crown attorney's office.

Testifying

Testifying is when you tell the judge about what happened. Usually, you are the first witness. The crown attorney will ask you several questions and you must answer them. When you testify, take your time and answer the questions carefully and honestly. Do not worry about hesitating

before you answer. If you do not understand the question, ask to have it repeated. If you do not know the answer to a question or do not remember, say so.

When the crown attorney is finished, the defence lawyer will ask you questions. This is called “cross-examination”. These questions are usually more difficult because the defence lawyer might challenge what you say and try to make your story less believable. The defence lawyer might try to suggest answers that can weaken the case to make the judge believe:

- you are making up what happened,
- you were hurt by someone else, not your partner,
- you tried to hurt him first and he acted in self-defence,
- you are unreasonable, unstable, or your story is not believable,
- you are doing this to get the advantage in your family law matter, for example, to get custody of the children, or
- you are doing this to try to get money from the Criminal Injuries Compensation Board.

See page 57.

If you do not like what the defence is saying at the trial, leave it up to the crown attorney to object. Answer each question honestly, clearly, and completely, but try not to give more information than is asked for.

You may feel that some questions you are asked do not relate to the violence between you and your partner. If you are able to answer the questions, you should. It is the judge’s job, with help from the crown attorney and the defence lawyer, to decide whether or not a question should be answered.

Your partner or his family might try to intimidate or bother you. The judge and the crown attorney should not allow this to happen. If you are concerned, tell someone at the Victim/Witness Assistance Program.

Other witnesses might testify after you. They will be asked to wait outside the courtroom until they are called so they will not be influenced by what you and other witnesses say. Witnesses can include doctors, police officers, the person who took pictures of your injuries, or neighbours who saw or heard the incident.

If you need support and assistance during the trial, you can bring someone to court with you. Talk to the Victim/Witness Assistance Program about other things that can be done to help you feel more comfortable.

What documents will the defence get to see?

If your partner is charged with a criminal offence, his lawyer automatically gets copies of the evidence or information the crown attorney and the police have. This is called “disclosure”. The crown attorney will have to disclose statements, photographs, or other information provided to the police by you or other witnesses.

Special provisions exist in sexual assault cases to protect your personal records, including medical, counselling, or therapy records, and personal journals and diaries. To get a copy of these records, your partner’s lawyer must make an application to the court asking for them. There are very strict rules that apply to these applications. The lawyer must prove to the court that your partner cannot make a proper defence without the records and that their disclosure will not invade your privacy in a significant way.

You can hire a lawyer to challenge the application for your records. Legal Aid provides certificates to help pay for a lawyer if you qualify financially.

Can he make excuses to defend himself?

Your partner has the right to choose whether or not to testify. If he chooses to testify, the crown attorney will be able to cross-examine him. He might try to defend his actions by saying he was provoked (he was reacting to your actions) or he was drunk, but this will not excuse his criminal behaviour. He cannot say he was acting in self-defence if he could have protected himself with less force than he actually used.

It is up to the judge to decide if he is guilty.

What sentence could he receive?

If your partner is found guilty, the sentence that he is given will depend on the seriousness of the offence and other factors, such as whether he has a previous criminal record. Abusing a child is a factor that can increase the sentence.

Before your partner is sentenced, you can tell the judge about the effect his violence has had on you and your family. You can do this by preparing a “Victim Impact Statement”. This statement allows you to express your feelings about the offence, and helps the court understand the effect on you.

Both the police and Victim/Witness Assistance Program staff can help you prepare this statement, and can advise you about the best time to complete it. The crown attorney must give it to the defence and you can be cross-examined (questioned) about it, although this is not very likely. You should also know that your statement

can be used in any subsequent family court proceedings.

Kinds of sentences

At the sentencing hearing, a person who has been found guilty might receive a “discharge”. This means that they have been found guilty, but the judge did not give them a criminal record. A discharge can be ordered with or without conditions of probation. See the section on Probation below.

If the judge believes a criminal record is necessary, a person who is convicted of a charge related to domestic violence can be:

- sent to jail for a specific amount of time,
- given a sentence, but the sentence is “suspended” and specific conditions are imposed under a term of probation,
- ordered to serve a “conditional sentence”, which is a jail sentence served in the community with strict conditions, such as house arrest,
- ordered to pay a fine, or
- ordered to pay “restitution” to cover the victim’s costs related to property loss, damage, or personal injury.

These last two options are rarely used.

Probation

A judge can order that your partner obey specific conditions for a certain period of time as part of his sentence. This is called probation. Many sentences include a period of probation. The probation can be ordered to follow the time spent in jail, or right away when the sentence does not include jail time.

If your partner is given a sentence with a term of probation, there will usually be conditions imposed. The conditions can include that he:

Part Five: Protecting yourself

- not contact you directly, indirectly, or through a third person,
- not come within a certain distance of your home or your workplace (for example, 100 metres),
- only contact you and the children as set out in a family court order,
- provide support for dependants,
- report to a probation officer regularly,
- not use alcohol or drugs,
- attend and actively participate in treatment or counselling for substance abuse, partner abuse, or anger management, or
- not own, possess, or carry a weapon.

