

# abusive relationships

information about options available to help deal with abuse and violence in relationships



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## Introduction

There are number of ways that the law can assist someone who is in an abusive relationship. This publication explains some legal options for dealing with an abusive spouse or partner.

Hopefully, this publication will also make more people aware of relationship violence and help them understand the harm caused. Abuse between spouses or partners is not just a private problem. Assaulting another person is a crime, whether they are a spouse or partner or a stranger.

The law applies equally regardless of sex. Both women and men can be the victims of relationship violence and abuse. However, throughout this publication, the victim of assault is depicted as female; the aggressor is depicted as male. This reflects the fact that females are much more likely than males to be victims of spousal violence (85% versus 15%).

[Source: Family Violence in Canada: A Statistical Profile 2004, Canadian Centre for Justice Statistics, Statistics Canada.]

Throughout this publication, the word **spouse** refers to legally married couples and persons living in a legally recognized spousal relationship, including same-sex couples. In Saskatchewan relationships outside of marriage can be legally recognized as spousal relationships after the couple has lived together for two years or more. The parents of a child can have a legally recognized spousal relationship before two years if the have lived together in a relationship of some permanence.

The word **partner**, as used in this publication refers to common law relationships that are not recognized as spousal relationships as well as girlfriend/boyfriend relationships.

It is important to note that some of the laws discussed in this publication apply only to spouses.

# About Abuse

## ***The Cycle of Violence***

Many believe that abusive relationships are limited to lower-income families or to certain ethnic or cultural groups. This is not true. Women from all backgrounds are abused. Often they suffer alone for a long time, not wanting to admit their spouse or partner is abusing them.

Even though there is no such thing as a "typical" abuser, there is a typical pattern to abuse. It is referred to as the "cycle of violence". It has three distinct phases. During the first phase tension, frustration and anger on the part of the abuser may gradually build up over time. The "build-up" period may range from days to months, or possibly even years.

As the tension builds, the possibility that an assault will occur becomes greater. At some point an "explosion" occurs; this is the second phase. The violence may last minutes or may continue over a period of days.

Following the assault there is usually a period of relative calm; this is the third phase. It is often referred to as the "honeymoon" phase. During this phase the abuser is likely to apologize to the victim and try to make amends.

Then the cycle repeats itself.

## ***The Behaviour***

The term "abuse" covers a wide range of behaviour that may or may not involve actual physical violence.

*Physical abuse* is any aggressive behaviour directed at another person, such as pushing, pinching, squeezing, shaking, grabbing, biting, slapping, punching, kicking, choking, etc. It also includes throwing objects or using a weapon. Needless to say, such

conduct will often result in serious injuries. But many women are subjected to varying degrees of physical abuse without suffering physical injury that is visible to the eye.

*Sexual abuse* is forced participation in any type of sexual activity. No one, not even a spouse or partner, has the right to force a woman to participate in sexual activity if she does not want to. If force or threats of force are used to gain compliance, a charge of sexual assault can be laid.

*Psychological abuse* is the infliction of emotional pain and suffering by doing things to control or degrade another person, such as persistent verbal attacks on self-esteem, repeated accusations of infidelity, threats of suicide or harm to others, control over friends, clothes and money.

*Forced confinement* is when someone does not allow another person out of, for example, a house, room, bed or chair, for extended periods of time.

*Abuse towards pets or property* is the destruction of property or animals with the direct or indirect threat that "you are next".

## ***Staying or Leaving***



Women stay in abusive relationships for many reasons. They may prefer to believe their partners when they say that the abuse will stop. They may have faith in the traditional family and want to remain a part of it. Possibly they have tried to leave and faced such financial difficulties that they felt forced to return. Some fear retaliation. Others, having lived in an abusive relationship for years, have come to believe there is no alternative and may even feel that they deserve such treatment.

Leaving a relationship and starting out on one's own is difficult enough. When that decision must be made in the midst of the trauma of abuse, it is even more difficult.

Without help, the abuse is not likely to stop. There are many alternatives to consider. Assistance is available.

