

# **Legal Pathways**

**Spousal Violence in the NWT**

**A Resource for Women**

**Written by Lani Cooke**

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# Contents

|  |           |
|--|-----------|
| Introduction   | Chapter 1 |
| Emergency Protection Orders,<br>Other Protection Orders, Peace Bonds | Chapter 2 |
| Child Protection   | Chapter 3 |
| Criminal Justice   | Chapter 4 |
| Income and Housing Issues  | Chapter 5 |
| Family Law   | Chapter 6 |
| Supports and Contact Information                                     | Chapter 7 |



# Introduction

CHAPTER ONE



# Contents

## CHAPTER ONE

**What is family violence?** 1

---

**Purpose of this book** 2

---

**NWT has the second highest rate of reported spousal assaults in Canada** 3

---

**Seek Safety** 4

---

- ▶ Seek safe shelter for you and your children
- ▶ Safety planning

**Legal Options** 5

---

- ▶ Emergency protection order (EPO)
- ▶ Other protection orders, restraining orders, peace bonds
- ▶ Criminal justice process
- ▶ Child protection
- ▶ Housing and income assistance
- ▶ Family law
- ▶ The importance of support workers and advocates

## What is family violence?\*

- ▶ When your intimate partner physically hurts you ...
- ▶ When you are frightened for your safety ...
- ▶ When you are frightened for the safety of your children
- ▶ When your children are frightened for their safety ...
- ▶ When you or your children are sexually abused ...
- ▶ When you are forced into confinement or restricted from coming and going freely...
- ▶ When you are harmed or frightened psychologically, emotionally, or financially ...
- ▶ When you are harassed through repeated hostility on the internet or with a cellphone...

## This is family violence\*

There are many types of family violence including spousal/partner abuse, elder abuse, and child abuse; family violence also includes violence among brothers and sisters, uncles and aunts.

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**All violence is unacceptable. Laws are in place to protect you and your children. This book provides NWT women with available legal options.**

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This book does not provide legal advice.  
If you need legal advice you must talk with a lawyer.

# NWT has the second highest rate of reported spousal assaults in Canada

The rate of reported spousal assaults in the NWT is 9 to 12 times more than the average in southern Canadian provinces.<sup>1</sup> Only Nunavut has a higher rate of reported spousal assaults. It is estimated that men commit most of this violence against their wives/common-laws. However, in some cases women are violent to their husbands/common-laws, and gay couples also experience violence. This manual is written to support women who are victims of abuse and family violence. It is written from the perspective that women are the victims and men are the abusers.

Spousal violence is often not reported to police because many communities have unspoken rules to keep the violence secret. The secrecy shrouds the violence creating the illusion that it is normal and is to be ignored.

D. Lockhart, a researcher, reports that here are community social pressures that "serve to keep people quiet about these issues, especially in communities in which violence is condoned as an appropriate way to solve problems and sanctions against abusers are low."<sup>2</sup>

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**No one needs to live with violence. There are laws and legal options that can protect you from violence.**

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<sup>1</sup> Johnson, H. (2006) Measuring violence against women: Statistical trends 2006. Ottawa: Statistics Canada

<sup>2</sup> Lockhart, D. "Spousal Violence in the Northwest Territories: Implications for Health Care Providers." EpiNorth, Vol. 19, Issue 1, 2007, p. 11. Govt. of the NWT Dept. of Health and Social Services.

# Seek Safety

## Seek Safe Shelter for You and Your Children

Whenever family violence is taking place, you are encouraged to seek shelter. Friends, relatives, and supportive community members may be able to provide you and/or your children with shelter in situations of violence. Designated shelters for women and children who are experiencing family violence are located in the following NWT communities:

- ▶ Alison McAteer House Yellowknife  
1-867-873-8257  
Toll Free: 1-866-223-7775

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- ▶ Family Support Centre Hay River  
1-867-874-6626

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- ▶ Sutherland House Fort Smith  
1-867-872-4133  
Toll Free: 1-877-872-5925

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- ▶ Aimagunga Women's Emergency Foster  
Care Shelter Tuktoyaktuk  
1-867-977-2000

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- ▶ Inuvik Transition House Inuvik  
1-867-777-3877

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When you are experiencing violence you may phone (collect or toll free) to any of the above shelters for support. Shelter workers will give you information about how to get you and your children to the safety offered by the shelter. If you have to travel, health and social services will provide funding support. Please refer to Chapter Seven of this manual for more contact information.





# Safety Planning

Most victims of family violence do many things to protect themselves and their children from abuse. You may have observed your violent partner carefully over time and recognize some of the warning signs that violence may take place. You might have a friend or relative who you and your children may stay with when you suspect that your partner is about to be violent. When you plan to protect yourself and your children, these ideas are called a safety plan.

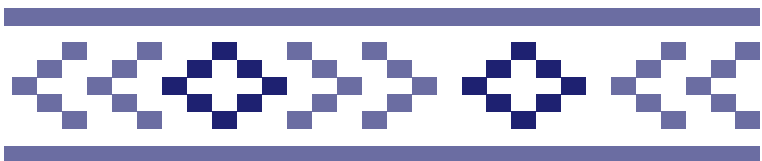
You do not have to wait for the violence to start. You can prepare your safety plan if you suspect that your partner is about to become violent or if you have experienced violence from your partner before. You may have your safety plan written down or you may have it memorized.

## Here are some questions that may arise as you begin your safety plan:

- ▶ What can I do when he has hit me and is getting more and more angry? How do I react to this so that my children and I can get away from him quickly? What do I say to him?  
.....
- ▶ How easy is it to leave the house quickly? What is in the way of our leaving? What do I do if he blocks the exit to the room we are in?  
.....
- ▶ Is there anything I can do ahead of time to help me and the children leave the home safely when he is getting violent?  
.....
- ▶ Are there some rooms in my home that are safer than others; rooms with windows or outside doors? Can I get to these areas in my house quickly?  
.....
- ▶ I will talk to my children and explain to them that when I yell "LEAVE the HOUSE" that they are to leave immediately, and go to a place that I have arranged for our safety.  
.....



- ▶ Are there times when he is away from the home when I can take my children and leave him?  
.....
- ▶ Where is the closest shelter? Which are the safest homes for me and my children? Have I talked with my friends and relatives about coming to their homes when there is violence in our home?  
.....
- ▶ Do I have a friend that I can turn to when I am afraid of violence?  
.....
- ▶ I will develop a system with my friend so that she knows when there may be violence happening in my home. If my friend phones I will say "I am ordering a new rug from the catalogue", and she will know that violence is taking place.  
.....
- ▶ I will talk to my friend about what I want her to do if she phones and I indicate that there is violence taking place.  
.....
- ▶ I will try to keep some extra cash hidden and have my identification, driver's license, truck keys, bank cards readily available if I have to leave the house in a hurry.  
.....
- ▶ What role do I want the closest shelter to play in my safety plan? I might decide to phone the shelter and discuss my safety plan with staff there.  
.....
- ▶ Am I ready to call the police to charge him in situations of family violence?  
.....
- ▶ Am I able to keep a written record of the times that my partner is violent to me?  
.....



# Legal Options

Getting to safety is the first part of looking after yourself in situations of family violence. Once safe you have a number of legal options that you can take to keep yourself and your children safe.

This manual provides information about the following legal options for women experiencing family violence :

## Emergency Protection Order (EPO)

- ▶ EPO's provide a variety of ways to be safe. One type of EPO can be granted very quickly if you are in immediate danger. You may be granted an EPO by a justice of the peace which allows you to stay in the home without the violent partner and without a criminal charge against him. Police may escort him from the house and he will get charged if he breaks the rules of the EPO. Details about emergency protection orders (EPO's) are in Chapter Two of this manual.

## Other Protection Orders, Restraining Orders, Peace Bonds

- ▶ Details about other protection orders are also presented in Chapter Two of this manual.
- 

## Criminal Justice Process

- ▶ A woman may call the police to her home because she needs protection from a violent partner. A police officer will come immediately to your home, ensure that you and your children are safe, and investigate. Depending on the situation, some of the charges that could be laid against the violent partner include assault, sexual assault, assault/sexual assault with a weapon, forcible confinement, attempted murder, and murder.
  - ▶ Details about the many different aspects of criminal law proceedings are detailed in Chapter Four of this manual.
- 

## Child Protection

- ▶ It is harmful to children when they see violence taking place in their homes. Therefore a child may be “in need of protection” if he or she has witnessed repeated violence taking place.
- ▶ According to the law everyone has “a duty to report” if they have reason to believe a child has been neglected, abused or has witnessed family violence.
- ▶ If a child protection worker does an investigation and your children are apprehended (taken away from you) **it is important to get legal advice as soon as possible**. Legal aid is available for people who are unable to afford the costs of a lawyer.
- ▶ There are many steps in the child protection process and many ways for parents to respond. Details about the child protection system are explained in Chapter Three of this manual.

## Housing and Income Assistance

- ▶ A woman who is experiencing violence may need income assistance and housing support. If she chooses to leave her home and her abusive partner she may no longer have a place to live and no longer have a source of income.
- ▶ The Government of the NWT has supports and services that address people's needs for income and housing.
- ▶ Income assistance is designed to provide food, shelter, clothing, some household effects for women and their families.
- ▶ Due to a housing shortage in many NWT communities, it may be very difficult for women who are leaving a violent relationship to find housing for themselves and their children.
- ▶ More information about housing and income assistance is in Chapter Five of this manual.

## Family Law

Family law covers family relationships including:

- ▶ marriage and common-law relationships
- ▶ divorce
- ▶ child protection
- ▶ child custody
- ▶ child support
- ▶ spousal support
- ▶ division of property

Information about family law is provided in Chapter Six of this manual.





## The Importance of Support Workers & Advocates

Organizations that support women who flee from violence provide service as well as advocacy. Shelter workers in the NWT received training in legal options for women experiencing family violence in February 2013.<sup>3</sup>

Shelter workers, victim support workers, relatives, and advocates are important supports to women who experience family violence. These people listen and offer supports so you will not feel as alone and helpless in situations of family violence.

For example, a support person can accompany you to meetings with child protection, income assistance, and housing. Victim support workers and crown witness coordinators may accompany you to the courtroom when you are a victim and help you to write a victim impact statement.

Information about the role of support workers and advocates is provided throughout the chapters of this book. Contact information for support workers and advocates is provided in Chapter Seven.



<sup>3</sup>YWCA-Canada sponsored the February 2013 Legal Options Workshop with participation of lawyers, RCMP's, staff from the Department of Justice and Health and Social Services, GNWT, and workers from five shelters for women and children fleeing violence.



# Protection Orders

## CHAPTER TWO



# Contents

## CHAPTER TWO

### Emergency Protection Orders

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- ▶ What is an “emergency protection order” (EPO)?
- ▶ Enforcement of emergency protection orders
- ▶ How do you get an emergency protection order?
- ▶ How to explain your situation to the justice of the peace
- ▶ Supreme Court Review of EPO's
- ▶ Obeying the EPO

### Other Protection Orders and Peace Bonds

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- ▶ What is a “Protection Order”?
- ▶ What is a “Restraining Order”?
- ▶ What is a “Peace Bond”?

### Differences of Various Protection Orders and Peace Bonds

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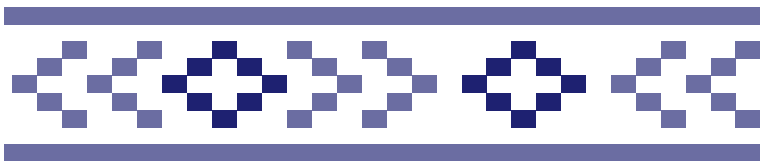
## What is An Emergency Protection Order (EPO)?

If your partner is being abusive and you are immediately concerned for your safety, you may apply for an emergency protection order (EPO). An EPO will force him to leave the family home and allow you and your children to stay. You can apply for an EPO very quickly and only you (and not your abusive partner) have to provide information to a justice of the peace (JP), who will consider the application and decide whether or not to grant the EPO.

The EPO is available under the NWT Protection Against Family Violence Act, which was passed in 2005, to increase awareness of family violence, to improve access to emergency protection, and to improve protection for victims of family violence.

If the JP grants an EPO your abusive partner will have to leave the home for up to 90 days. Often police will escort him allowing him first to collect some of his personal belongings. The EPO may also indicate that the abuser may not communicate with you, cannot damage, sell, or take property, and may be required to turn over to the police any weapons that he owns.

Your partner will not be arrested or charged with a criminal offence. However, if he does not obey the emergency protection order he can be charged under the Protection Against Family Violence Act. If found guilty of an offence under this act the punishment is a fine, or possibly a term of imprisonment, or both.



## Enforcement of an Emergency Protection Order

The police enforce EPO's, making sure that your abusive partner obeys the order. If you live in a small community where there are no permanently stationed RCMP officers it may be difficult to enforce the EPO.



## How do you get an Emergency Protection Order?

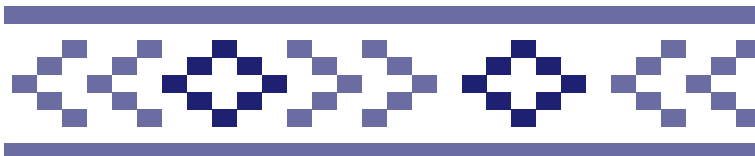
If you are frightened for your immediate safety and/or for the safety of your children you can telephone the RCMP or Alison McAteer House (family violence shelter) in Yellowknife at any time – 24 hours a day, seven days a week to apply for an EPO. An RCMP officer or a staff of Alison McAteer House will listen to concerns for your safety and the safety of your children and can connect you by phone to apply for an EPO to a specially trained justice of the peace (JP).