If you have a family lawyer and there is a family court order, you should tell your lawyer about the conditions of probation in case the family law order has to be amended. You can get a copy of the probation order by contacting the Victim/Witness Assistance Program, the crown attorney, or the court staff.

What if he is found not guilty?

The crown attorney has to prove the case beyond a reasonable doubt for your partner to be found guilty. He may be found not guilty (acquitted) even if the judge believes your testimony. If there is not enough evidence to convict your partner, the judge may still believe that you are at risk of violence and order him to have no contact with you and to sign a peace bond. The judge can make conditions similar to those that are made at a bail hearing.

If your partner is not put in jail, you need to plan for your safety when you leave the court.

You have to make decisions about your safety. The legal system is one part of the community response to protect you and to hold your partner responsible.

In addition to testifying against your partner in criminal court, you may want to bring actions against him in other courts. Family law actions are called civil actions and they are the most common. They are different from criminal proceedings.

In most criminal cases, the crown attorney is in charge of the case and your role is to testify as a witness. However, in a civil action you are in charge of your own case. You hire a lawyer to represent you, and the lawyer takes direction from you.

At family court, you can ask for civil protection orders to help protect you and your children. You can ask for a “restraining order” or an “order for exclusive possession” of your home. These civil orders can be in addition to criminal orders, such as peace bonds and bail conditions.

Family Court Orders

What are restraining orders?

The purpose of a restraining order is to prevent your partner from harassing you or your children. You can get a restraining order through the family court system. These orders are not part of the criminal law system. You may be able to get one even if your partner has never been charged, if the charge has not been dealt with, or the criminal court did not find him guilty. Your lawyer can ask the court to make a restraining order. If you need a restraining order right away,

go to the nearest family court or Ontario Court of Justice and ask for help from the duty counsel or advice counsel lawyer. You may also be able to get help from a Family Court Support Worker.

The judge can make an order to limit or prevent your partner from contacting you and the children. If there is concern about whether your partner will take care of the children properly, the judge may order “supervised access”. Depending on where you live, and the availability of a supervised access centre, you may have to find a friend or family member you can both trust to supervise visits. **See page 46.**

If there is concern about your safety when exchanging the children for access time, the judge may order “supervised access exchanges”. These exchanges may take place at a supervised access centre, if one is available, or may be supervised by a friend or family member. Or, the exchanges of the children may take place in a public location, which is intended to reduce the opportunity for your partner to abuse you.

Sometimes a restraining order is used to try to keep the abusive spouse away from the home. If he is facing criminal charges, or there has been a conviction, a condition of his bail or probation might be that he cannot return to the home. But these criminal conditions only last for a certain period of time. Restraining orders can be permanent or last for several years.

Tell your lawyer what kind of protection you need. For example, you can ask the judge to order your partner to stop telephoning you or having his friends or relatives call you on his behalf. In some circumstances, the judge may order that your partner cannot come within a certain distance of your home, workplace, or the children’s school. All of these conditions and others can be in a restraining order.

There is no minimum time that you have to have lived together before you can make an application for a restraining order. You can apply for a restraining order whether you are married to your partner or live with him, no matter how short the time is that you have lived together.

To apply for a restraining order, you have to fill out an application form. You will also have to complete a Canadian Police Information Centre Restraining Order Information Form. The form provides information about your partner to make it easier for the police to identify him.

A restraining order is made in family court. Breaking any of the conditions in the order (sometimes called breaching the order) is a criminal offence. If your partner breaks any of the conditions, he can be arrested by the police, charged, and held for a bail hearing.

A restraining order comes on a standard form. The judge marks a tick beside the conditions that apply to your case and writes in any additional conditions.

All restraining orders say that breaching the order is a criminal offence and that the police are authorized to arrest the person who has breached the order.

One advantage of a restraining order is that it can be made for a specific period of time, even for several years. You can also apply to a justice of the peace in the criminal court for a peace bond, but a peace bond lasts for only one year. **See page 40.**

It is more complicated to apply for a restraining order than a peace bond. To apply for a restraining order, you will have to prepare a number of written documents. If you are applying for a restraining order without a lawyer and you need more information, the Ministry of the Attorney General has a publication called,

A Self-Help Guide: How to make an application for a restraining order. You can view the publication at www.attorneygeneral.jus.gov.on.ca. You may need help with this application; contact a shelter or community legal clinic for assistance.

When you get your restraining order, you can get two free certified copies from the court. You should do this right away. Keep one copy with you at all times, and the other in a safe place in case your partner breaches the order and you need to show it to the police.

Aboriginal women living on First Nations (on reserve) can have difficulty getting provincial family court protection orders enforced. The Chief and Council have the authority to refuse to enforce restraining orders and orders for exclusive possession.

What are exclusive possession orders?

If you are legally married, the family court might decide that you have a right to stay in the house or apartment where you have lived with your husband, and that he must leave. This is known as “exclusive possession of the matrimonial home”. An order for exclusive possession only orders your husband out of your home. It does not prevent him from contacting you at work or anywhere else. It does not mean that he gives up his part of the ownership of the home.