## ***Options***

Once an abused woman has decided to get out of the cycle of abuse she has a number of choices to make. Many questions need to be answered. Would it be best just to leave and not take any legal action at all? Where will she go? Should she call the police when she has been assaulted, which could lead to criminal charges against the abuser? What rights does she have to the family home? Should she apply for custody of the children?

The following pages attempt to answer these and other questions. The options that are available to abused women looking for a way out of an abusive relationship will be outlined. The options open to a woman in an abusive relationship depend on her particular situation. A woman in an abusive relationship will often have a number of options and can make choices about what to do based on her circumstances.

## **Help From the Community**

### ***Finding a Place to Go***

When a woman is being abused she should attempt to protect herself. One way she might do this is to leave the home and stay with other family or friends, or check into a motel or hotel. Or she may choose to go to an emergency shelter, safe house or transition house for abused women. The RCMP or the police, if requested, will escort the victim out of the family home to any safe place she specifies.

The Abuse Help Lines, listed at the front of SaskTel phonebooks, provide information about abuse, counselling and support services, as well as contact information for safe shelters and help lines.

## ***Immediate Financial Assistance***

Ideally, a victim of abuse should try to save up a private "nest egg" for just such an emergency. Even a small amount of money might be enough to get her through until she is able to begin to organize her life and seek financial assistance.

If she has no funds or income, she can apply for financial support at any government office of Community Resources and Employment, listed in the Government of Saskatchewan blue pages of the telephone book.

When applying for financial assistance, it is important to have the following documents...

- Saskatchewan Health Card
- Social Insurance Card
- personal ID
- birth certificates, including those of the children who are leaving the home as well
- doctor certificates, or prescriptions for special medication if required

## ***If There Are Children***

When parents are living together, they share custody of the children. If parents are separating, they will have to decide who will have the children or how they will share custody of the children. If parents cannot agree, the courts can be asked to determine the matter.

Generally, the best solution is if parents can agree about who will have custody. However, when a woman is caught in an abusive relationship, it is highly unlikely there will be any kind of rational

discussion, either about her leaving or whether she should take the kids with her. That places her in a difficult position, because the law says that where a custody order does not exist, it is an offence for one parent to take the children from the other parent with the intent to deprive him or her of access to the children. An exception is where the children would be in “imminent harm” if they were left at home. This law might not be applied to a woman who fled the home with her children because *her* life or safety was threatened.

If a woman is forced to leave her home for her own protection, and takes her children with her, she should contact a lawyer as soon as possible so that the matter of custody may be settled without delay.

If she decides to leave her children in the home temporarily, but ultimately wants custody of them, it is equally important that she seek legal advice immediately. The court may interpret a delay to mean that she doesn’t really want the children. Or, if she takes so long to initiate an action that the children become used to living with the other parent, the court may be reluctant to upset their routine. The court will be guided by the best interests of the children.

Whatever route she takes, it is important for her to contact a lawyer immediately so that the matter of custody may be settled.

### ***Counselling for the Abuser***

If the abuser recognizes that the problem is his, he may be willing to get counselling. Health Districts offer programs that may include treatment programs. For example, Saskatoon District Health sponsors a treatment program called *An Accountable Advocacy Program For Men Who Are Violent to Their Partners*, commonly referred to as “Alternatives”. Regina District Health sponsors a treatment program called “Alternatives to Violence”. To find out what programs exist in your area, contact your local health district or Health Canada’s National Clearing House on Family Violence.

Treatment by a psychologist, psychiatrist or marriage counsellor may also be of assistance.

## **Criminal Law**

The criminal system applies to everybody. It is possible that the abuser will be arrested, that there will be a trial and that the abuser will be convicted and sentenced. Ultimately, it is not the victim who decides to proceed under this system – it is the police or the Crown Prosecutor’s office. An abused woman does not need a lawyer; a Crown Prosecutor will handle the case in court. The Crown Prosecutor does not act for the abused woman, but rather represents the public. This is because all crimes are considered to be offences against society as a whole and not only against the individual victims. The victim’s role, once the prosecution begins, is that of witness for the Crown Prosecutor in the case against the accused. It is not the woman’s case against the abuser but rather society’s case against him.