In a very short time (usually not more than four hours and often less) you will be asked to give evidence to a justice of the peace during a telephone hearing, or, in some situations, a hearing in person. You explain your situation and answer the questions that the JP asks you. Your abusive partner will not be informed about the EPO hearing and therefore he will not be asked to present any information.

If the JP feels that you (and your children) need immediate protection from your abusive partner an EPO will be issued. It is effective immediately. The JP will decide on the length of time for the protection order which can be up to 90 days.

The police will serve your partner with the EPO, often on the same day, although they have up to three days to serve EPO's. Although your abusive partner is not arrested or charged with a criminal offence, the RCMP often escort him from the home.

You do not need a lawyer to get an EPO.



## Support to Obtain an EPO

You can phone the RCMP or a staff of the Alison McAteer House in Yellowknife at any time, 24 hours a day, seven days a week, and seek advice about getting an EPO. The police or Alison McAteer staff will listen to concerns for your (and your children's) safety and will connect you by phone to a justice of the peace who can grant the EPO.

RCMP Phone Numbers are the first three numbers of your community plus 1111. For example:

|                                    |                |
|------------------------------------|----------------|
| ▶ Fort McPherson RCMP              | 867-952-1111   |
| .....                              |                |
| ▶ Alison McAteer House Yellowknife | 867-873-8257   |
| Toll Free                          | 1-866-223-7775 |
| .....                              |                |

## How to explain your situation during the EPO Hearing

It is very important that you give accurate information in an organized way during the EPO hearing with the justice of the peace. This may be difficult if you have just gone through an experience of spousal violence. The staff of Alison McAteer House will support you to collect your thoughts and focus on the important facts that the JP needs to know in order to grant the EPO.

### Some tips for explaining your situation to the JP are:

- ▶ Be as factual as possible; try to control your emotions
- ▶ Give the details about who is in your family
- ▶ Start with the most recent violence and then describe the history of the violence in the relationship
- ▶ If the abuse has been getting worse, explain this
- ▶ Describe why it is an emergency
- ▶ Answer respectfully any of the questions that the JP asks

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**The following fictional story is about an NWT woman in a situation of family violence. Following the story are two ways that she can explain her situation to a justice of the peace during a telephone EPO hearing. One of these ways of explaining her situation is better than the other.**

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### **Story of Irene and Frank**

Irene and Frank got together in high school, having grown up together in a small community of the NWT. They had their first child, Jacob, when they were in the last year of high school. They were able to finish school because Irene's mother looked after Jacob.

In Grade 12 there was a tragedy in Frank's family. Frank's youngest brother, who he loved very much, died in a skidoo accident. Other members of Frank's extended family had suffered violent deaths and Frank had worked through his grief, but this time he couldn't cope. He started to binge drink and became violent and abusive in the home.

When drunk he would shout and scream that Irene was a bad mother and wife. He would demand that she hand over her money, which he would use to buy bootleg alcohol. If she didn't relent, he would push, shove, and even hit her. Once he grabbed his loaded hunting rifle and waved it at Irene. All of this often occurred in front of the child.

One Friday night Irene was working late at the community store and Frank was looking after their son. He called her at work and Irene

could tell that he had been drinking. Irene left work in a rush and found the kitchen in a shambles. Dishes were everywhere and her son was hiding in the corner in tears.

Frank demanded money from Irene. She refused. Frank lunged at her but Irene grabbed her son and made it to the door. As she was leaving Frank threatened that if she didn't give him money he would burn the house down.

Irene was terrified that Frank would not be able to control his anger and grief and might carry through on the threat. She decided to call Alison McAteer House in Yellowknife and apply for an EPO. She really wants Frank to stay away from her when he's dangerous and she hopes that he will be able to ask for the help that he needs. Irene also believes that it is important that Frank's gun be taken away from him until he is in better health.

### **Number 1 Version:**



### **Irene explaining her Situation to the JP during the Telephone EPO Hearing**

I am so upset. I just don't know what to do anymore. My common-law spouse, Frank, is having a really hard time. His baby brother died and now he binges all the time and he shouts at me, and hits me, and demands money from me. I know he loves me, but when he gets like that, I'm really scared. He says these terrible things about me in front of our son, Jacob. He's thrown things at me, too. Also in front of Jacob.

He's a really good person at heart. I know it. He's just going through a really bad time. I love him and want him to get better, but I need to protect myself and my son.

I think an EPO will help shake some sense into Frank. He has threatened to kill Jacob in the past, but I know deep down, even when he's blasted, he would never want to lose Jacob.

I think an EPO will help keep Frank away from us until he sobers up. He's always so sorry when he's sober. He's so ashamed and I think he's scared too. I think it would be good if Frank didn't have his gun for awhile.



## **Number 2 Version:**

### **Irene explaining her Situation to the JP during the Telephone EPO Hearing**

Frank is my common-law husband. We have been together for four years. We have one child together, named Jacob, who is three years old.

Last year Frank's brother died in a skidoo accident and Frank has had a really hard time coping. He started drinking and the drinking has gotten worse. When Frank drinks he becomes physically and verbally violent and emotionally abusive.

Tonight Frank really scared me. I'm worried that he's going to completely lose control and harm me, my child, or our home. I was at work and Frank was at home looking after Jacob. He called me at 7 pm and was drunk, and shouting, and breaking dishes. I ran home and the place was a disaster, and my son was cowering in the corner. Frank demanded money from me to buy more alcohol, and when I refused, he lunged at me and tried to punch me.

Tonight I ran out the door with Jacob. As we were leaving Frank said he would burn the house down if we didn't come back, and if I didn't give him money.

This isn't the first time he has done this. This is the third such incident in three months, and things are getting worse. Last month he pushed me up against the wall, and put his hands around my neck, threatening to kill me if I didn't give him money. About two months ago he threatened to put us all out of our misery. On that occasion he took a loaded rifle and waved it in my face. On both of these occasions, he also shouted and swore at me, in front of our son, that I'm a terrible mother and wife.

Frank needs help. Before his brother died Frank was a good father and husband. But right now Frank is dangerous to us. For a period of time, while he sobers up and gets serious about healing, he needs to stay away from me and Jacob, especially our home, and where I work, and Jacob's day home. I want him to have the counselling he so badly needs. I also want his gun seized. When he is binge drinking you don't know what he might do.

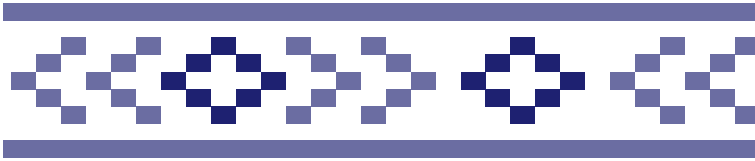
## What the JP must consider before granting an EPO

According to the NWT Protection Against Family Violence Act, when the justice of the peace is considering whether to issue an EPO he/she must take into account:

- ▶ the nature of the family violence
- ▶ the history of family violence by the violent partner
- ▶ is there immediate danger to people or property?
- ▶ what are the best interests of the woman applying for the EPO?

## Number 2 Version is Best

The Number 2 Version of Irene's situation gives a justice of the peace clear information about the kind of family violence that has taken place, the history of the violence, the fact that there is an immediate danger to Irene and her child, and that it is in the best interests of Irene to get an EPO.



## Supreme Court Review of EPO's

The EPO is effective as soon as the justice of the peace issues it. However, all EPO's must be reviewed by the Supreme Court of the NWT - usually within three days. The Supreme Court can agree with the decision of the justice of the peace and confirm the EPO, making it an order of the Supreme Court.

If the Supreme Court Judge does not agree with issuing the EPO, or finds some question about the evidence, the Judge can call for a hearing about the matter. Everyone involved will be given notice of the hearing date and time and will have the opportunity to participate.

The original EPO stays in effect until the Supreme Court either confirms it, changes parts, or all of it, or cancels the EPO.

It is a good idea to get a lawyer immediately if the Supreme Court is requiring a hearing about an EPO that has been granted for your protection. You may get a legal aid lawyer if you do not have a large income.





## What is a “Protection Order”?

If you do not have an emergency and immediate need for protection, but there are difficulties with family violence in your home, you can apply for a protection order. It can take up to two weeks to get a protection order. Under the NWT Protection Against Family Violence Act protection orders can be issued for longer than 90 days and can deal with a variety of matters regarding the violence in your home. It is helpful to have a lawyer because the application has to be made at a hearing, in front of a Judge.

The Judge making a protection order can order the same conditions as an EPO (such as restrict the abusive partner from coming into the home, no communication, removal of firearms) as well as other conditions. For example, the Judge could order your abusive partner to go to counselling, pay for medical and dental costs, repair or replace items that he has destroyed, pay for your counselling.

You do not have to go to Court to get a protection order. Your lawyer can bring the application on your behalf before a Judge.

Your abusive partner does not have to be present at the hearing, however, the protection order is not effective until he is given a copy of the order granted at the hearing.

The police are not usually involved in protection orders. However, your abusive partner can be charged by the police with an offence under the Protection Against Family Violence Act if he does not obey the conditions of the protection order.



# What is a Restraining Order?

Most people apply for a restraining order at the same time as they are in Court dealing with a marriage breakdown and child custody issues. This type of order is issued under the NWT Family Law Act or the NWT Children's Law Act and it can take you a fair bit of time to get a restraining order.

If you have experienced family violence but you are not in an emergency situation, you can apply for a restraining order at the same time as other family law matters.

At a hearing a Judge makes decisions about your application for a restraining order, which can include very detailed and specific terms that meet your needs. A restraining order has no time limit and the Judge will set a date for the order to end. It is best to talk with a lawyer if you are thinking of applying for a restraining order.

When you make an application for a restraining order, the application must be given to your abusive husband. This means that he can attend the application hearing and tell the Judge his side of the situation and argue that the order not be granted.

## A restraining order can force your abusive partner to:

- ▶ Stay away from you and children that are in your lawful custody
- ▶ Not communicate with you or the children except as the restraining order allows
- ▶ Surrender any weapons to authorities
- ▶ Keep from possessing certain property

The police are not usually involved in restraining orders. However, your abusive partner can be charged by the police with an offence under the Family Law Act or the Children's Law Act, if he does not obey the conditions of the restraining order.



## What is a Peace Bond?

A peace bond can be used when you are afraid for your safety, your children's safety, or the safety of your property. It is issued under section 810 of the Criminal Code of Canada. A peace bond can be issued against anyone, and is not restricted to family or family violence issues. It can take weeks or possibly months to get a peace bond and they can last for up to one year.

In order to get a peace bond you need to make a formal complaint to the RCMP. Then you have to swear to a statement giving the details of why you are afraid for your safety.

The RCMP will direct the rest of the process. You will need to go to Court and give evidence, most often in a JP Court in your community. Your abusive partner will be informed about the application for a peace bond although he is not required to attend the first appearance in Court. If your abusive partner wants to argue against the issuing of a peace bond then a hearing will be held and he may be asked to provide evidence.

You do not need a lawyer to apply for a peace bond. The RCMP will do the application for you and the crown prosecutor will be in the Court. There are no fees to apply and the peace bond is enforceable anywhere in Canada.