Your lawyer must file an application in court to request an order for exclusive possession. Before making the order, the judge will consider factors including:

- the best interests of the children, including the effect that a move might have on them, and how they feel about moving or staying,

- the children’s attachment to the neighbourhood, including how long they have lived there, if they are in school, and their attachment to friends,
- any violence committed against you or your children,
- each of your financial situations,
- any other written agreements between you and your spouse, and
- the availability of suitable and affordable accommodation elsewhere.

If you or your partner own your home, or if both of you own your home, an order may be made so that you and your children can stay in the house temporarily (at least until you have to sell it) and that your partner must leave. You might be able to stay in the house for several years, or permanently, if you can afford to keep it.

Orders for exclusive possession usually apply to partners who are legally married. If you are in a common-law relationship, it is more difficult to get an order for exclusive possession. You may be able to get an order for exclusive possession, but this will depend in part on whose name is on the deed or lease.

You can get an order for exclusive possession for a house or apartment whether it is owned or rented, but the situation may be more complicated if you are renting and your name is not on the lease. Get legal advice. If you and your partner live in a rented unit together, you will also need to get legal advice about your responsibilities and options when one of you leaves the unit.

Can I get an order if my partner is not in court?

Judges rarely make decisions that affect people’s rights without those people present so they can

tell their side of the story. If there is a court proceeding against your partner, he will usually have the right to receive notice of the proceeding so that he can make arrangements to attend.

But in a potentially dangerous situation, a judge might make exceptions. For example, if you are asking for an order for exclusive possession or a restraining order because your partner is dangerous, your lawyer can apply to get the order “without notice”. An order without notice is also called an “ex parte” order. The court can make the order without giving your partner any warning. The order is only for a short time, to provide you with some immediate protection and to allow your partner to come to court to respond.

Criminal Court Orders

What is a peace bond?

A peace bond is a signed promise, in writing, to keep the peace and be of good behaviour. If you are afraid that your partner will hurt you or your children, the family property, or pets, but you do not want to call the police or the police have not charged him, you can apply for a peace bond.

To start the process, you must ask for a peace bond from a justice of the peace, and explain why you need it. You should explain why you are afraid that your partner may hurt you, your children, your property or your pets.

Call your local courthouse, look in the government blue pages of your phone book under Courts/Ontario Courts/Justices of the Peace, or visit www.ontariocourts.on.ca to find out where to go. After listening to your explanation, the justice of the peace may order your partner to appear in court. You will have to appear as well. If your partner does not agree with what you told the justice of the peace or if he does not agree to sign the peace bond, there will be a hearing in front of a judge or a justice of the peace to determine

whether you are at risk. You will have to testify at this hearing. There are many conditions that can be made part of the peace bond which are similar to conditions of probation.

Sometimes a justice of the peace will suggest that both partners sign a peace bond. This is called a “mutual” peace bond. *Never agree to sign a mutual peace bond without getting legal advice first.* It would mean that you must follow the same conditions. An abusive partner might try to get you to break a condition and then call the police to report you.

Even though it is issued by a court, the peace bond will not give your partner a criminal record. But if your partner breaks any of the conditions that are part of the peace bond, call the police. Your partner can be charged with breaching a peace bond, which is a criminal offence. If he is found guilty, he can be sentenced to time in jail.

Peace bonds can offer protection to women who are not eligible to apply for a family court restraining order. For example, peace bonds can offer protection to women in dating relationships or women being harassed by a co-worker or colleague.

Peace bonds also do not require a written application, which may make the process more accessible to some women. But, if your partner does not agree to a peace bond and a hearing date has to be set, there may be many delays before the hearing takes place and there will be no restrictions on his behaviour during this time. This is different than if your partner were charged with a criminal offence, where conditions may be placed on his release while he waits for the trial.

As with restraining orders, peace bonds are entered on the police information computer system and the police are authorized to arrest anyone who breaches (breaks) any of the conditions.

Part Six: Your rights under family law

A disadvantage of a peace bond is that it can only be made for up to *one year*, and it can be difficult to renew if none of the conditions have been breached.

Once you get an order, keep a certified copy of the original with you at all times. The police will want to see it if they need to enforce it. Depending on your situation, you may also want to give a copy to your child's teacher or principal to show to the police if your partner arrives at the school.

What can I do to have an order enforced?

A police officer can arrest anyone who violates a peace bond, a restraining order, or an order for exclusive possession.

Call the police immediately if your partner violates an order or if you are afraid he will.

Is there other protection available?

High Risk Support Services offers safety planning case management. This provides safety planning, follow-up client contact, and where appropriate, a cell phone programmed to call 911. This program is available in 20 Ontario communities. For more information, and to find out if it is available in your community, call the Victim Support Line (VSL). [See page 67.](#)

Whether or not you are legally married, you and your children have certain rights in Ontario under the Family Law Act and the Children's Law Reform Act. If you want a divorce, the federal Divorce Act also applies. Custody of the children, access between parents and children, dividing up family property, and financial support for you and the children are family law issues and can be dealt with in family court.

Making an application in family court is different from being a witness in a criminal proceeding. In family court, it is best to have a family lawyer to represent you. But you are in charge of your case, and your lawyer takes direction from you.