*It is important to note that not all forms of abuse are crimes. In order for any abuse to be considered a crime it must be an offence as defined in the Criminal Code of Canada.*

If an act is a crime, it can be dealt with by the criminal system. An act of abuse that is not a “crime” cannot be dealt with by the criminal system. However, it could well be the basis of an action in the civil court system. As well, if an abuser is convicted of a crime his victim may be entitled to compensation as a victim of a crime.

### ***Assault***

Physical abuse is assault; assault is a crime. An assault is committed when a person intentionally applies force to another without their consent, or threatens to apply force to another when the victim believes that person has the ability to carry out the threat. Physical injury is not required.

The law does not distinguish between assault on spouses and partners or strangers. A man has no more right to assault his spouse or partner than to assault a stranger on the street.

Various categories of assault are set out in the *Criminal Code*. They are...

- assault (also called “common” assault) — where force is used or threatened but there is no physical injury or the injury is trifling in nature
- assault with a weapon — where a weapon, even an object such as a pen or bottle, is used during the assault
- assault causing bodily harm — where the assault results in bodily injury of such an extent that it interferes with health or comfort
- aggravated assault — where the injury is so severe that it amounts to serious wounding or maiming for life

## ***Stalking or Criminal Harassment***

Stalking is an offence called criminal harassment under the *Criminal Code*. Criminal harassment is behaviour that causes another person to fear for their safety or for another person’s safety. Behaviour that the law prohibits includes repeatedly following a person from place to place, repeatedly communicating with a person, watching their home or workplace, and engaging in threatening conduct directed at them or any member of their family.



If the offence is prosecuted as a summary conviction offence, the penalty for criminal harassment can be a fine of up to \$2000, a jail term of up to 6 months, or both. If prosecuted as an indictable offence, a person could be jailed for up to five years. The Crown Prosecutor decides how to prosecute the case.

There are other abusive acts that are *Criminal Code* offences. For example, if a person damages the property of another, or prevents another from enjoying or using their property, he or she can be charged with the *Criminal Code* offence of mischief. Causing a disturbance and uttering threats are other examples.

## ***Procedure***

### **Laying the Charge**

Police must treat assault or criminal harassment against a spouse or partner as they would any other case. They are required to lay a charge if they have reason to believe that a woman has been assaulted or criminally harassed by her partner or spouse.

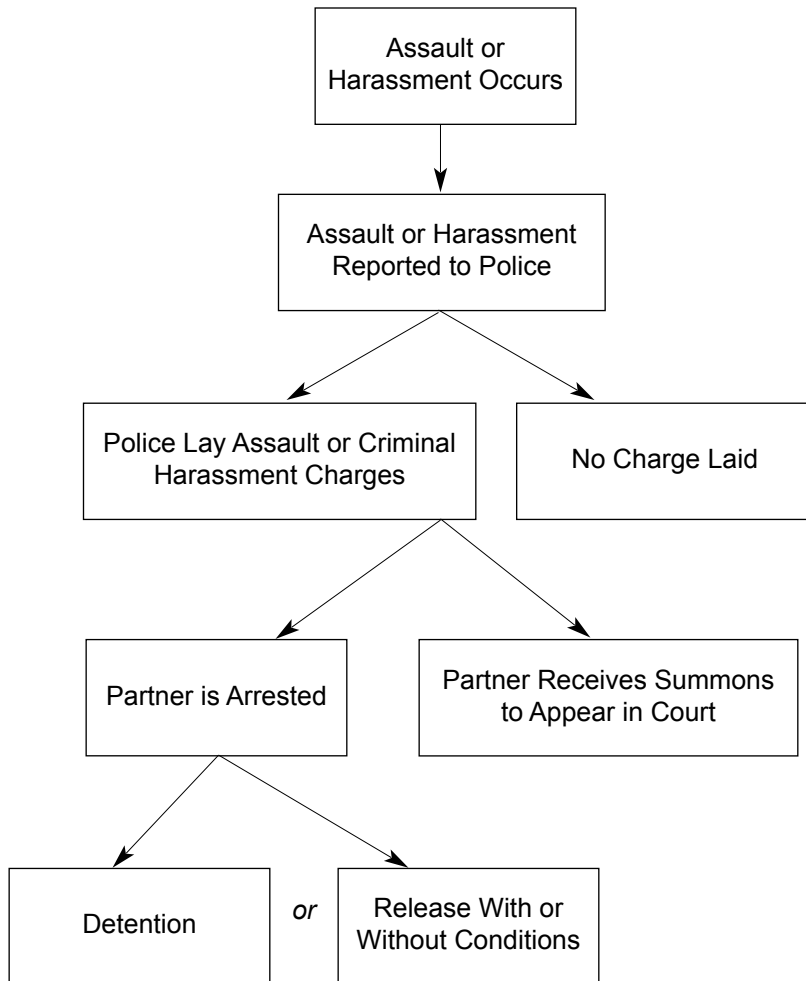
In the past, the police were often reluctant to lay a charge themselves even when they had reasonable grounds to believe that an assault had been committed. If a woman had been assaulted, by her spouse or partner, and wanted to proceed with criminal charges, she had to lay the complaint herself. The police would need her cooperation to proceed. It was the belief of the police that all too often a woman could be “convinced” by her spouse or partner not to give evidence against him in court and if a woman chose not to give evidence, the Crown Prosecutor would have difficulty proving their case.