## Emergency protection order

**What Legislation?** Issued under the *NWT Protection Against Family Violence Act* (PAFV)

**How is it issued?** Issued by a justice of the peace, often by teleconference, anytime day or night

**How long does it take to get issued?** Takes a few hours to get

**Who can apply for it?** Anyone who is abused by any family member

**In what situations is this order issued?** In emergency situations where family violence has occurred and the victim needs immediate assistance

**Involvement of Abuser?** Does not require that the abuser know that the application is being made. Police often escort abuser out of the home

**What conditions can this order include?** Not being allowed in the home; not being allowed to contact you; giving up firearms; conditions can be very specific

**Is a lawyer required?** Does not require a lawyer

**Does it cost any money?** No costs

**Will the police be involved?** The police may escort the abuser from the home. ( NOTE: Police are involved if the abuser does not abide by the Conditions of the Order )

**How long can this order last?** Maximum of 90 days

**Where is it enforceable?** Not enforceable outside the NWT unless there is a jurisdictional agreement between the NWT and another Territory and/or province

## Protection order

**What Legislation?** Issued under the *NWT Protection Against Family Violence Act (PAFV)*

**How is it issued?** Issued by a Judge in a hearing

**How long does it take to get issued?** Can take up to two weeks

**Who can apply for it?** Anyone who is abused by any family member

**In what situations is this order issued?** When family violence has occurred and there is time for longer term planning to put protection in place

**Involvement of Abuser?** The abuser does not need to know about the Court hearing. The protection order is not valid until it is served to the abuser

**What conditions can this order include?** Can include all conditions of an EPO; can also include requiring abuser to go to counselling; require abuser to pay damages on the home; require abuser to pay for medical and dental expenses

**Is a lawyer required?** Requires a lawyer

**Does it cost any money?** Requires you to pay the lawyer's fees unless you qualify for legal aid

**Will the police be involved?** No, except for enforcement

**How long can this order last?** No time limit unless stated in the order

**Where is it enforceable?** Not enforceable outside the NWT unless there is a jurisdictional agreement between the NWT and another Territory and/or province

## Restraining Order

**What Legislation?** *NWT Family Law Act or Children's Law Act*

**How is it issued?** Issued by a Judge in Family Court

**How long does it take to get issued?** Takes some time to get

**Who can apply for it?** Anyone who has been in a relationship with the person they are afraid of (married, common-law, or have had a child with)

**In what situations is this order issued?** If the applicant is afraid for her safety or is being harassed, usually as part of divorce or custody proceedings

**Involvement of Abuser?** Requires that the abuser know about the application. He could appear in court and present evidence

**What conditions can this order include?** Can include very detailed conditions that you ask for

**Is a lawyer required?** Requires a lawyer to make the application. Usually happens at the same time as other family law matters

**Does it cost any money?** Requires you to pay the lawyer's fees unless you qualify for legal aid

**Will the police be Involved?** No, except for enforcement

**How long can this order last?** Has no time limit – the Judge will set a date for the order

**Where is it enforceable?** Not enforceable outside of the NWT. You will have to reapply if you move out of the NWT

## Peace bond

**What Legislation?** *Criminal Code of Canada*

**How is it issued?** Issued by a Judge in Criminal Court

**How long does it take to get issued?** A peace bond can be issued fairly quickly but it takes longer than an EPO

**Who can apply for it?** Anyone who is fearful of their safety, their children's safety or the safety of their property

**In what situations is this order issued?** Issued to an applicant who has reasonable grounds to believe that another person will harm her, her children or property. Not necessarily connected to family violence

**Involvement of Abuser?** Requires that the abuser know about the application. He could appear in court and present evidence

**What conditions can this order include?** Can include conditions such as to be on good behaviour; keep the peace; no contact with you, the victim

**Is a lawyer required?** Does not require a lawyer

**Will the police be Involved?** RCMP make the application before the Judge. Crown attorneys are present in court as well

**Does it cost any money?** No costs

**Will the police be Involved?** You must talk to the police to begin this process. The police look after the Court process.

**How long can this order last?** Will end after 12 months

**Where is it enforceable?** Is enforceable anywhere in Canada



# Child Protection

## CHAPTER THREE





# Contents

## CHAPTER THREE

### Children Who Witness Violence in Their Home

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#### Child Protection Services

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- ▶ Investigation
- ▶ Voluntary Support Services Agreement
- ▶ The role of the Child Protection Worker (Social Worker)
- ▶ The role of the Support Worker, Friend, Advocate
- ▶ Plan of Care Agreement
- ▶ Child Apprehension
- ▶ Apprehension Hearing
- ▶ Plan of Care Agreement – after an Apprehension
- ▶ What is in a Plan of Care Agreement?  
Who is on the Committee?
- ▶ Children can be taken into temporary or permanent custody
- ▶ Court hearing
- ▶ Judge's orders
- ▶ Temporary and permanent custody orders

#### Decisions about care of children

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- ▶ Custom Adoption
- ▶ Voluntary parental consent to adoption

#### Dealing with Child Protection Services

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# Children who witness violence in their home

It is harmful to children when they see violence in their homes. Many children who witness family violence see and listen to assaults upon their mothers.

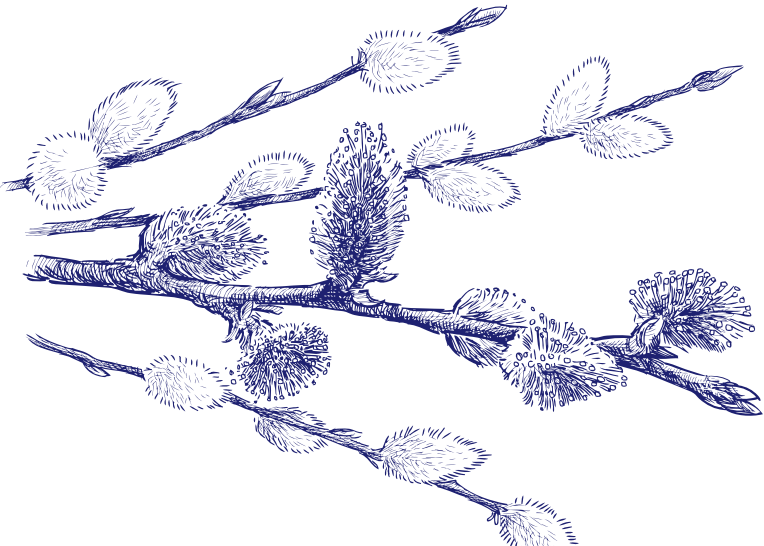
Children experiencing family violence are more likely to miss school and cannot concentrate because they are worried about what may happen to their mother (or other family member being abused). They often feel that they are to blame for the violence in their family, causing them to have low self-esteem and difficulty in developing healthy and trusting friendships. As they get older they may do harm to themselves and misuse alcohol and drugs.

Children who are abused by violent parents may have problems throughout their lives. The abuse may lead to behavioral, academic, sexual, interpersonal, self-esteem, and spiritual problems.

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**All children have a right to live free from abuse, harm, and neglect. Repeated exposure to family violence is considered to be child abuse.**

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## Protection of Children

The *NWT Child and Family Services Act* governs the protection of children and can offer voluntary services to families.

The Act recognizes that each of us has a responsibility for the well-being of children. Anyone under the age of 16 years is considered to be a child. Anyone who has information about a child being abused must report the matter to a child protection worker (social worker) or a police officer. This is called the "duty to report". Repeated exposure to family violence, even if the violence is not directly aimed at the child, is considered to be child abuse.



## Seeking Safe Shelter for You and Your Children

Women are encouraged to seek shelter away from the violence for themselves and their children. Friends, relatives, and supportive community members may be able to provide you and/or your children with shelter in situations of violence. Designated shelters for women and children who are experiencing family violence are located in Yellowknife, Hay River, Fort Smith, Inuvik, and Tuktoyaktuk. Please refer to shelter information in Chapter One and contact information in Chapter Seven.



## Calling the RCMP

When the police are called to a home where there is family violence taking place they are responsible for restoring order, protecting victims (most often women and children), and investigating and gathering evidence. They may arrest the abuser and take him into custody. If they have enough evidence that a crime has been committed they will charge the abuser. In Chapter Four you will find more information about the various steps you, as a victim, will have to go through within the criminal justice system.

Police also have a "duty to report" to child protection authorities if they believe that children in the home have been victims of abuse or neglect or are exposed to abuse or neglect.

## What happens when Child Protection Services gets involved?

### Investigation

- ▶ Every report to child protection services must be investigated. A child protection worker (social worker) may interview you and your child, talk to other family members, talk to teachers, visit your home and visit the school. The child protection worker can talk to your child without telling you. Parents, however, have a right to know about any report that has been made about them to child protection services.
- ▶ The child protection worker may find that there are no child protection concerns in your home and nothing further will happen. The complaint will be listed as "unfounded" and the investigation file will be closed.
- ▶ If the child protection worker finds there are child protection concerns in your home but the risk to your child is not significant then the worker will encourage your family to get help.
- ▶ You may contact child protection services if you feel that you and your family need help. You do not have to wait until a social worker comes to investigate a child protection concern.

## Voluntary Support Services Agreement

- ▶ The child protection worker may find that the child is not in need of protection but they feel that there is still a problem in your home. Then the child protection worker will encourage the family to address the problem under a voluntary support service agreement or through community resources.
- ▶ A voluntary support services agreement can last up to six months at a time. After six months you review it with the child protection worker and decide if it should be renewed, modified, or ended. You can end a voluntary services agreement at any time by informing the social worker that you no longer want to be a part of the agreement.
- ▶ A voluntary support services agreement can help to provide services to your family. Services that can be offered include:
  - Counselling
  - Respite care
  - Parenting programs
  - Drug and alcohol treatment
  - Payment of some housing costs to ensure that you are not evicted from your home
- ▶ **Women may feel pressured into entering into a voluntary**





**services agreement.** Some women may feel that if they do not enter into a voluntary service agreement child protection services may decide to apprehend their children. **The social worker cannot apprehend your children just because you have decided to end a voluntary support services agreement. There would have to be other reasons for the apprehension.**

- ▶ It is recommended that women get legal advice before signing any contracts or agreements, including the "voluntary service agreements". Many parents are unable to make informed decisions because they do not have a clear understanding of the agreements they are being asked to sign.
- ▶ If you are concerned or feel pressured to sign a voluntary support services agreement, contact the NWT Legal Aid Outreach Clinic at 867-920-3365 (you may call collect) to speak with a lawyer.
- ▶ The voluntary support services agreement should include support ideas that are unique and appropriate for the woman and her family.

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**If you do not understand what you are signing**



**with Child Protection Services it is important to talk to a lawyer. Contact the NWT Legal Aid Outreach Clinic at (867) 920-3365, Call Collect.**

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## The role of the Child Protection Worker (Social Worker)

The *Child and Family Services Act* is an NWT law designed to protect children. This is known as the "paramount" objective. Sometimes women may think that the child protection social worker is working for them, and that he or she is a friend. **This is not the role of a child protection (social) worker.**

Although the child protection worker will support families to keep their children at home, ultimately the legal obligation of these workers is to protect the child. This may cause the parents some discomfort.

The child protection worker may appear to be building a trust relationship with a mother while at the same time the worker has the power to take her children away.

## The role of the Support Worker, Friend, and Advocate

People who work in shelters for women fleeing family violence are important supports to women in their dealings with the child protection system. An advocate may be a legal aid lawyer or a friend who have some understanding of the child protection system. Support workers, friends, and advocates are all very important to women who are dealing with child protection.

### If you are going through a child protection investigation you may feel:

- ▶ overwhelmed
- ▶ frightened that you may lose your children
- ▶ intimidated
- ▶ alone and isolated
- ▶ guilty about the violence in your home even though you have been abused
- ▶ confused about what child protection is trying to do

## A shelter worker, friend, or advocate can:

- ▶ help you to identify and contact people who can be of support including your family members, elders, community wellness workers, counsellors
- ▶ help you to understand the different steps in the child protection system
- ▶ help you to prepare for an interview with the child protection (social) worker
- ▶ sit in on the meeting with you and the child protection (social) worker
- ▶ help you realize that it is normal to be frightened and overwhelmed in this situation
- ▶ talk with you about the agreements and/or plans of care that the child protection worker wants you to sign
- ▶ help you to focus on your strengths and help you to identify realistic and achievable steps towards healing
- ▶ help you to get a lawyer
- ▶ help you to deal with your emotions and tell your story to the lawyer in a factual way
- ▶ make sure that you understand what the lawyer is telling you
- ▶ if you disagree with the lawyer's advice, help you to understand what exactly you disagree with and how you want the lawyer to approach your situation differently
- ▶ make sure that interpreting services are available should you require them
- ▶ identify support programs that are available to you







## What Happens if there is a Problem identified in the Child Protection Investigation?

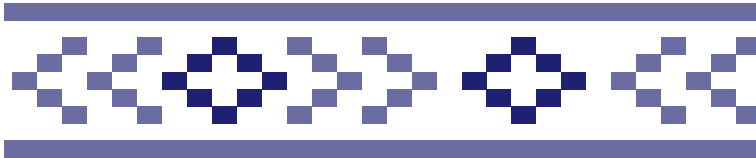
If the child protection worker investigates and believes that the child needs protection and that the child's health and safety is in danger, the child protection worker can do a number of things.

### For Example:

If a caregiver is looking after your children while you are out make sure to tell them where you are going, when you will be back, and your phone number.

If you will be late getting home let the caregiver know. If you have been drinking and you return home, do not let the caregiver leave until you are able to look after your children.

If the caregiver calls child protection services because they cannot find you and no longer want to look after your children, the child protection worker will apprehend your children.



**You should speak with a lawyer before signing a Plan of Care Agreement. Contact the NWT Legal Aid Outreach Clinic (867) 920-3365 Call Collect**

## Plan of Care Agreement

If a child protection worker finds that there are serious problems in the home and, as parents, you acknowledge that you need help, you and the child protection worker can enter into a plan of care agreement.

This is a binding contract and you should speak to a lawyer before signing it. A child protection lawyer at the NWT Legal Aid Outreach Clinic can answer your questions.

You cannot be forced to sign a plan of care agreement. You should discuss it with a lawyer or a friend to see if the conditions are realistic and achievable. You have the right to make suggestions about what you would like to see in the plan of care agreement.

You may end a plan of care agreement by a letter. Ten days after the social worker receives your written request the plan of care agreement can be ended.

## Child Apprehension

If a child protection worker finds that there are serious problems in your home then he or she can immediately remove the child from your (the parent's) care. This is called an apprehension. Apprehensions occur if the child protection worker feels that the child's health or well being is in immediate danger and the parents are unable or unwilling to protect the child.

## The Child is Returned to her/his Family

After the apprehension the child protection worker may discover additional information that causes the worker to decide to return the child to his/her parents, usually within three days of the apprehension.



## The Child is Not Returned to her/his Family – Apprehension Hearing

If the child is not returned to his/her family within three days then an application to confirm the child apprehension must be filed in the Territorial Court. The child protection worker must be prepared to go to court for a hearing within 14 days after the child has been apprehended.

The test during the court hearing, that has to be passed to confirm a child apprehension, is to answer "Yes" to the following two questions: (Note that the Part 2 question is usually asked first by the Judge followed by the Part 1 question.)