There are 17 family courts in Ontario where judges deal with all family law issues. If there is no full-service family court in your area, family law matters are dealt with by the Ontario Court of Justice (sometimes called the Provincial Court), or the Superior Court of Justice. The court that is used depends on what family issues are being dealt with.

When will a children's aid society be contacted?

The law says that anyone who has concerns about a child being harmed, or at risk of being harmed, must report it to a children's aid society. This could be a teacher, doctor, counsellor, neighbour, relative, or police officer. For most professionals, it is an offence not to report. The harm to the child can include physical abuse, sexual abuse, or neglect. It can also include the risk of a child being exposed to domestic violence, even if the child is not being physically harmed.

The police have a duty to report any concerns to a children's aid society. If a children's aid society is contacted, a worker might visit your family. They can suggest services and resources to help you.

When you have confidential discussions with a professional or service provider, if they believe your child is at risk of being harmed, they have to report it to a children's aid society. The situation is different with your lawyer. Lawyers have a strict duty to maintain the privacy and confidentiality of their clients.

How do I get custody of the children?

Whether you take your children with you when you leave, or you stay in the home, you will need to speak to a family lawyer right away about custody. If you have to leave your community because of violence or immediate risk to the children, you may be able to apply for custody in the area you have moved to. If it is an urgent situation, many courthouses will be able to help you right away if you can show that any delay could harm either you or your children.

If your children are living with your partner when you go to court, and you are successful in getting a custody order, you can ask the court to order the police to help you to bring the children to your home.

If you want custody of your children, but do not want to leave your home, you may need to get an order for exclusive possession if you are legally married. It is more difficult to get an order for exclusive possession if you are not legally married, but you may be able to get a restraining order that has the same effect as an order for exclusive possession.

How does the court decide who gets custody?

The judge will consider only what is in the children's best interests when deciding who gets custody. This includes looking at who has been the main caregiver for the children and who the children are closer to. Family courts believe that it is usually best for children to keep as much contact as possible with both parents.

Recent changes to the law say the judge must consider whether the parent who wants custody or access has committed violence or abuse against their spouse, family member, or any child.

A parent who has "sole custody" will make the major decisions about their child's care, education, and religious instruction. If the parents have "joint custody", they will share the responsibility for making those decisions. The legal term "custody" refers to the person who makes these major decisions; this is not necessarily the person who the child lives with.

For joint custody to work well, parents have to be able to communicate and cooperate with each other. If your partner is abusive or controlling, you should not agree to joint custody.

It is important to make sure your lawyer knows about the abuse in your relationship so that you do not end up with an agreement or order that requires cooperation. Generally, abusers are not cooperative and arrangements need to be very clear. Abusers may seek joint custody to maintain control over you as joint custody requires his agreement to all parenting plans, such as schooling, medical care, recreational activities, summer vacations, and where you live.

The terms “shared parenting” or “co-parenting” are sometimes used to mean the same thing as “joint custody”. But shared parenting is a term that relates to the amount of time spent with a child. Be sure you understand what is being suggested before you agree to it. For more information, see the CLEO publication, *Separation and Divorce: Child Custody, Access, and Parenting Plans*.

If you do not have custody, you still have a right to see your children and to get information about them unless the court has refused you access. It is unusual for a judge to make an order denying access to a parent unless there is strong evidence that the parent has abused or neglected their children in the past and that the children are at risk of further abuse or neglect, or if the parent has not seen the child in a very long time.

If you do have custody, you cannot deny access unless the court has made a “no access” order or if an access order states that access is at the discretion of the custodial parent. You also cannot deny access because the other parent has not paid child support.

If you have custody, you cannot prevent the other parent from seeing the children at arranged times unless you believe it would not be safe; for example, if the other parent is impaired by drugs or alcohol and planning to drive with the children. If you deny access, contact your lawyer or a family court duty counsel immediately.

If there are safety concerns, a judge may order “supervised access” or “supervised exchanges”. There are more than 50 supervised access facilities in Ontario. To find if there is one in your area, visit www.attorneygeneral.jus.gov.on.ca (search for “supervised access”) or call 1-877-661-9977 or 416-212-2028 in the Toronto area. There are usually brochures about supervised access at the court.

If there is no supervised access centre in your area, you may have to find and agree on an appropriate supervisor, such as a relative or friend both you and your partner trust. Many women have difficulty finding and agreeing on an appropriate supervisor. Speak to your lawyer if you think this will be a problem.

If your children are in school or daycare, and you think your partner might try to take them from there without your knowledge, discuss the situation with the school staff immediately. Give them a copy of any court orders. If you have a custody order that states your partner cannot pick up the children at school, the staff should refuse to let your partner take them. If the order says that he has access to the children on certain days at specific times, the school should not give them to him at any other time.

If the court has made an order concerning custody or access to the children and your partner is not cooperating, it is best to have a lawyer to help you enforce the order or change the conditions of the access order.

