

Legal Information for Battered Women

Custody and Access

Who this is for

This fact sheet is for you if —

- you are a mother, and
- your husband or partner has hit you or threatened you and he (or she) is the legal parent of your children, and
- you have left the relationship or are thinking of leaving.

What the legal words mean

- **Custody** is one parent's legal right to live with a child and give daily care to the child.
- **Access** is the right of the other parent to visit the child. It is also the right of the child to see that parent.

What you can do to keep your children

- You have a right to take the children with you if you leave a partner who is abusing you. Your husband or partner does not own you or the children. You have a better chance of getting legal custody if the children are with you already.
- Go to court to ask for a temporary custody order right away, whether or not you have the children with you. You need a lawyer for this.
- If you are afraid that the father will kidnap your children, you can ask for a court order that says he cannot take the children out of the area where you live without your written permission. You need a lawyer for this.
- If you have a legal custody order, it's against the law for the other parent to take your child without your permission. If this happens, tell the police right away, and show them the custody order.

- If you lose custody of your children, you can apply again later in court. It is important in the meantime to stay involved in your children's lives.
- If the father has abused the children, you may not want him to see them, or you may want to limit his visits with them. You will need a court order that restricts access. It is not easy to convince a judge to limit access, so talk to a lawyer.
- If you want to have the other parent's access visits supervised, it's up to you to find someone to do this and talk to them about it before you go to court. It can be a friend or family member if you wish. Ask your lawyer or a transition house worker about how supervised access works.

What will the courts do about the children?

- If you and your husband or partner disagree about the children, a judge decides who has **custody** and who has **access**. The judge must look at each parent's ability to give emotional, physical, and financial care to the child. The judge must decide based on the "best interests" of the child.
- A judge can make different kinds of arrangements about custody and access. For example, the judge can say that you have **sole custody**, which means that the child lives with you only. The other parent may still have access visits with the child. Or the judge may decide on **joint custody**, which means the responsibilities for the child will be shared in some way between you and the other parent.
- A judge can limit a parent's access to the child, although this does not happen very

often. For example, a judge may say the father can see the child only at certain times (this is called **specified access**), or only when someone else is present (called **supervised access**). In extreme circumstances, a judge can also deny a parent's access to a child.

Who can help

- If you feel unsafe or you are in immediate danger, call **911** or the emergency **police** or **RCMP** number listed inside the front cover of your phone book. If you do not speak English, you can ask 911 for an interpreter.
- Talk to a family law lawyer as soon as possible. If you are Aboriginal, you can also get help from a Native Courtworker. **VictimLINK** at 1-800-563-0808 can refer you to a Native Courtworker near where you live.
- If you can't pay a lawyer, call **legal aid**. They provide legal information and may pay for a lawyer to help you. Be sure to tell them if your situation is urgent, and tell them if you need an interpreter. **VictimLINK** at 1-800-563-0808 can give you the number of the nearest legal aid office.
- If you can pay a lawyer, ask the local women's centre, transition house, or safe house program for the name of a family law lawyer in

your area. If you are Aboriginal, you can also check with the local friendship centre or Native Courtworker.

- The **Lawyer Referral Service** can also give you the name of a family law lawyer. You can have a half-hour appointment with the lawyer for \$25. In Vancouver, call (604) 687-3221; in the rest of BC, call 1-800-663-1919.
- For more information and support, contact your local women's centre, transition house, immigrant service organization, or Native friendship centre. **VictimLINK** can give you the numbers of groups and services near you. If you are Aboriginal, you may also get help from your band's social development office or your nation's child and family services.

When you talk to your lawyer or legal aid

Tell your lawyer or legal aid —

- about the times your partner physically or emotionally abused you or your children
- if you or your children are in danger from your partner
- if you want custody of your children
- how your children have reacted to your partner's violence towards you or them.

This fact sheet explains the law in general. It is not intended to give you legal advice on your particular problem.

Produced by the Legal Services Society, BC. Also available in Chinese, Farsi, Punjabi, and Spanish.

Other fact sheets in this series (available in Chinese, English, Farsi, Punjabi, and Spanish):

1. If You Are an Immigrant Sponsored by Your Husband
2. Taking Legal Action
4. Peace Bonds, Restraining Orders, and No-Contact Orders
5. Can You Stay in the Family Home on Reserve? (English only)

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