Part 2: Is the child in need of protection today? (date of hearing)

Part 1: If the answer to Part 2 (above) is yes, then the Judge considers whether, on the day of the apprehension, the child protection (social) worker had reasonable grounds to believe that the child was in need of protection.

If both Part 1 and Part 2 of the test are answered "Yes", the Judge will confirm the apprehension.

If either Part 1 or Part 2 is answered "No" then the Judge will dismiss the order and the child/children must be returned to the parents.

If child protection still feels that the children are in need of protection, they will have to return the children to their family and then re-apprehend the children and go through the court process again.

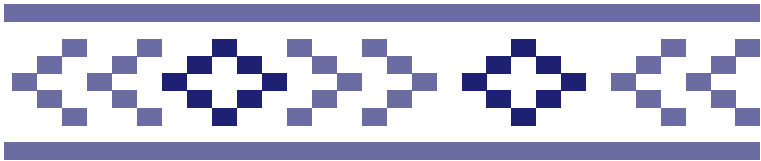


## Plan of Care – after an Apprehension

It is possible to sign a plan of care agreement after your child has been apprehended but before the apprehension hearing. Once the plan of care agreement is signed you will have to go to court to ask the Judge to withdraw the apprehension application.

An apprehension order issued by the court is only valid for 45 days from the date of the apprehension of your child/children. Within 23 days of the apprehension the child protection worker must have a plan of care agreement signed with you. The child protection worker sets up a "plan of care committee" to help develop the plan of care for the child/children.

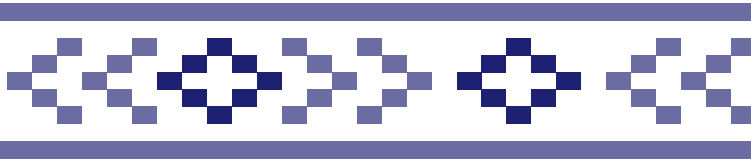
The plan of care agreement is a signed agreement between you and the child protection worker (social worker) to deal with the risks and dangers to your child.



## Who is on the Plan of Care Committee?

This plan of care committee is made up of:

- ▶ the child's parent or parents,
- ▶ the child (if the child is 12 years old or older),
- ▶ a member of your community's child and family services committee (if you have this committee in your community),
- ▶ the child protection (social) worker,
- ▶ sometimes a member of the child's extended family or other person who may be able to help the family,
- ▶ you may ask for other people such as your lawyer and a shelter worker to attend committee meetings to support you.



## What is in a Plan of Care Agreement?

A plan of care agreement may include the following items:

- ▶ where the child will live and with whom,
- ▶ how to make the parental home safer for the child,
- ▶ counselling for the child and/or for the parents,
- ▶ how much time each of the parents will be able to spend with the child,
- ▶ recreation, education, and social activities of the child.

Plans of care agreements are usually in place for six months. They can last for twelve months, and can be renewed for up to another twelve months.

If you feel that you are looking after your children well and you no longer want to be in a plan of care agreement then you can talk with your child protection worker explaining why you no longer want to work with the agreement. Your worker can help you make changes to the plan of care so that it is easier for you to follow.

Or you may end a plan of care agreement by a letter. Ten days after the social worker receives your written request the plan of care agreement will be ended.

If the child protection worker still feels that there are problems in the home the worker can take you to court. (see Court Hearing below)

## Temporary or Permanent Custody for Children

When parents sign a plan of care agreement they are signing a contract in which they acknowledge that if they do not comply with the contract then their child can be apprehended without a formal apprehension hearing taking place. If the child protection worker feels that you are not following the plan of care agreement and your children are not being properly cared for the worker will give you a letter that tells you that she is taking you to court. At the court hearing the child protection worker applies directly for a custody order that could lead to the child being permanently or temporarily taken away from her/his parents. (permanent or temporary custody).

## Court Hearing

The child protection (social) worker will have to take the matter to court if:

- ▶ the child protection (social) worker decides that the child cannot be returned to the parents,
- ▶ the parents will not participate in the plan of care agreement committee process and refuse to sign a plan of care agreement,
- ▶ there is no plan of care agreement signed within 23 days of the original child apprehension.

The following people are notified about the matter going to court:

- ▶ parents,
- ▶ the child (if 12 years of age or older)
- ▶ the chair person of a plan of care committee and the community child and family services committee (if there is one in your community),
- ▶ the band of the child if she/he is of aboriginal descent.



In court the child protection worker (through a lawyer) will give reasons why the child was removed from the home and will outline the following:

- ▶ where the child will live
- ▶ who the child will live with
- ▶ support services to make the child's home safe for the child
- ▶ counselling
- ▶ visits with the child by a parent
- ▶ child's education
- ▶ child's social and recreational activities
- ▶ any other matter the Judge thinks is necessary for the best interests of the child

## Parents Need to Have Legal Advice for the Court Hearing

Parents have the right to be represented by a lawyer, give evidence, and call witnesses to give evidence for them. **Because court proceedings are very serious, you should always seek legal advice.** Legal aid is available for legal matters involving child protection. Call 867-920-3365 collect to speak with a child protection lawyer at the NWT Legal Aid Outreach Clinic.

It is very important that you show up in court for a child protection hearing. If you are unable to show up make sure that your lawyer is present for you and explains why you are not in the courtroom. If parents do not show up in court and do not have lawyers to represent them then it is thought that they are giving consent to having their children taken away.

Children who are older than 12 years may take part in the court proceedings and the court may sometimes appoint a lawyer for the child from the office of the children's lawyer.

The public cannot be present in the court room during a child protection hearing so the details of your family are kept confidential.







## Judge's Orders

At the court hearing a Judge will decide whether a child is in need of protection, and, if so, what orders should be made to protect the child.

### A Judge may

- ▶ order that the child be returned to his/her home,
- ▶ order that the child be returned home under the supervision of child protection with conditions set by the Judge, and for as long as the Judge feels is necessary,
- ▶ order that the child be placed in the temporary custody of child protection for up to twelve months, (see Temporary Custody Order below)
- ▶ order that the child be placed in the permanent custody of child protection, (see Permanent Custody Order below)



## Temporary Custody Order

If the Judge orders a temporary custody order, the director of child and family services becomes the child's guardian and is responsible for him/her. A temporary custody order can last up to twelve months. It can be extended, but it cannot continue for more than a total of 24 months.

It is hoped that while a temporary custody order is in effect, the child protection worker and the family can work together to fix the family problems.

If you are able to fix these problems before the court order ends, you or the child protection (social) worker may ask the court to end the order and allow your child to return home.

But, if the child protection worker has difficulty working with the family to fix the problems, the worker might ask the court to make the director of child and family services the permanent guardian of the child.

## Permanent Custody Order

If the Judge makes a permanent custody order, the director of child and family services becomes the child's permanent guardian, taking the place of the parents.

The director, through the child protection (social) worker, will make all decisions about the child's care and may place the child for adoption.

The parents no longer have rights and responsibilities for the child. The director will give them information about the placement, education, or health of the child if it is in the best interests of the child and only until the child is adopted.

The court may order that the parents be allowed to have ongoing contact with the child up to the time of adoption.

If your child is adopted by another family you may or may not be able to keep in contact with your child. This decision is almost always left up to the adoptive parents.

# Decisions Made by Parents about the Care of their Children

## Custom Adoptions

Parents may decide to do a "custom adoption" in which they give their child up to be adopted by relatives or friends that they choose. An aboriginal custom adoption is a traditional way that northern people have taken care of each other's children. Today, the Government of the NWT has created forms and steps so that parents can choose a relative or a friend, who is also of aboriginal descent, to adopt their child or children in accordance with aboriginal customs.

The advantages of a custom adoption are that you will always know where your children are and usually you will have some contact and involvement with them.

Each community has a custom adoption commissioner who has been chosen by the community and appointed by the Minister of Health and Social Services because of their knowledge of the community's customs of adoption.

To arrange a custom adoption the natural parent(s) and the custom adopting parent(s) meet with the custom adoption commissioner who will talk with them, listen, and ask questions. If the custom adoption commissioner is satisfied that a custom adoption has occurred in accordance with the local customs then the commissioner files a certificate with the Supreme Court.

Communities may have different customs about these adoptions so it is important to talk with your local custom adoption commissioner.

## Parents voluntarily giving consent for the purpose of adoption

Sometimes parents may want to place their child (children) in the care of the director of child and family services in order to find a good home where their child can be adopted. Parents must sign a consent form which gives the director permanent care of their child. The consent form is followed by a ten day waiting period before you can give final consent for the adoption. This allows you to think over this decision and fully realize that this is a final decision.

The director (possibly through the child protection worker) must be sure that you know about all other ways that the department can help you to provide a good home for your child and what services and assistance are available to you and your child.

Talk with a lawyer before making a final decision to give up your child for adoption.

Both parents must sign a consent form to give up their children. Sometimes only one parent will give consent and then the director may have to ask the court to make an order saying that the other parent's consent is not needed.

Adoption is final. Once the adoption is completed it cannot be reversed and birth parents may no longer have any rights to see their child (children).



## Important Tips and Information if you are dealing with Child Protection Services

- ▶ speak up for yourself and your rights while remembering to work with the child protection workers in a respectful and collaborative way
- ▶ keep involved with your children as much as possible
- ▶ keep your appointments with the child protection worker, answer the telephone, participate in meetings with child protection. If you do not participate child protection and the court may interpret this as not caring about your children or not being capable of parenting

### If your child or children are apprehended:

- ▶ Contact a lawyer as soon as possible. You can call collect to the NWT Legal Aid Outreach Centre – 867-920-3365
- ▶ Get a support worker you trust (a friend, advocate, shelter worker).
- ▶ Bring your support person to meetings and court hearings.
- ▶ Show up in court, be prepared for what will happen in court, and answer questions politely.
- ▶ Ask for translation if needed.
- ▶ Make sure that any terms in a plan of care agreement or other agreement are clear and make sense. Don't agree to sign an agreement that you know you cannot fulfill.
- ▶ **Do not give up hope that you will get your children back.**
- ▶ Get as much access and time with your children as possible under the terms that child protection has set.
- ▶ In many cases it is good to ask for the maximum access to your children. This shows that you care about your children and that you will spend as much time with them as possible. This will help you to prove your commitment to looking after your children.
- ▶ If you are unable to make a meeting with child protection or a court hearing call your child protection worker to let them know. Your support person may also call child protection for you in this situation.



# Criminal Justice

## CHAPTER FOUR



# Contents

## CHAPTER FOUR

- ▶ Call to the Police for Help
- ▶ Police Investigation – Will the Police Lay Charges?
- ▶ Your Statement to the Police – audio/videotaped statement
- ▶ Supports are available to you during the Investigation
- ▶ Mandatory Charging Policy
- ▶ Canada's Criminal Justice System
- ▶ Key People in the Criminal Justice System
- ▶ Steps in the Criminal Justice Process
- ▶ Accused – Goes to Jail or is Released
- ▶ Bail
- ▶ Disclosure
- ▶ First Appearance in Court
- ▶ Why women may not want their partner charged
- ▶ Testifying at the Trial
- ▶ Guilty or Not Guilty? "Beyond a reasonable doubt"
- ▶ Accused is Found Guilty
- ▶ Victim Impact Statement
- ▶ Sentencing the Offender
- ▶ Domestic Violence Treatment Option



## Call to the Police for Help

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**The first three numbers followed by 1111 are the emergency phone numbers for the police in all communities of the NWT. Whati 573-1111 Tuktoyaktuk 977-1111, Fort Simpson 695-1111**

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If you are beaten up by your husband or your common law, and you are able to get to a phone, call the police for help. In the Northwest Territories the emergency number for the police is the first three numbers used in your community followed by 1111. For example, in Tulita the police emergency number is 588-1111.

When called to a family violence incident the RCMP officers are responsible to restore order, protect the victims, and investigate and gather evidence. The police officer will ask you questions about what has taken place and write up a police report. The police will also help you to get medical attention if you need it.

Often in the NWT the police will bring a child protection (social) worker to the home if children are present. (see Chapter Three for more information about child protection.)





## You are the Victim - also called the Complainant

A woman who has been abused, is known as the "victim" or the "complainant" throughout the criminal justice process.

## He is the Offender – also called the Accused

The abusive partner may be called the "offender". If he is charged with a criminal act he is also called the "accused".

## Police Investigation Will the Police Lay Charges?

- ▶ Once there has been a thorough investigation of the incident, the police officer has to decide whether there is enough evidence to lay a criminal charge. Depending on the situation, some of the charges that could be laid against your violent partner include assault, sexual assault, assault/sexual assault with a weapon, uttering threats, forcible confinement, and attempted murder. The question that the police officer asks when considering whether or not to lay charges is: "Do I have reasonable and probable grounds that an offence has been committed?"
- ▶ As the victim of the violence you cannot make the decision about whether or not your partner will be charged. Police officers will get information from you and they will listen to your opinion, but it is police policy to lay charges when there are reasonable and probable grounds to believe that an offence has been committed.

## Your Statement to the Police

The police will interview you and all other people who have knowledge about the abusive incident. Often, as the complainant, you will be required to give an audio / videotaped statement under oath describing what happened. This is called a "KGB statement."

The police will ask the complainant to give the videotaped statement at the police station, or another location if there is not a detachment in the community.