Non-removal orders

A non-removal order is an order a court makes to be sure that one or both parents do not take a child out of a specified area, such as a county or province. If you have custody of the children and your partner has threatened to leave the area with them, get legal help right away. See a lawyer as soon as possible and ask about getting a non-removal order. If you are afraid that your partner may take the children out of the area immediately, and you do not have time to find a lawyer, go to the nearest family court or Ontario Court of Justice and ask for help from a duty counsel or advice counsel.

What about support?

Whether you are legally married or living common-law, if your partner has more than a minimal income, he will be required to pay child support, and possibly spousal support.

To determine the amount of child support, the court will apply the Child Support Guidelines. These Guidelines set fixed amounts of child support payments based on the income of the person paying support and the number of children in the family. There are special and extraordinary expenses a court may consider when making a child support order. The amount of child support you receive can be affected by the amount of time the children are in the other parent's care. Ask your lawyer to explain the Guidelines and other factors that may apply to your situation.

For more information, see the CLEO publication, *Separation and Divorce: Child Support*.

You may be able to claim spousal support from your partner whether you are married or have been living common-law. If you are not married, you must have lived together for at least three years, or have a child together and be in a relationship of some permanence to qualify for spousal support.

To determine whether to order your partner to pay spousal support, the court will consider:

- the needs and financial situation of each partner,
- the length of the marriage or relationship,
- the role each of you played during the marriage or relationship, for example, who stayed at home to look after the children,
- the effect of these roles on each partner and their current financial position, and

- whether there is an immigration sponsorship agreement signed by your partner.

When making orders for spousal support, the goal of the court is for each partner to eventually be able to provide for themselves.

If your partner is receiving social assistance, it is almost impossible to get an order for support.

For more information, see the CLEO publication, *Separation and Divorce: Spousal Support*.

How are support orders enforced?

There are government offices to help individuals enforce support orders. For more information, visit www.mcsc.gov.on.ca and search for “Family Responsibility Office” or contact the Family Responsibility Office at **1-800-267-7263**. In the Toronto area call **416-326-1818**. The TTY number is **1-866-545-0083**.

If you need to enforce an order for custody or access, you should get help from a lawyer.

Can I get a divorce?

Marriage breakdown is the only ground for divorce. You can show marriage breakdown in one of three ways:

- if the spouses have lived apart for one year with the intention of ending the marriage,
- if a spouse has committed adultery (sex with someone other than your spouse during the marriage), or
- if there has been physical or mental cruelty.

A one-year separation is the most common basis for divorce. In this case, your partner does not have to agree to a divorce or sign anything for you to get a divorce after you have lived apart for one

year. You can apply right after you separate, but you cannot get the divorce judgment until one year has passed.

During the one-year separation, you can get back together again for one period of no more than 90 days, or for several periods that add up to no more than 90 days. If you separate again within the 90 days, you can continue your application for divorce without having to start the one-year period over again.

If you base your application for divorce on cruelty or adultery, you must prove it. This can be difficult and expensive.

If you have children, you have to make arrangements for child support before a judge will finalize your divorce. It is best to have a family lawyer to help you. They will also help you deal with custody and dividing the family property.

What about the division of our property?

Couples who are legally married have a right to a share in the value of the “family property”, which is money, assets, or property earned or accumulated between the date of marriage and the date of separation. You should consult a lawyer to be sure you apply for your share within the time limit and to help you figure out what you are entitled to receive.

Common-law spouses do not automatically have a right to a share in the family property. Sometimes a common-law spouse can be granted a share if it seems their spouse would be “unjustly enriched” by being able to keep everything. An example of this is if a spouse is not named as an owner of the home but they made regular mortgage payments. Other examples are if a person worked for free in her spouse’s business, or if a person did all the

child care or housework to enable her spouse to build up their business.

If you live common-law and you are a registered part owner of the family home, you do not lose your right to ownership when you leave. See a family lawyer as soon as possible to find out how to protect your interest in the home.

How do I find a family lawyer?

Ask your local shelter, community legal clinic, or community agency for the names of lawyers on their referral list. You can also ask your doctor, community contacts, or friends and family.

There are many agencies and services that can help you find a family lawyer and deal with family law problems.

Law Society Referral Service

The Law Society Referral Service can give you the names of lawyers who accept legal aid and they can refer you to a lawyer in your area for a free half-hour consultation. [See page 61.](#)

Family Law Offices

There are three Family Law Offices in Ontario. They are staffed by family lawyers who can represent people who qualify for legal aid. They are located in:

- Kenora, at **807-468-7790** or toll-free at **1-888-295-4986**,
- Ottawa, at **613-569-7448**, and
- Thunder Bay, at **807-346-2950** or toll-free at **1-800-393-8140**.

Family Law Service Centres

At Family Law Service Centres, if you are financially eligible, you can access a variety of legal resources and support, including:

- help with documents,
- referrals to advice counsel,
- full representation in family law cases by a staff lawyer,
- referral to a private lawyer who does legal aid work, if eligible,
- mediation and settlement conferences, and
- referrals to other social service agencies.