Crown Prosecutors now handle assaults by spouses and partners the same as any other assault. The police are directed to lay the charge themselves if they have reasonable and probable grounds to believe that an assault has taken place. The Crown Prosecutors’ offices are directed not to withdraw charges merely because the victim is reluctant to testify, or because there is a prospect of reconciliation between the parties.

This change in procedure accomplishes two things. First, it has made society more aware that assaults between spouses and partners are as serious and as wrong as assaults against strangers. Second, it has improved the situation somewhat for the abused woman.



It provides her with some degree of protection because once charges have been laid, the matter is out of her hands. She cannot be bullied or threatened into asking that the charges be dropped. It is up to the Crown Prosecutor to decide whether the case will proceed. If the abuser tries to interfere with the case by, for example, asking the woman to lie or by threatening her, he is committing another separate offence for which he can be charged.



### After Charges Are Laid

After a charge is laid, the person charged with the offence is called the “accused” and the victim is called the “complainant”.

When a charge is laid the accused is given a date and time to appear in court. On that day the accused will have to answer to the charge. He has three choices...

- he can plead guilty to the charge
- he can plead not guilty to the charge
- he can request an adjournment to get a lawyer to prepare for his case

If the accused pleads guilty to the charge, he will be sentenced. If the accused pleads not guilty to the charge, a trial date will be set. The trial date may be months away.

### Going to Trial

The complainant will be asked to appear in court as a witness for the Crown Prosecutor. She will get a piece of paper called a witness subpoena which will be delivered to her and will tell her the time and place she must appear to testify. Usually the Crown Prosecutor will contact her before the date of the trial so that they can go over the information before the trial.

During the trial the Crown Prosecutor will call the complainant to give evidence before the court. Evidence must be given under oath or a promise to tell the truth. The complainant must also answer questions asked by the lawyer defending the accused person.

The Crown Prosecutor may also call other people who have evidence to give in support of the complainant. These witnesses could include anyone who witnessed the assault or stalking behaviour, or others such as the investigating officer or medical personnel who may have examined the complainant after an assault.

When the Crown Prosecutor is finished presenting evidence, the lawyer for the accused may call witnesses. The accused does not have to testify but may do so if he wishes.

## Victim Testimony

Sometimes a woman who has been assaulted or stalked does not wish to give evidence against her spouse or partner. However, in some cases she will be required to do so.

If the Crown Prosecutor wants the spouse or partner to testify, she will receive a document called a witness subpoena. This means she must go to the Court at the time indicated on the subpoena. If called to give evidence, she must truthfully tell the court what happened whether she wants to or not.