It is important for the police to get an accurate account of the victim's memory of the incident. Support workers are not usually allowed in the interview room because police investigators are working to get a "pure version" of what happened – a description of the incident that is not influenced by others.

Support workers can be nearby to offer support to the victim after the statement is complete.

## A KGB audio / videotaped statement by the complainant will be introduced by the police using words like these:

This statement will be taken under oath, solemn affirmation, or solemn declaration and will be videotaped. (Your name), we are investigating an allegation of assault (or other charge such as confinement, assault with a weapon) that took place on (date).

As part of our investigation we would like to interview you on videotape and under oath and that is why we have asked you to come here today.

Your statement is an important part of the police investigation. You should understand that it is a serious criminal offence to make a false statement to the police. If you make a false statement you can be charged with a number of serious criminal offences, including perjury and obstruction of justice. You must understand that your statement might be used against you if you are charged with one of these offences.

Lastly, it is important that you understand the statement you provide may also be used at trial for the incident being discussed today.

Are you voluntarily providing this statement today on video?



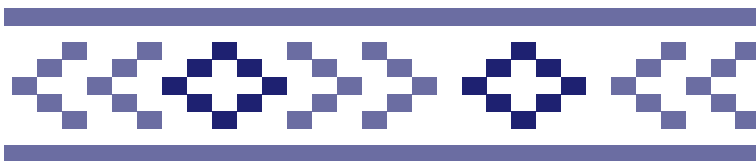
## What Supports are available to you during the Criminal Law Investigation?

When the police are still investigating and deciding whether or not to lay charges, most often shelter workers and community support people are not present. But if the investigation takes a number of days, and you decide to stay in a family violence shelter, then the shelter workers can provide support.

Shelter workers and community support people can be present when the RCMP officer is questioning you, although it is not encouraged during audio / videotaped statements. These support people must be careful not to speak on your behalf. It is very important that you, the victim, give the information to the police during their investigation.

Shelter workers and other support people will explain to you that the RCMP need to know facts such as what happened and when, and details about who was there and what was said. It is important that you remember, as clearly as possible, the order of events that happened during the violent incident.

As a victim you may feel intimidated and may not ask for an interpreter, even if that would help you to understand. Shelter workers and other support workers can help you during the investigation by explaining that you can ask for an interpreter, you can ask questions when you don't understand, and take a break when you feel you need one.



## Mandatory Charging Policy

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**The RCMP are required to lay charges in all when reasonable and probable grounds exist that there has been an assault against a spouse. This is called the “mandatory charging policy”.**

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The reasons for this policy are:

- ▶ to address the safety of the victim
- ▶ to remove the responsibility from the victim for laying charges - it's not your fault that he was charged - it is the law!
- ▶ to send a message to the offender that it is unacceptable to abuse his partner: family violence is always a criminal offence;
- ▶ to provide police with the ability to remove the offender from the home to protect the victim from further harm;
- ▶ to increase the chances that the victim will cooperate with the court processes;
- ▶ to prevent offenders from pressuring women to “drop” the charges because you do not have the power to drop the charges

# Why women may not want their partner charged

Women may be reluctant to report spousal violence to the police if they know that their partner will be charged and possibly sent to jail. Here are some reasons:

- ▶ fear of retaliation from your partner or his family
- ▶ fear that child protection will take your children away
- ▶ concern about your loss of income and housing;
- ▶ concern that the children will be separated from their father;
- ▶ fear that your community will isolate or punish you and your children if your partner is charged

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**If your partner is charged, as the victim, you will be going through the criminal justice system. This book provides you with important information about what you can expect in this system.**

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## Canada's Criminal Justice System

Criminal laws are the same everywhere in Canada. These criminal laws are in place for the following reasons:

- ▶ To promote public safety and protect the public
- ▶ To prevent people from committing crimes
- ▶ To hold people responsible by punishing them when they have committed crimes
- ▶ To rehabilitate offenders so that they can return to a crime free life in their communities

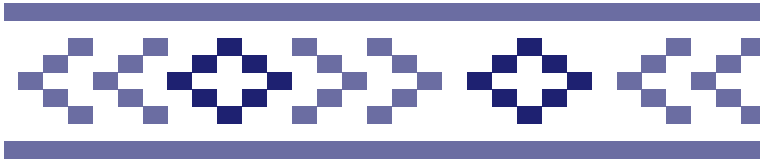


## Key People in the Criminal Justice System

- ▶ **Victim** The person who has been abused is the victim also known as the complainant
- ▶ **Accused** The person who is charged with a crime of family violence is the accused also known as the offender
- ▶ **RCMP** In the NWT, the Royal Canadian Mounted Police (RCMP) is the only criminal law police force
- ▶ **Crown Prosecutor** The crown prosecutor is the lawyer for the government. The crown works for the "public interest". It is important for you to understand that the crown is not the victim's lawyer. The criminal justice system in Canada does not provide a lawyer for the victim
- ▶ **Crown Witness Coordinator** If you are required to go to court to testify as the victim of spousal violence, a crown witness coordinator will meet with you, keep you informed about the date of the court case, inform you about the appearances of the accused and whether he has pled guilty or not guilty, and be in the court room as your support when you testify.



- ▶ **Defense Counsel** The defense counsel is the lawyer for the accused (your partner who has been charged with a crime of family violence).
- ▶ **Duty Counsel** If the accused is unable to afford a lawyer he will be assigned a duty counsel who will help him at a bail hearing, and to set a date for a court appearance. Duty counsel lawyers do not defend people at trials. If the matter goes to trial, the accused may make an application to legal aid to get a lawyer to defend him.
- ▶ **Judge** If the accused has pled "not guilty" then a trial will be held. The Judge presides over the trial and listens to the evidence about the family violence incident from the police and from witnesses. The crown prosecutor and the defense counsel (the lawyers) will question the witnesses. The victim will likely be asked to be a witness at the trial. The Judge must decide if the accused is "guilty" or "not guilty". In some cases the accused may ask to have a jury decide if he is "guilty" or "not guilty".
- ▶ **Justice of the Peace** The justice of the peace holds bail hearings to decide if the accused will be released from jail before court is held.
- ▶ **Victim Services Workers** Victim services workers provide assistance and support for victims of crime. Often the RCMP gives the victim information about how to get in touch with a victim services worker. You can get help from a worker at the time of the offence, throughout the court process, and afterwards, as long as you need support. Victim services workers provide information about being a witness, the court process, shelters in the NWT, and safety planning. Please refer to Chapter Seven for contact information about victim services in the NWT.



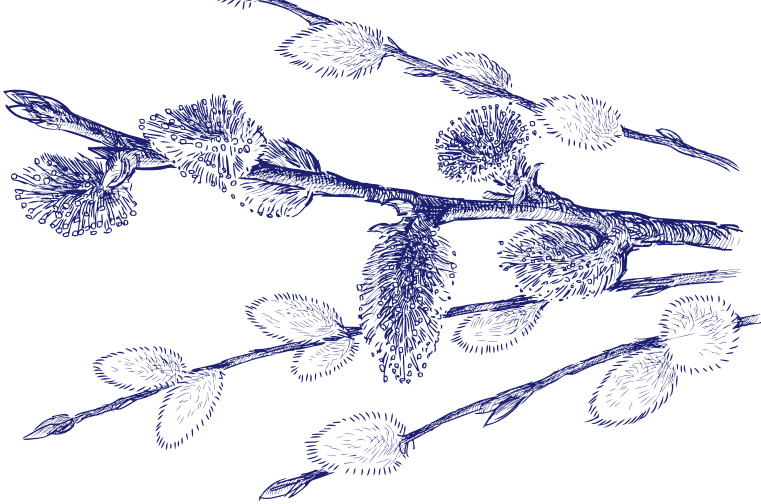
## Steps in the Criminal Justice Process

Once the accused has been charged the following steps take place:

- The accused is arrested and taken to jail, or the accused is released with conditions of release
- If the accused is kept in jail then he must be brought before a justice of the peace within 24 hours . If he is not released he may apply for a bail hearing.
- Disclosure: The accused is provided with all of the evidence that will be used against him in the court case
- First appearance in court
- Plea bargaining
- Preliminary inquiry and trial
- Testifying at the trial
- Verdict - guilty or not guilty
- Victim impact statement
- Sentencing







## Accused – goes to jail or is released

The accused may be arrested and taken to jail immediately. The accused may be released with a “promise to appear” in court at a later date. He is usually required to sign an “undertaking” to the officer in charge with a list of conditions.

### Some of the common conditions of release in cases that involve spousal violence include:

- ▶ No communication with the victim (directly, or indirectly)
- ▶ Restricted from going to the victim's home, her place of work, or her school
- ▶ An outline of ways that the accused can have access to the children with minimal contact with the victim
- ▶ Restricted from carrying weapons
- ▶ Restricted on the use of alcohol and drugs (if drugs and alcohol have been issues)
- ▶ Possibly restricted from using cellphones

In the Northwest Territories the RCMP officer often discusses a possible release and the conditions of a possible release with the victim. If you indicate that your abusive partner is likely to harass and be violent with you if he is released, even with conditions, then it is likely that the accused will be kept in jail until a bail hearing is held.

## Bail

By law the accused has the right to appear before a justice of the peace, or a Judge for a bail hearing which is usually held within 24 hours.

At a bail hearing the justice of the peace or the Judge will decide whether to keep the accused person in custody until his trial, or release the accused with or without conditions.

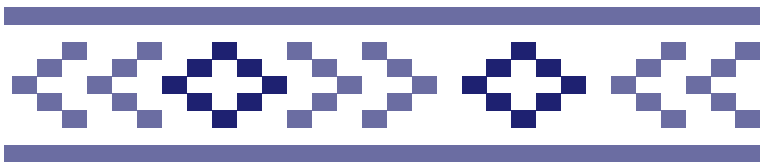
The crown prosecutor may oppose releasing the accused from jail. The crown may have spoken to the victim and may believe that she will be unsafe if the accused is released.

Usually the justice of the peace or the Judge will release an accused with conditions unless:

- ▶ the accused is a flight risk and will not show up at his next court appearance, or
- ▶ the accused is likely to commit more crimes, affecting the safety of the victim or others

Sometimes the accused is released with a "surety", which is someone who agrees to watch over the accused to ensure that he pays attention to the conditions of his bail.

Often the "surety" puts up bail money, which will not be refunded if the surety fails to properly supervise the accused.





### Some typical conditions of release on bail in cases of spousal violence include:

- ▶ No direct or indirect communication with the victim
- ▶ Restricted from going to the victim's home, her place of work, or her school
- ▶ An outline of ways that the accused can have access to the children with minimal contact with the victim
- ▶ Restricted from carrying weapons
- ▶ Restricted on the use of alcohol and drugs (if drugs and alcohol have been issues)
- ▶ Live with his surety, if a surety is a condition of bail
- ▶ Possibly a curfew which may have conditions that the accused is not to leave the home, except for work, medical appointments, or to meet with the bail supervisor

If the accused is denied bail he stays in jail until his trial. While in jail he may be ordered not to communicate with the victim or other witnesses. This is important in situations where other witnesses could feel threatened or intimidated if contacted by the accused.



# Disclosure

The crown prosecutor must give the accused and his lawyer all of the evidence that the crown has in the criminal law case against the accused.

Evidence that must be given to the accused includes:

- ▶ Police notes and investigation reports
- ▶ Statements from all witnesses
- ▶ Any audio / videotaped (KGB) statement given by the victim and other witnesses
- ▶ Photographs of the scene of the crime
- ▶ Medical evidence

## Your personal notes, journals, and diaries

If the police ask the victim for personal notes, such as diaries or journals, be aware that these personal notes will be given to the accused before the trial. Privacy laws may protect you from giving your personal notes to the police. Get legal advice before handing over any personal records.



# First Appearance in Court

If the accused has been released on bail, he will be required to be in court for his "first appearance" usually in four to six weeks. Most of the time at the first appearance, the court case is "adjourned" or the accused is "remanded", which means the case is pushed forward to a future date and the accused might be kept in jail until the next court appearance. Sometimes the accused is trying to get a lawyer, or he and his lawyer want to carefully review all the information that they have before the case is heard in court.

After the first appearance, the criminal justice process slows down and it can take weeks or months, and even sometimes years before the trial.

Victim services workers and crown witness coordinators can give you information about how long it will be before the court case is held.

## Plea Bargaining

Before the trial date is set, the crown prosecutor and the defense counsel for the accused may meet. The victim and the accused are not required to attend this meeting. The lawyers will talk about the strengths and the weaknesses of the case with the possibility of coming to an agreement about the charges and the sentence. This process is called "plea bargaining". Sometimes the accused agrees to plead guilty to a less serious offense.

Even though the crown prosecutor and the defense counsel agree on a guilty plea, it is still up to the Judge at the trial to make a decision about the sentence. The Judge could decide on a harsher or lighter sentence than the lawyers had agreed upon.

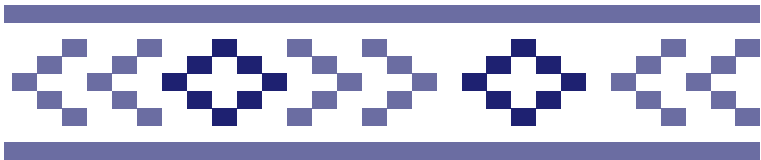


## The Effect of Plea Bargains on the Victim

You might feel that your violent partner got off too easily because he pleaded guilty to a lesser crime.