These centres are located in Toronto, North York, Newmarket, Brampton, Chatham, Sarnia, and Windsor. It is important to use the centre in the region where your court case is located. To find a centre near you, call Legal Aid Ontario. **See page 60.**

Family Law Information Centres

Family Law Information Centres (FLICs) are located in Ontario courts that deal with family law matters. They provide a variety of information and services that can:

- help you understand the court process,
- provide you with court forms,
- explain how to get your own lawyer,
- answer your general questions, and
- refer you to services and resources.

Advice lawyers from Legal Aid Ontario are also available at FLICs at certain times.

To find out if there is a FLIC in your area, look up “court” in the government blue pages of your phone book and call the number for “family court” or “Superior Court of Justice”. Or visit www.attorneygeneral.jus.gov.on.ca and search for “Family Law Information Centres”.

Family mediation

Some family courts provide family mediation services. Mediation sometimes offers a solution to family disputes that is faster and less disruptive than a court hearing. A mediator does not give legal advice, but helps partners talk about legal issues like custody and access and spousal and child support, and come up with a solution that is acceptable to everyone.

You do not have to use mediation, although it is possible that a judge may order you and your partner into mediation if they think it’s useful. If this happens and you have concerns about mediation, make sure to let the judge know. Mediation is not usually appropriate in domestic violence situations because:

- if you are afraid of or intimidated by your partner it can be difficult to express your wishes,
- it is often difficult to disclose your experiences of violence in mediation and, even if you do, some mediators may not understand the impact of violence on you or the relevance of violence to legal issues such as custody or access to children, and
- abusers are often described by women as being very charismatic outside their home environment, and abusers’ charisma, may lead some mediators to believe that certain arrangements, such as joint custody, are workable.

You do not have to agree to anything that is being proposed in mediation. If you are uncomfortable with a proposal you can tell the mediator that you need time to speak to a lawyer or to think about it.

Part Seven: The next steps

If you do decide to try mediation, make sure to use a mediator who has been trained to handle cases involving domestic violence. If you're not sure, you can ask the mediator if they've been trained in mediating domestic violence cases.

If you do go to mediation, make sure you do not agree to any arrangement or sign anything before you discuss it with a family lawyer.

What money can I take with me?

As soon as you leave your partner, transfer all your money from any joint bank accounts to a new account in your name only. You should be entitled to at least half of the money in a joint account, but a family lawyer can advise you about how much you can withdraw. Also, take any money you have at home when you leave.

If you have a joint safety deposit box, remove all documents, valuables, or bonds that belong to you. If you have any income that is mailed to you at your home address, arrange to pick up the cheques yourself or have them sent to a relative or friend where they will be safe. For less important mail, you can also notify the post office to have it forwarded. You can do this at the post office or online at www.canadapost.ca. There is a fee for this service.

Even if you have some income of your own, you might face financial hardship when you separate from your partner. You may need spousal support. Talk to a lawyer to see if your partner has a legal obligation to support you. If you do not have enough money, you might qualify for short-term or long-term assistance from a government agency.

For more information, see the CLEO publication, *Separation and Divorce: Spousal Support*.

Can I get social assistance?

If you have left your partner or are planning to leave, and you need financial assistance, contact your local Ontario Works (social services) office. To find the contact information for the nearest Ontario Works office, call ServiceOntario toll-

free at 1-800-267-8097. In the Toronto area call 416-326-1234. TTY can be accessed toll-free at 1-800-268-7095, or 416-325-3408 in the Toronto area.

There are special policies that apply if you are leaving a domestic violence situation, so it is important to tell them if you have been abused. For more information, see the CLEO publication *Need Welfare? How to apply to Ontario Works for assistance*.

If you have a problem getting social assistance, contact your community legal clinic or family lawyer immediately.

Will I need to find a job?

Your partner may have to pay you support when you separate, but courts today expect both partners to be able to eventually take care of themselves financially. He might have to pay support while you take a course or training.

If you do not have current job skills, there may be government programs available to train you. Sometimes you can get government assistance while you learn. For more information, you can contact a women's centre, Service Canada Centre, or visit www.servicecanada.gc.ca or www.hrsdc.gc.ca.

Where will I live?

There are shelters that provide temporary emergency housing. They are free of charge. You are not entitled to social assistance while you are at a shelter, but there is a personal needs allowance provided.

In some shelters, you cannot stay for more than six weeks. But sometimes it is possible to make special arrangements with the staff to stay longer. Shelter staff will work with you to find other suitable accommodation as soon as possible.

If you are on government assistance or you cannot find affordable housing, you can apply for government-funded housing, or for a housing subsidy. There may also be housing co-operatives that might be more affordable. Contact your community legal clinic or the Assaulted Women's Helpline for more information. If French is your preferred language you can call Fem'aide. Women leaving violent situations are given priority, but there might be a waiting list. **See page 64.**

Criminal Injuries Compensation Board

The Criminal Injuries Compensation Board (CICB) awards financial compensation to victims of violent crimes who have suffered injuries and have had expenses as a result of the crimes. The CICB will accept applications from victims of domestic violence. You can apply even if charges were not laid against your partner or he was found not guilty. However, a police report or a criminal conviction will usually help your case.

As soon as possible after the incident, contact the CICB to ask for an application form. You can call 1-800-372-7463 toll-free. In the Toronto area call 416-326-2900. For more information, you can visit www.cicb.gov.on.ca.