Witnesses and victims have a vital role to play in the administration of justice. Their testimony is a very important part of the Crown's case against the accused. To ensure that all the facts in a case will be presented to the court, witnesses and victims may be required to give evidence.

Witnesses and victims may have fears and concerns about testifying in court. They may be worried about giving personal information. They may be unsure about understanding and answering questions well. They may be worried about not remembering important dates, times or other details. These concerns are normal. The Crown Prosecutor and provincial victim/witness services can provide witnesses and victims with information about what to expect in court and options that may make testifying easier.

It is important for witnesses and victims to get the assistance they need to enable them to appear and testify in court as required. If a person, including a witness or victim, ignores a subpoena to appear in court they can be arrested and brought before a judge. If a witness or victim refuses to testify in court they could be held in contempt of court and face a fine, or jail, or both. Witnesses and victims should ask the Crown Prosecutor or victim services personnel to help them prepare to testify in court.

In cases where a victim wants to have charges dropped, they may be referred to a victim/witness coordinator for review of the case. The victim/witness coordinator can also help prepare and assist the prosecutor in preparing a reluctant or frightened witness for court.

A victim's testimony is very important to the case. Sometimes it is the only evidence available, but it is possible that a charge of assault or stalking may be proven solely on that evidence. The accused will not be convicted unless his guilt is proven beyond a reasonable doubt. It is difficult to define the notion of "reasonable doubt". Generally a person cannot be convicted of a crime if, after considering all the evidence, the judge or jury is unsure whether the accused committed the offence. To convict, the judge or jury must believe that the only sensible explanation, considering all the evidence, is that the accused person committed the offence.

## The Judge's Decision

After hearing all the evidence, the judge must find the accused either guilty or not guilty. A finding of not guilty does not mean that the accused did not commit the crime or that the judge did not believe the victim. It may simply mean that there was not enough evidence to prove the case *beyond a reasonable doubt*.

If the accused is convicted, the victim should understand that the accused is being sentenced only for the offence before the court. Often a woman will suffer many beatings or much harassment before she finally goes to the authorities. She might feel that the court should take the entire history of her abuse into consideration. If she understands that the court has no choice but to pass sentence for the current offence only, there is less chance that she will feel she has not been given proper consideration.



## The Sentence

If the accused pleads guilty or is found guilty by the judge, he will be sentenced. What sentence he will be given depends on a number of factors, including the severity of the assault or harassment and previous convictions. There are various options facing the judge, who must decide the sentence, including: a jail term; a conditional sentence; a fine; a suspended sentence; a conditional or absolute discharge; and probation.

*Jail term* – The length of any jail term ordered will vary with the seriousness of the offence and the previous criminal record of the offender. If the sentence is 90 days or less, a judge may order that it be served on weekends so that the offender can continue his employment.

*Conditional Sentence* – A conditional sentence is served in the community instead of jail. It is available for offences that do not require a minimum term of imprisonment. It can be for a period of less than two years. The offender receives supervision and there are certain terms that are a part of the sentence. Violations could result in the offender serving the rest of their sentence in jail.

*Fine* – Fines also vary with the seriousness of the crime and criminal record of the offender.

*Suspended Sentence* – Instead of imposing a fine or a jail term, a judge may suspend the sentence and place an offender on probation for a specified period of time. If the offender completes the probation successfully he will have a criminal record for the offence but will not be punished further. If he breaches a term of probation, not only can he be charged with breach of probation but he can also be brought back to court and given a fine or jail term for the original charge.