However, if the accused pleads guilty to a less serious offense you will not have to testify against him in court. The accused will get a sentence and a criminal record for the guilty plea to the lesser crime.

If the lawyers do not agree on a plea bargain then the case will proceed with a not guilty plea, and the next step might possibly be a preliminary inquiry. The final step in the process is a trial before a Judge, or possibly a trial before a Judge and jury, if the accused chooses to be tried before a jury.



## Preliminary Inquiry

In cases that involve serious charges, a preliminary inquiry is held before the trial. The purpose of the preliminary inquiry is to see if the crown has enough evidence for the case to go to trial. It also gives the accused and the defense lawyer a chance to hear the details of the case. As the victim, you will likely be required to testify and be cross-examined by the lawyer for the accused. You will also have to testify at the upcoming trial.

## You Change Your Mind

A woman may change her mind and decide that she does not want to testify against her abusive partner as a witness in court.

You may not want to testify for a variety of reasons such as:

- ▶ You are frightened that your partner will punish you, or come after you if he's acquitted or is released;
- ▶ You love him and you want to reconcile;
- ▶ You just want the violence to stop and you don't want him to lose his job, go to jail, or have a criminal record;
- ▶ There is pressure from his family and from members of the community to let him off;
- ▶ You may rely on your partner for financial stability.

## If You Change Your Mind It is Important to Talk to Victim Services and the Crown

- ▶ Talk to victim services, the crown witness coordinator, and the crown prosecutor about changing your mind. You can also tell the RCMP.
- ▶ The sooner the crown knows the better. The crown may take the opportunity to talk with you and calm your fears, and provide you with more information.
- ▶ The court system may require that you testify even though you do not want to.
- ▶ You can be served with a subpoena to be a witness at the trial – if you do not show up in court you could be arrested and possibly charged for "failure to appear".

# Testifying at the Trial

Most often victims are required to testify at the trial. The accused is not required to testify at the trial.

You are not allowed into the courtroom until it is time for you to testify. When you testify you are "under oath". This can be a stressful and intimidating process. Most often the crown meets with the victim before trial and reviews the case. **But the crown is not the victim's lawyer. The crown represents the public good.** A woman, who testifies in a spousal assault case as a victim, does not have a lawyer to represent her.

Victim services workers and crown witness coordinators are available for support:

- ▶ They may take you to attend court before you have to testify so that the process is more familiar,
- ▶ They encourage you to eat a good breakfast and take snacks to court,
- ▶ They listen to your questions and make sure that you understand the answers

Once in court, the workers can help the victim by explaining that:

- ▶ you can answer a question saying "I don't know" or "I don't recall"
- ▶ you can ask for clarification of the lawyer's question when you don't understand
- ▶ you can ask for a break if you need one



## Being Cross-Examined

The defense lawyer will often try to confuse you in order to create doubt about your partner's guilt. This can be a hostile experience. Defense lawyers sometimes try to:

- ▶ destabilize you while you are testifying,
- ▶ cause you to lose confidence and create doubt about your memories of the family violence,
- ▶ ask pointed questions to confuse you about the details of your testimony,
- ▶ provoke you to anger,
- ▶ suggest that you may have a motive to lie, or exaggerate what had happened

## Victim services workers and crown witness coordinators can help

- ▶ explain what to expect during cross-examination,
- ▶ encourage you to stay calm and clear-headed,
- ▶ reassure you that you are able to explain what happened to you as best you can.

## Guilty or Not Guilty? “Beyond a Reasonable Doubt”

The Judge and jury will carefully consider all the evidence that they have heard during the trial and will decide if the accused is guilty **“beyond a reasonable doubt”**. This is called a very high “burden”, or “standard of proof”.

The accused will be found guilty if the Judge or the jury is convinced “beyond a reasonable doubt” that he committed the crime as charged. If the Judge or jury are not convinced about the guilt of the accused, he will be found ‘not guilty’, or “acquitted”.

Sometimes offenders are acquitted because it has been difficult to prove their guilt “beyond a reasonable doubt.” Even though the victim has testified honestly, in situations where there is no physical evidence, it may be hard for the court to know “beyond a reasonable doubt” what happened.

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**If the accused is found “not guilty”, a victim may feel that the Judge and others in the court did not believe her. However, it is often the “burden of proof” – proving that he was guilty beyond a reasonable doubt – that has been too hard to overcome to convict him.**

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### Accused is Found Guilty

If the accused is found “guilty” the Judge must choose from a range of sentences set by law. The Judge will consider:

- ▶ the circumstances of the crime
- ▶ the offender's criminal record
- ▶ the offender's personal history
- ▶ the impact of the crime on the victim
- ▶ the amount of responsibility that is taken by the offender

## Victim Impact Statement

The victim impact statement is your opportunity to tell the court about how the violence of your partner has affected you emotionally, psychologically, financially, physically, or in other ways. This statement can be prepared at any time before the court sentencing.

A victim services worker can help you to write this statement. Refrain from expressing anger in your statement, but feel free to tell how the crime has impacted your life. Indicate your feelings about contact with the abuser, and if you are frightened of him.

The victim impact statement is not opened until the accused person pleads guilty or is found guilty. The statement is presented to the abuser's lawyer and to the court by the crown prosecutor. The statement is considered when the Judge sentences the accused.

You can make changes to your victim impact statement at any time before the offender is sentenced.

## Sentencing the Offender

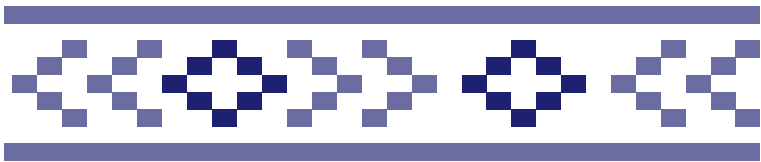
There are many types of sentencing and/or a combination of sentences that a Judge may impose on an accused who is found guilty of spousal violence including:

- ▶ Imprisonment. An offender who is sentenced to jail for less than two years stays in the NWT correctional system and may go on probation after that time. An offender may be released earlier, due to good behavior.

An offender who is sentenced for two years or more, serves his time in a federal penitentiary. After serving at least two thirds of the sentence, an offender can ask for parole. Parole allows the offender to be released from jail with strict rules and supervision until the sentence is completed. An offender on parole who does not follow the rules may be returned to jail.

- ▶ An intermittent sentence is when the offender goes to jail for blocks of time such as every weekend.
- ▶ Release on probation for a period of time. The offender must be of good behavior, and tell the probation officer of any changes of address, school, or work. Contact or no contact with the complainant may also be a term in a probation order.
- ▶ Absolute discharge – this means that an offender is found guilty, but there is no punishment for his crime. The accused will not have a criminal record with an absolute discharge.

- ▶ Conditional discharge – this means that the offender will not go to jail, but will have a sentence that requires certain conditions such as community work and/or alcohol and drug counselling. If the accused completes all of the conditions he will not have a criminal record.
- ▶ Restitution or payment of money to a victim for injuries or to replace property that has been taken or damaged.
- ▶ An offender who commits a particularly violent crime against another person may be declared a dangerous offender at a special hearing. If found to be a dangerous offender, they are sentenced to stay in a federal prison for as long as they are considered dangerous.



## Domestic Violence Treatment Option (DVTO)

The DVTO process allows people who have used violence against a spouse to take responsibility for their behavior by pleading guilty and then participating in a support and counselling program before they are sentenced.

Both the crown and defense lawyers must agree before an offender can enter the domestic violence treatment option.

Following the completion of the program, the treatment team reports on the offender's progress. The Judge may review the report and information submitted by the treatment team before sentencing the offender.



# Housing and Income Issues

CHAPTER FIVE



# Contents

## CHAPTER FIVE

### A Time of Change

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#### Income Issues

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- ▶ How will I pay for the rent, groceries, and clothing?
- ▶ Income Assistance for Victims of Family Violence
- ▶ What will Income Assistance pay for?
- ▶ Information required to receive Income Assistance
- ▶ Productive Choice while on Income Assistance

#### Housing Issues

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- ▶ Where will my children and I live?

#### Five Housing Challenges and Some Ideas to resolve them

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- ▶ Scenario 1: Privately owned home by husband and wife
- ▶ Scenario 2: Leased accommodation – husband and wife on the lease
- ▶ Scenario 3: Rent arrears
- ▶ Scenario 4: Possible eviction
- ▶ Scenario 5: Possible relocation to Yellowknife

# A Time of Change

You have decided to improve your life and the lives of your children. Though you may love your abusive common-law and he has been a good provider, you have decided that you cannot allow yourself and your children to continue to live with his violence and abuse. You will not stay with him until he gets help.

**You feel good about making this decision to get away from him. Now you face new challenges:**

- ▶ How will I pay for rent, groceries, and clothing?
- ▶ Where will my children and I live?

## Income Issues

If you have been working in the home for many years and raising children you may lack confidence to go out looking for a job. You may not have the education and skills required for some jobs and the idea of managing a budget may be scary for you. Some women feel overwhelmed when they leave an abusive husband. "I have to find a new place to live, I have to get income assistance, I have to find child care, I have to manage the money, and he's doing whatever he wants."

### How will I pay for the rent, groceries, and clothing?

Often, in the first few months of separation from an abusive partner, there are no legal directives regarding the payment of the rent or mortgage on the family home or the payment of food and clothing for you and your children. If you are employed you may have enough income to cover your household and family expenses.

If you have been working in the home and your partner has paid the household expenses you may not have any money to look after these expenses now that he is not staying with you and the children.

### Income Assistance for Victims of Family Violence

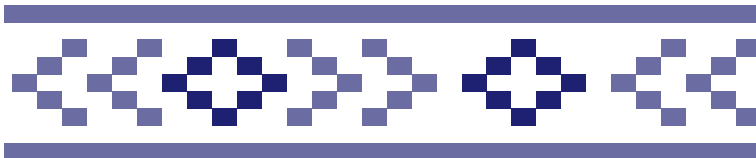


The Government of the NWT has a procedure that ensures that victims of family violence are supported financially, physically, and emotionally in an efficient and timely manner.

The client service officers who deliver income assistance are required to see a person who is a victim of family violence within 24 hours of their first visit to an income assistance office in an ECE Service Centre. A woman fleeing a violent situation can generally expect financial assistance within 24 hours (provided that you qualify). You will not be required to provide all of the documentation before you receive the assistance but you must give the documents to the client services officer within a month.

You must also prove that you are no longer living with your partner. The client services officer will give you a statutory declaration regarding marital status. You fill this form out in front of a commissioner for oaths, a notary public, or a justice of the peace. You do not need your partner to sign this form. If you have questions about this form call the Legal Aid Outreach Clinic at 867-920-3365 (call collect) to speak to a lawyer.

The client services officer must have proof that you are a victim of family violence by ensuring that you have already been seen by, or a referral has been made to the RCMP, a doctor or nurse, counselling services, a shelter for abused women, women's centre, Salvation Army, church, or social services.





## What Will Income Assistance Pay For?

Income assistance in the NWT may cover basic costs for you (and your children) for the following:

- ▶ Food
- ▶ Accommodation costs (which can be rent, room and board, or a mortgage payment)
- ▶ Power, water, and sewer costs
- ▶ A fuel allowance
- ▶ A clothing allowance
- ▶ A child care allowance
- ▶ Additional money if you are disabled or if you are over 60 years of age

In order to get your accommodation costs covered you must be on a waiting list for public (subsidized) housing. If you have arrears with public housing you will not be considered for the waiting list until you sign and honour a repayment plan for a minimum of six months.

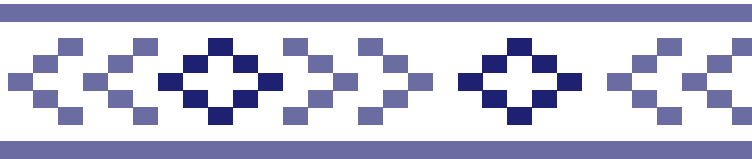
## Information Required to Receive Income Assistance

People who are fleeing family violence may receive income assistance without first providing all of the documents listed below. However, these documents must be provided within a month. It is very important that you give the client services officer **all of the information that they require at the time that they require it**, otherwise you will not receive your payment.

According to the income assistance policy manual the client services officer requires the following information:

- ▶ full name, gender, address, phone number(s), birth date, ethnicity
- ▶ marital status (you will need to sign a declaration indicating that you are separated from your husband/common-law)
- ▶ education and occupation, employment history
- ▶ health care number, social insurance number

- ▶ description of any maintenance order
- ▶ explanation of why you are applying for income assistance
- ▶ monthly income
- ▶ description and estimated value of all assets
- ▶ information about money in the bank, etc
- ▶ most recent copy of your Canada child tax benefit notice



## Productive Choice while on Income Assistance

You must also engage in a “productive choice” while on income assistance. Productive choices include:

- ▶ employment
- ▶ traditional activities
- ▶ education
- ▶ career planning
- ▶ wellness programs such as counselling, participating in a plan of care agreement, or addictions treatment
- ▶ parenting one child under three years or two children under six years, caring for disabled adult dependants,
- ▶ volunteering

You and your client services officer will discuss what productive choices are available in the community and decide how much time you must participate in a productive choice.

# Housing Issues

Where will my children and I live?

Where are you living now?