You can make an application up to two years after the incident. After two years, you must ask the CICB for an extension of time. This is not always granted. Before granting an extension, the CICB might ask you for evidence to support your claim. If CICB feels that the evidence is not strong enough, they may not grant the extension. Before you apply for an extension, contact your community legal clinic or a lawyer.

Completing a CICB claim can be difficult. In cases of domestic assault, sexual assault, child abuse, criminal harassment, elder abuse, or homicide, notices of hearings are usually not

sent to offenders convicted in a criminal court. If charges were laid against your partner but he was not convicted, he will be notified of any hearing at the CICB and he can participate. He can call his own witnesses, call other evidence, or ask you questions.

Do I need a lawyer?

It is a good idea to get a lawyer or advocate to help you with your CICB application. A community legal clinic or student legal clinic might be able to help you. **See page 60.**

Is there a trial?

No, but the CICB can deal with your application in two different ways — an “oral hearing” or a “documentary hearing”. CICB decides whether a hearing should be oral or documentary.

At an oral hearing, you go to a CICB hearing and explain what happened. You can bring witnesses to speak about the incident and you can present written evidence. This includes medical reports and police reports. The CICB does not usually release medical or psychological reports to your partner.

A documentary hearing means CICB will make a decision after reading all the reports and documents you send to them. You do not have to attend.

If you do not want to attend an oral hearing, you can ask for a documentary hearing. Requests are more likely to be accepted if the written evidence is strong (for example, if there was a conviction) and there are no objections to a documentary hearing.

How much can I receive?

Awards are paid by the CICB, not your partner. The maximum lump sum award is \$25,000.

However, most awards are much lower than that. They can be given as a lump sum or in periodic payments.

Some of the losses you can be compensated for are expenses that you had or will have as a result of the injury. For example, you can receive compensation for dental work, medication, and therapy you received as a result of your injuries, as well as travel and child care expenses if you had to be treated outside your home area. You can also be compensated for pain and suffering you endured.

You can make separate applications for your children if they have been victims of a violent crime, and have suffered physically or emotionally. If you are a victim of long-term domestic violence, you can apply for compensation for separate incidents of abuse if you have evidence of injuries you received for each of the separate incidents. Without this evidence, the CICB will combine the applications and consider them together.

Part Eight: Legal and community resources in Ontario

Important privacy information

Your partner might try to monitor your telephone calls, emails, or website visits. Avoid communicating with your partner by email after you separate. Email communications are not private. If you sent any messages to your partner after you separated that were angry or insulting, your partner can use them in family law proceedings to discredit you. For online privacy and safety information and advice, visit www.owjn.org and click on “COVER YOUR TRACKS”.

Legal Services

Legal Aid Ontario (LAO)

Legal aid certificates

You can apply for a legal aid certificate to pay for a lawyer’s services. LAO will decide if you qualify based on your income and legal issue.

Victims of domestic violence may be able to get a legal aid certificate on an emergency basis. If you qualify, you may be able to get the certificate on the same day you make your application.

Victims of domestic violence can ask a women’s shelter or community legal clinic for authorization for a free two-hour consultation with an immigration or family lawyer. You can meet with this lawyer to get legal advice, but you will have to apply for a legal aid certificate for the lawyer to represent you in any legal proceedings.

Community legal clinics

Community legal clinics provide summary advice, referral, and representation on many legal issues. Student legal clinics in law schools in

Legal and community resources in Ontario

Toronto, Kingston, London, Ottawa, and Windsor can also provide representation and assistance.

To find the legal aid office, community legal clinic, or student legal clinic nearest you, call the numbers listed below or visit LAO’s website.

Telephone:

Toll-free: 1-800-668-8258

Toronto area: 416-979-1446

Toll-free TTY: 1-866-641-8867

Toronto area TTY: 416-598-8867

Website: www.legalaid.on.ca

Barbra Schlifer Commemorative Clinic

This organization provides free legal representation in family and immigration law, as well as counselling and language interpreter services for women who experience physical, sexual, or psychological abuse. They also give summary advice and advocacy in criminal law. They accept collect calls.

Telephone: 416-323-9149

TTY: 416-323-1361

Website: www.schliferclinic.com

Law Society Referral Service

The Law Society Referral Service, operated by the Law Society of Upper Canada, can give you the name of a lawyer in your area who will provide you with a free half-hour consultation to help you determine your rights and options. There is no charge for this referral service. They can also give you names of lawyers who accept legal aid.

Telephone:
Toll-free: 1-800-268-8326
Toronto area: 416-947-3330
Website: www.lsuc.on.ca

Legal Information

CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario)

CLEO has a series of family law information resources that are available online and in print. CLEO also provides clear language materials on other areas of law, including social assistance, housing, employment, health and disability, and immigration and refugee law. CLEO publications are free and can be viewed, downloaded, and ordered online. CLEO accepts collect calls.

Telephone: 416-408-4420
Website: www.cleo.on.ca

CLEO also has an extensive online collection of public legal information resources produced by legal and community organizations across Ontario. The **Your Legal Rights** website includes resources dealing with family violence and violence against women.