## Family Violence Shelter

If you (and your children) are staying in one of the five NWT family violence shelters located in Tuktoyaktuk, Inuvik, Yellowknife, Hay River, or Fort Smith you have a temporary home for up to six weeks. The shelters provide food and shelter for women and their children. Please refer to contact information in Chapter Seven.

## In Your Family Home

If you were granted an emergency protection order (EPO) one of the conditions could be that you (and your children) are able to stay in your family home and your violent partner is restricted from coming to the home for up to 90 days.

If you called the police and they have pressed criminal charges against your husband/common-law for his violent behavior towards you there is likely an "undertaking" or a bail order with conditions that prevent him from causing more violence towards you. Conditions could include:

- ▶ No communication with you, the victim
- ▶ He is restricted from going to the family home, your place of work, or your school
- ▶ He is provided with an outline of ways that he can have access to your children with minimal contact with you
- ▶ He is restricted from carrying weapons
- ▶ He is restricted from the use of alcohol and drugs (if drugs and alcohol have been issues)
- ▶ He may be restricted from using cellphones



## In a Friend's or a Relative's Home

If your home is legally owned or rented by your abusive partner you may have to temporarily move to refuge in someone else's home. You will still need money to feed and clothe yourself and your children and you will need money if you decide to rent a new home.

# Five Housing Challenges and Some Ideas to Resolve Them

There are many challenges for a woman leaving her abusive partner. Finding a home that is safe and paying for it are some of the most difficult. We have developed five fictional scenarios to illustrate some challenges and some solutions.

## Scenario 1:

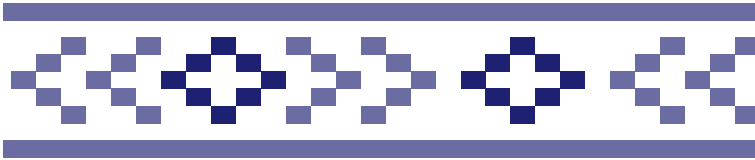
You and your three children have been staying at a family violence shelter for three weeks and you want to return to your family home. Your husband and you are employed, both of you contribute to the mortgage on the house, which is registered in both of your names. Your abusive husband is insistent that he will not leave the house. You want him to leave the home and allow you and the children to continue living there in peace. You hope that he will continue to pay half of the mortgage. You are consulting a lawyer about how to get a divorce.

## Scenario 1: How to get him out of the family home

(Refer to Chapter Two of this manual for more detailed information on the protection orders and peace bond options presented below.)

- ▶ **EPO** You may apply for an emergency protection order (EPO) if there is an immediate need for protection from his violent behavior. An EPO can be obtained very quickly and can allow you and your children to stay in the family home while restricting his contact with you for a maximum of 90 days
- ▶ **Protection Order** During the 90 days with the EPO you may apply for a protection order which can take up to two weeks to get. A protection order provides you with protection from him without a time limit unless the Judge sets a limit.

- ▶ **Restraining Order** A restraining order is usually ordered by a Judge as part of divorce or custody proceeding. Because it is part of a court process it can take longer to get. The restraining order could indicate clearly that your abusive partner is not to have contact with you or the children. The Judge will set the time limit on a restraining order.
- ▶ **Peace Bond** A peace bond, which may take up to a week to get, is presented in criminal court by the RCMP and can require your abusive partner to stay away from you for up to a year.



## Scenario 1: How to Get Him to Pay for Half of the Mortgage

You may apply for an “order of division of property” in the NWT Supreme Court under family law (see Chapter Six of this manual) and ask for an interim order for exclusive possession of the home. The Supreme Court Judge could also order the abusive husband to continue to pay for half of the mortgage. You can also apply for a restraining order as part of your application for the division of property.

## Scenario 2:

You and your abusive partner have been renting a two bedroom apartment from a private landlord in Behchoko and both of your names are on the lease. You applied for and received an EPO so your husband is not allowed into the house. You want to continue to rent the apartment in Behchoko on your own. You need to get his name off the lease and you need to figure out how you can afford to pay the rent on your own.

### Scenario 2: How to get your name off a lease with a private landlord


The Rental Officer for the NWT provides information, holds hearings, and makes decisions affecting landlords and tenants based on the *NWT Residential Tenancies Act*.

According to the Act each of the people named in a lease is responsible to pay the rent.

In the private housing market tenants can sign an "assignment agreement" which allows one tenant to sign over their rights and obligations (such as paying rent) to another tenant. You must have been living in the rental unit for at least six months and you, your abusive partner, and the landlord must sign the agreement.

In the Act there are two kinds of tenancy agreements – a "term agreement" or lease which is for a specific time most often for six months up to a year. To break this agreement a tenant must give thirty days notice before the end of the lease. If you do not communicate with the landlord before its end, the lease will automatically become a "periodic agreement".

A "periodic agreement" is a month to month agreement and the tenant can end this lease by giving 30 days notice before the next month. If two people are on the month to month agreement then both people have to give notice.



## Scenario 2 – Help with your housing costs in privately rented accommodation

### Transitional Rent Supplement Program

The NWT Housing Corporation has introduced the Transitional Rent Supplement Program (TRSP) to support low to moderate income residents who live in private market housing. The TRSP can provide a subsidy for individuals and families who are paying more than 30% of their income towards shelter (which includes rent, heat, electricity, and water costs). The subsidy can be up to \$500 a month and is paid directly to the landlord.

To be eligible you must have a current lease with a private landlord, you must be 19 years or older, and you must have lived in the NWT for one year, you cannot be on income assistance, and you cannot have rental arrears with a local housing organization.

Within the first six months of receiving this subsidy you must take a Financial Skills 1 – Budgeting course.

You can receive this subsidy for two years. Please refer to Chapter Seven for contact information.

### Amendment to Residential Tenancies Act to address family violence

In November 2014 the Legislative Assembly passed the 2<sup>nd</sup> reading of a bill to amend the NWT *Residential Tenancies Act*. The bill will have to receive 3<sup>rd</sup> reading and assent before it is law. One of the amendments indicates that a person may apply to the rental officer for a termination of a tenancy agreement if family violence has taken place.

Under this amendment, if you have an emergency protection order, a protection order, a peace bond or any other court order which indicates that your partner may have committed family violence, the rental officer may issue an order that terminates the lease that you have with your landlord.



### Scenario 3:

You and your two children have been staying at a family violence shelter in Inuvik and you and your children want to return to your home, a three bedroom house rented from the Inuvik housing authority. You and your abusive partner are both on the tenancy agreement.

You have stayed at home looking after your two young children and your husband has always paid the rent. The shelter staff has supported you in making an application to get income assistance and you will be receiving your first payment in a week.

You have signed a form at income assistance indicating that you are officially separated from your husband and you are seeking a divorce. Income assistance has required you to go to legal aid and seek child support from him.

You have done safety planning at the shelter and are prepared to call the police if he threatens or is violent with you. He has moved into another house with a friend.

You are getting packed up and the kids are excited about returning to their home. Then you receive notice that the housing association is trying to evict you because your husband has not paid rent for three months. There is a teleconference rental hearing scheduled in one week.

## Scenario 3: How to deal with rent arrears

The rental officer, shelter staff, and legal aid lawyer all emphasize that it is **extremely important** to participate in the rental hearing. And, it is very valuable to have a plan in place about how you intend to deal with the arrears before the hearing.

There are a number of ways to deal with the arrears.

### Both you and your abusive husband are responsible for the arrears

Because both you and your abusive husband are on the lease, each of you is responsible for paying half of the arrears.

### You can use a portion of your monthly income assistance to pay off the arrears

You will be required to discuss the issue of arrears with your income assistance worker. Income assistance can make an arrangement that transfers a portion of your monthly assistance payment (probably about \$25) to the landlord to whom you owe rent.

### Social Services may be able to help if you have an agreement with them

If you are working with Social Services in a voluntary service or a plan of care agreement your child protection worker may be able to access some funding from Social Services to help you pay some of the arrears.

### Some charitable organizations may be able to help you

In some communities charitable organizations may be willing to help you out. They may provide some money to pay your arrears and they may also require that you have a clear budgeting plan. Family violence shelter staff can help you to contact charitable organizations and also provide you with support to do budgeting.



## You may seek a referral to the “Homelessness Assistance Fund” (HAF)

You may seek funding from HAF only once. If you are in danger of becoming homeless due to the situation of your arrears you may ask a family violence shelter or other community agency to refer you to the Homelessness Assistance Fund (HAF) program. The HAF is administered by the NWT Housing Corporation, telephone 867-920-3277.

The shelter workers will fill out a detailed application form on your behalf. Application questions include details about your household income, monthly expenses, and the amount of funding requested to cover your arrears. You will have to collect many documents such as an arrears statement, proof of income (pay stub), income assistance, rental ledgers, eviction notice. The HAF may cover arrears up to \$3,000 **and for one time only**.





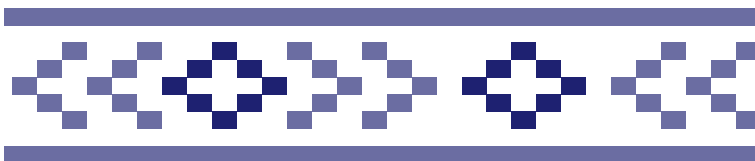
### Scenario 3: How to get his name off of the Housing Authority Lease

You can apply to the local Inuvik housing authority rental officer for a termination of the joint lease. If the housing authority is assured that you and your ex will not become reconciled and want to live together in the house again, then the joint lease can be terminated and the housing authority will enter into a new lease with you.

### Scenario 4

You and your common-law have been living in a rented apartment in Hay River. Only your name is on the lease. Your common-law has been very argumentative and abusive in the past six months. You got an emergency protection order and he has been out of the apartment for four weeks and cannot return for another eight weeks. You have had peace in your home, you have paid the rent yourself, and you have met with a lawyer and instructed her to write up a separation agreement.

Then, you receive a copy of an application against you that indicates that due to the noise and violent disturbances in your apartment three of the tenants in the neighbouring apartments have put in several complaints to the landlord. The landlord is seeking to terminate the lease and have the rental officer issue an eviction order. A rental hearing is taking place in Hay River in four weeks.



## Scenario 4: How to deal with a possible eviction

**It is very important that you attend the rental hearing.** The rental officer will seek information from the landlord regarding any incidents of noise and disturbances in the past four weeks, since your violent partner has not been in the home. You will be asked how you intend to ensure that there are no more disturbances in the apartment. If the rental officer is convinced that you are determined to keep the peace in your apartment he/she may not issue an eviction order. The rental officer could issue an order that you are not to create any disturbances in the apartment.

## Scenario 5

You, your common-law husband and your young child have been living in the home of your in-laws for two years in Nahanni Butte. Your in-laws often argue and, since his best friend has gone to jail three months ago, your husband has become more and more angry. You sense that he will become violent with you and you are concerned about your child being exposed to so much yelling and argument in the home.

You contact Alison McAteer House in Yellowknife and make arrangements to fly there with your child. You are safe and you feel good about getting yourself and your child away from the violence.

With support of the Alison McAteer staff you make inquiries at the Nahanni Butte housing association and realize that there is a shortage of public housing in the community and it could take up to two years before a house is available for you and your son. You decide that it might be best to try to start over in Yellowknife.



### Scenario 5: Consider a move to Yellowknife very carefully

It is important that women understand that it is not always easy to get affordable housing in Yellowknife. There are long waiting lists at the Yellowknife Housing Authority and at the YWCA Family Housing. Some family violence support workers advise women to try to keep the housing that they have in a smaller community if they can stay there, free from violence.



## Scenario 5: Apply to” Lynn Brook’s Safe Place for Women”

In October 2014 the YWCA opened Lynn's Place in Yellowknife, designed to provide safe housing with supports to women and women with children who have taken steps to live independently, free from abuse. Lynn's Place provides women the opportunity to heal and grow in a cooperative, caring environment with other families who have similar experiences and are seeking a safe place free from violence and abuse.

Lynn's Place offers two three-bedroom and ten two- bedroom apartments and six bed-sitting units (two of which are wheelchair accessible) at slightly less than the market rate. It is not permanent housing. Residents will have to find permanent housing between 24 and 36 months after moving into Lynn's Place.

Programming is offered based on the tenants' needs and can include cooking classes, literacy programs, sewing and crafts, parenting, budgeting, computer courses, children's programs.

To be eligible for Lynn's Place you must:

- ▶ be 18 years or older
- ▶ be willing to live in a housing environment without adult men
- ▶ have already made the decision to live independently from an abusive partner
- ▶ need the level of safety and security offered at Lynn's Place
- ▶ be able to care for yourself and your children
- ▶ be willing to work with supports and participate in programming and activities offered at Lynn's Place and in other locations
- ▶ have an adequate source of income to pay the rent

You can contact Lynn's Place at 867-873-6170. See Chapter Seven for more contact information.



# Family Law

## CHAPTER SIX





# Contents

## CHAPTER SIX

### Family Laws in the NWT

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#### Husband and Wife? or Common-Law?

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#### Separation and Divorce

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#### What's in a Separation or Divorce Agreement?

---

#### Child Custody and Access to Children

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#### Ways to Go through the Legal System

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- ▶ Write up an Agreement
- ▶ Negotiation
- ▶ Mediation
- ▶ Collaborative Approach
- ▶ The Court Process

# Family Laws in the NWT

The Northwest Territories and Canada have laws about family relationships such as marriage, how to separate or divorce, and many rules that guide families when separation and divorce take place including:

- ▶ how to decide where your children will live and who will look after them,
- ▶ how to divide up the family property, and
- ▶ how the former married couple provides financial support to children and each other.

The NWT laws that are used most often for these situations are:

- ▶ *Family Law Act*
- ▶ *Children's Law Act*

The *Divorce Act* is a federal law and it applies to married people who want a divorce. It does not apply to couples who are living in common-law relationships.

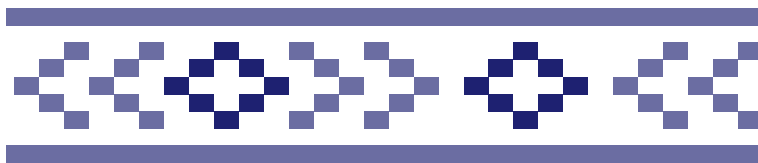


## Husband and Wife? or Common-Law?

To be married you must go through a legally recognized marriage ceremony with another person. The ceremony may take place in a church or in another location that the couple chooses. A marriage commissioner, which includes ministers and priests, must perform the marriage ceremony. Once you are married you stay married until one of you dies, you divorce, or your marriage is annulled. Even if you live separately you are still legally married until you take the legal steps to formally end your marriage.

A common-law relationship is defined as two people living together as a couple for two years or a couple who has a natural or an adopted child together.

Both legally married and common-law couples have rights and obligations if the relationship ends. These include responsibilities to make sure your children are supported and cared for, rights to the property you owned together, and rights to financial support.



## Separation and Divorce

When your relationship ends you can make it final with a separation agreement or a divorce. If you are legally married you will need a divorce or a separation agreement. If you have been living in a common-law relationship you will need a separation agreement. In order for a separation agreement to be legally binding it must be in writing, signed by each of the former spouses, and witnessed.

### What's in a Separation or Divorce Agreement?

The separation or divorce agreement provides clear information about:

- ▶ Where the children will live (called child custody and access)
- ▶ How you and your former spouse will share the costs of raising the children (called child support)
- ▶ Whether one spouse will give money to the other to help with living costs (called spousal support)
- ▶ How the property owned by you and your former spouse will be divided

# Child Custody and Access to Children

There are a number of options for child custody and access to children when parents separate or divorce. The options are:

- ▶ **Sole Custody** Sole custody means that one parent has day-to-day care of the child and makes most of the decisions about the child such as schooling and medical decisions. The other parent is normally able to spend time with the child as agreed between the parents or as ordered by a Judge.

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- ▶ **Joint Custody** Joint custody means that both parents continue to have input into the major decisions that affect the child's life. The child may live with one parent or may move back and forth between the parents' homes on a regular basis, depending on what the parents agree to. The parents work together to make decisions that are important for the child and both parents must be willing to cooperate with each other to do this.

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- ▶ **Shared Custody** Shared custody occurs when the child lives with each parent for about an equal amount of time. For example the child may spend two weeks with mom and then two weeks with dad. This type of custody works best when both parents live in the same community.

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- ▶ **Split Custody** Split custody can happen when there are two or more children and some children live with each parent. In this situation each parent is primarily responsible for the care of at least one child.

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- ▶ **Access to Children** When a child lives with one parent the other parent almost always has the right to visit or has "access" to the child. The legal system recognizes that it is most often in the best interest of the child to continue to have a relationship with both parents, even after they separate.

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- ▶ **An Abusive Parent** If your former spouse has been abusive to the children it is important that this information be presented during discussions or court hearings about child custody. Sometimes parents ask for an assessment of their parenting abilities and the needs of their children. An independent professional will do the assessment and the parents will have to pay the cost. Please note that there are very few people in the NWT qualified to do this type of an assessment.

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**If you have decided that you want to break up with your abusive husband or your common-law there are many different ways to go through the legal system.**

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### **Write up an Agreement**

If you and your husband/common-law are able to agree to the details of your separation you can write them into an agreement which you both sign. You may choose to get a lawyer to write up the formal agreement. It is a good idea for each of you to talk with your own lawyer to be sure that you each understand what your rights and responsibilities are.

### **Negotiation**

If you cannot reach an agreement between yourselves then you may have to negotiate an agreement through lawyers. Your lawyer will work with the lawyer of your former spouse to come up with a reasonable arrangement. If you qualify for legal aid and have tried mediation with your former spouse without success, then legal aid may be able to help you with legal advice. Legal aid does not deal with property division in amounts over \$20,000.

When the lawyers are involved the negotiations are usually done through an exchange of letters suggesting ways to settle the separation/divorce. This hopefully will allow both of you to come to a compromise agreement.

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**You can call collect to the NWT Legal Aid  
Outreach Clinic at 867-920-3365**

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### **Mediation**

In mediation the two sides sit down with a trained mediator. The mediator does not represent you or your former spouse. The mediator cannot make decisions but offers the opportunity for separating or divorcing couples to work together to reach their own agreement. The mediator makes sure that both you and your former partner get an opportunity to tell your side of the story.

Once you have both agreed the mediator will prepare a written agreement for you to sign. Before signing it is important to take it to a lawyer to review it. Mediation is not “couples counselling” or therapy.

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**The Department of Justice, GNWT will cover the costs of some hours of mediation for parents who are divorcing or separating and are doing mediation to discuss issues of their children or spousal support.**

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In the collaborative approach you and your former spouse and both of your lawyers agree to work together toward a solution. Your spouse, you, and each of your lawyers hold a series of meetings and work towards a solution that does not require you to go to court.

If you cannot agree both of the lawyers involved in the collaborative process must withdraw and you will have to get another lawyer to represent you in court.

### Can Collaboration or Mediation Work with an Abusive Husband?

If your husband has been abusive it may be very difficult for you to sit down with him to discuss the terms of your separation or divorce. Some mediators and lawyers trained in the collaborative approach may arrange for the meetings to be safe for you. For example you and your former spouse may be in separate rooms with the mediator going back and forth between rooms.

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**For a list of family lawyers who also provide**



**mediation services and lawyers who have been trained in the collaborative approach, contact the Law Society of the Northwest Territories.  
[www.lawsociety.nt.ca](http://www.lawsociety.nt.ca) 867-873-3828**

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## The Court Process

The Supreme Court of the NWT makes decisions on all issues under the *Divorce Act* and most other matters involving separation and divorce such as custody, child and spousal financial support, and the division of property.

If you are unable to resolve the issues with your former spouse when your relationship ends, then you may have to go to court. It is almost always better to come to an agreement without going to court because you can have some control over the decisions that are made. When you go to court you are asking the Judge to make these decisions.

Because your time in court is limited it is sometimes difficult to explain to the Judge why you think certain difficulties should be dealt with in a certain way.

A trial in court can be long, complex, and expensive. It is important that you have a lawyer.





# **SUPPORTS AND CONTACT**

**CHAPTER SEVEN**



# Contents

## CHAPTER SEVEN



This chapter provides contact information for the support workers and support services for women who are victims of family violence.

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# Emergency Protection Orders

You can phone the RCMP or Alison McAteer House in Yellowknife at any time, 24 hours a day, seven days a week, and seek advice on how to get an emergency protection order (EPO).

## RCMP

### If you are experiencing violence in your home

The first three numbers of your community phone number plus 1111. Examples are:

- |                           |          |
|---------------------------|----------|
| ▶ RCMP in Fort McPherson  | 952-1111 |
| ▶ RCMP in Tuktoyaktuk     | 977-1111 |
| ▶ RCMP in Fort Resolution | 394-1111 |

## Shelters

For Women and Children who are Victims of Family Violence

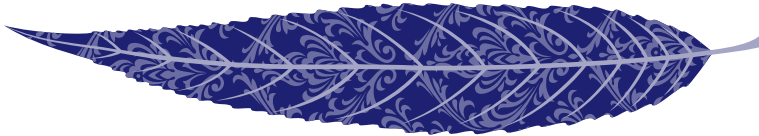
- |  |                                |
|--|--------------------------------|
| ▶ <b>Alison McAteer House</b> , Yellowknife<br>Toll Free               | 867-873-8257<br>1-866-223-7775 |
| ▶ <b>Family Support Centre</b> , Hay River                             | 867-874-6626                   |
| ▶ <b>Sutherland House</b> , Fort Smith<br>Toll Free                    | 867-872-4133<br>1-877-872-5925 |
| ▶ <b>Aimayunga Women's Emergency Foster Care</b> , Tuktoyaktuk Shelter | 867-977-2000                   |
| ▶ <b>Inuvik Transition House</b>                                       | 867-777-3877                   |



## Travel Subsidies

For funding to travel to a shelter contact the Health and Social Services Authority (HSSA) in your region or talk to a HSSA staff in your community

|                                    |              |
|------------------------------------|--------------|
| ▶ Beaufort-Delta HSSA              | 867-777-8000 |
| ▶ Sahtu HSSA                       | 867-587-3650 |
| ▶ Dehcho HSSA                      | 867-695-3815 |
| ▶ Yellowknife HSSA                 | 867-873-7276 |
| ▶ Hay River HSSA                   | 867-874-7115 |
| ▶ Tlicho Community Services Agency | 867-392-3000 |
| ▶ Fort Smith HSSA                  | 867-872-6200 |



## Lawyers

Lawyers who can help you if you and your children are involved with child protection Services

|   |              |
|---|--------------|
| ▶ NWT Legal Aid Outreach Clinic<br>(you may call collect) | 867-920-3365 |
| ▶ Legal Aid lawyer in Inuvik                              | 867-777-2030 |

## Victim Services

Contacts if you are the victim of spousal violence

|                  |                              |
|------------------|------------------------------|
| ▶ Yellowknife    | 867-920-2978                 |
| ▶ Hay River      | 867-876-2020<br>867-874-6701 |
| ▶ Fort Good Hope | 867-598-2247                 |
| ▶ Inuvik         | 867-777-5493                 |
| ▶ Behchoko       | 867-392-6381 Ext: 1332       |
| ▶ Fort Smith     | 867-872-3520                 |
| ▶ Fort Simpson   | 867-695-3136                 |

## Crown Witness Coordinators

if you are a victim of spousal assault and have to testify in court

|                 |              |
|-----------------|--------------|
| ▶ Call collect: | 867-669-6900 |
|-----------------|--------------|

## Income Assistance

Almost all communities in the NWT have an income assistance office. Call toll free to get the contact information for your community:

|             |              |
|-------------|--------------|
| ▶ Toll Free | 866-768-8149 |
|-------------|--------------|

## NWT Rental Officer

|  |              |
|--|--------------|
| ▶ If you are required to attend a rental hearing | 867-920-8047 |
|--|--------------|

# Rent Subsidy

## If you rent from a private landlord

Contact one of the district offices of the NWT Housing Corporation for information about the Transitional Rent Subsidy Program

- ▶ Beaufort Delta District Office, Inuvik 867-777-7271  
.....
- ▶ Nahendeh District Office, Fort Simpson 867-695-7700  
.....
- ▶ North Slave District Office, Yellowknife 867-873-7795  
.....
- ▶ Sahtu District Office, Norman Wells 867-587-5100  
.....
- ▶ South Slave District Office, Hay River 867-874-7600  
Toll Free 866-956-9842  
.....

For further information contact the Transitional Rent Subsidy Program Coordinator at [NWTHC\\_TRSP@gov.nt.ca](mailto:NWTHC_TRSP@gov.nt.ca).

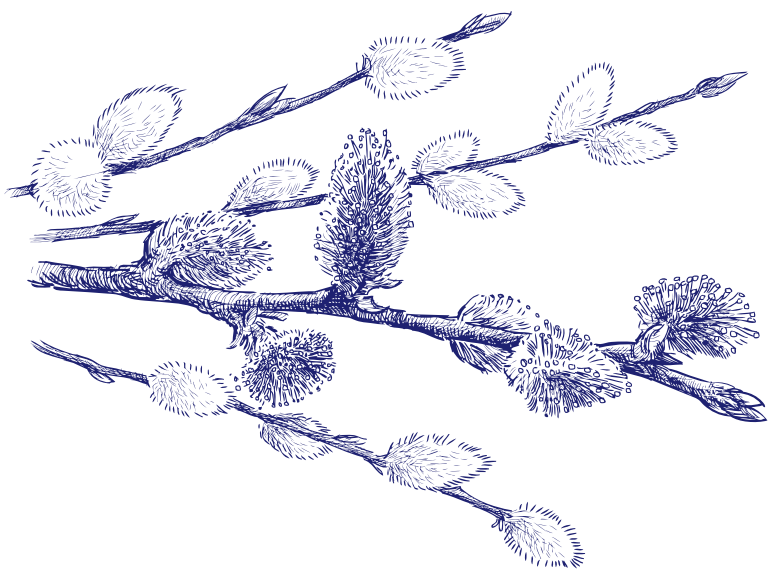
# Funding Help for Rental Arrears

- ▶ Homelessness Assistance Fund 867-920-3277  
[nwthc\\_Homelessness\\_Coordinator@gov.nt.ca](mailto:nwthc_Homelessness_Coordinator@gov.nt.ca)  
.....

# Mediation Lawyers

For a list of family lawyers who also provide mediation services

- ▶ Law Society of the NWT 867-873-3828  
[www.lawsociety.nt.ca](http://www.lawsociety.nt.ca)  
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## Temporary Housing

For temporary housing in Yellowknife if you have made the decision to live independently from an abusive partner contact:

► Lynn's Place  
info@ywcanwt.ca

867-873-6170

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