Website: www.yourlegalrights.on.ca

For more information about refugee law issues, see CLEO's website, **Refugee Rights In Ontario**.

Website: www.refugee.cleo.on.ca

FLEW (Family Law Education for Women)

FLEW provides plain language legal information on 12 family law topics in 14 languages and in a variety of formats. Materials can be viewed, downloaded, and ordered from the FLEW website at no cost.

Website: www.onefamilylaw.ca

METRAC - Metropolitan Action Committee on Violence Against Women and Children

METRAC provides public legal information materials and workshops on issues concerning women and children experiencing violence.

Website: www.metrac.org

METRAC also has an online legal resource on issues related to violence against women and children called the **Ontario Women's Justice Network (OWJN)**. OWJN also provides legal information and referrals to women in Ontario experiencing violence.

Website: www.owjn.org

Crisis Helplines and Shelter Referrals

Aboriginal Healing & Wellness Strategy

This organization provides referrals to shelters, and to other resources and services for Aboriginal communities.

Telephone: 416-326-6905
Website: www.ahwsontario.ca

Assaulted Women’s Helpline

The Helpline provides crisis counselling and referrals to shelters, legal advice and other services 24 hours a day, 7 days a week, for women across Ontario. It is free and available in over 100 languages, including 17 Aboriginal languages.

There are 27 agencies across Ontario that provide transitional housing to abused women and their children funded by the Ministry of Community and Social Services. To access these services, contact the Assaulted Women’s Helpline.

Telephone:

Toll-free: 1-866-863-0511

Toronto area: 416-863-0511

Toll-free TTY 1-866-863-7868

TTY Toronto area: 416-364-8762

#SAFE (#7233) Bell Mobility, Rogers, Fido or Telus cell phone

Website: www.awhl.org

Fem’aide

This helpline is for Francophone women in Ontario seeking support, referrals, and information on woman abuse, including sexual assault, available 24 hours a day, 7 days a week.

Telephone:

Toll-free: 1-877-336-2433

Toll-free TTY: 1-866-860-7082

Website: www.femaide.ca

211 Ontario

This website is an online resource to help you find community and social services available across Ontario.

Website: www.211ontario.ca

The **211** resource includes a 24-hour telephone referral service for all types of social services. It is available 24 hours a day, every day of the year, and in more than 150 languages

Telephone: 211

Victim Services

Family Court Support Workers

Family Court Support Workers provide direct support to victims of domestic violence who are involved in the family court process. A Family Court Support Worker will:

- provide information about the family court process
- help victims prepare for family court proceedings
- refer victims to other specialized services and supports in the community
- help with safety planning, such as getting to and from court safely
- accompany the victim to court proceedings, where appropriate.

Family Court Support Workers are based in communities across the province. A list of service providers can be found on the Ministry of the Attorney General website. Search for “Family Court Support Worker Program”.

If you have questions about the program, or need helping finding your service provider, call the Victim Support Line toll-free at **1-888-579-2888** or **416-314-2447** in the Toronto area.

Website: www.attorneygeneral.jus.gov.on.ca

Ontario Coalition of Rape Crisis Centres

This is a network of 20 community-based rape crisis centres across the province who provide counseling and referral to people who have suffered sexual abuse. The website lists the centres, and has resources for victims of sexual violence.

Website: www.sexualassaultsupport.ca

Ontario Network of Sexual Assault/ Domestic Violence Treatment Centres

These centres provide care to women, children, and men who have recently been sexually assaulted or experienced domestic violence. There are 33 hospital-based programs in Ontario. Services include emergency medical and nursing care, crisis intervention, forensic evidence collection, medical follow-up, and counselling. The website lists centres throughout Ontario and referral information.

Website: www.satcontario.com

Victim Crisis Assistance and Referral Services (VCARS)

VCARS is a community response program providing immediate on-site service to victims of crime and tragic circumstances, 24 hours a day, 7 days a week. VCARS programs work in partnership with local police services. Police officers call on VCARS to send a team of trained volunteers to provide on-site, short-term assistance. VCARS also assists victims by providing referrals to other appropriate community agencies and the Victim Quick Response Program, which offers assistance for funeral expenses, counseling services and emergency expenses in the immediate aftermath of a violent crime.

There is also a **Victim Support Line (VSL)** and **Victim Services Directory (VSD)** available for more information and support, 8 a.m. to 10 p.m., 7 days a week.

Telephone:

Toll-free: **1-888-579-2888**

Toronto area: **416-314-2447**

Website for VSD:

www.justice.gc.ca

(Search for “Victim Services Directory”)

Victim/Witness Assistance Program (VWAP)

This program provides information and support throughout the criminal court process to victims and witnesses of crime. It is available in many Ontario communities. Contact your local police station or courthouse to find out if there is a program in your area. Or you can visit the website or call one of the phone numbers listed below.

Telephone:

Toll-free: **1-888-579-2888**

Toronto area: **416-314-2447**

Website:

www.ontario.ca/victimservices

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CLEO has free publications on other legal topics as well. We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away. For a copy of our current Order Form or Discard List, please visit our website at www.cleo.on.ca or call 416-408-4420.



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