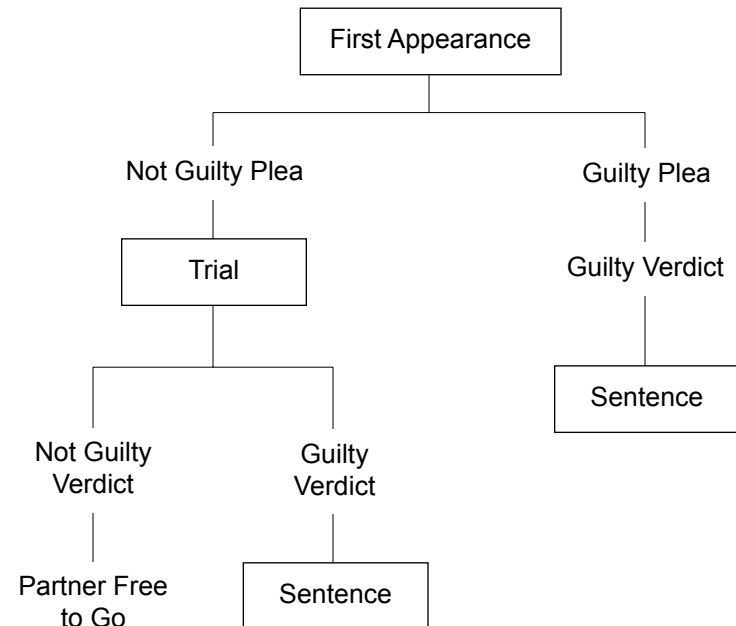
*Conditional Discharge* – A judge may place an offender on probation for a specified period of time. The difference between

this and a suspended sentence is that in the case of conditional discharge, if the probation is completed successfully, the offender will not have a criminal record for the offence.

*Absolute Discharge* – A judge may also grant an absolute discharge. Although there is a finding of guilt, the offender will not receive any punishment, nor will he be placed on probation. He will not have a criminal record for the offence.

After a successful prosecution, Crown Prosecutors are directed to provide the court with victim impact information, to advise of appropriate treatment programs, and to seek appropriate penalties, including jail time.

## Court Process



## **More About Probation**

Probation is a court order that may be imposed in addition to a fine or a jail term and *must* be imposed upon a conditional discharge or the granting of a suspended sentence. A probation order usually lists conditions that are intended to aid in the control or rehabilitation of an offender.

Conditions of a probation order may include...

- regular reporting to a probation officer
- abstaining from alcohol
- seeking treatment of an alcohol problem
- having limited or no contact with the victim
- attending counselling

If an offender does not follow all of the conditions of a probation order he could be charged with breaching a probation order. A breach of probation is a criminal offence.

## ***Protection in the Future***

### **If the Police Lay Charges**

Even if charges are laid, a victim may not be safe from her abuser. The police decide whether or not to arrest the accused when the charges are laid. If the police believe that the accused is no longer a danger to his victim they may simply, without arresting him, serve him with a summons to attend court on a certain date and time to answer to the charge.

If he is arrested by the police and taken to the police station he may still be released shortly or at any time within 24 hours. The police do not have to inform his victim of his release. If it is believed that the accused might still be a danger to his victim, it is possible that conditions will be attached to his release. This is done by a Justice of the Peace. Conditions of release for an accused person can include the following...

- limited or no contact with his victim
- limited or no contact with his children or the children of his victim
- no access to certain property
- such other conditions as are reasonable in the circumstances

A victim can recommend appropriate conditions for her own protection. Such recommendations should be made to the police officer that investigated the assault or harassment.

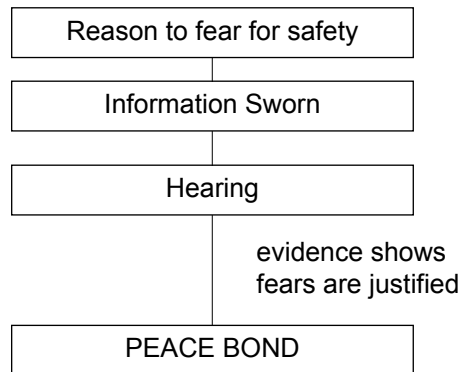
Any conditions imposed at the time of release remain in effect until the entire case is over, unless the court specifically changes them. Either the accused or the Crown Prosecutor can apply to the court to have these conditions changed. If the woman thinks the terms imposed on the accused are too harsh or too lenient, she can speak to the Crown Prosecutor. If the prosecutor agrees with her assessment, he or she will make an application to the court.

If any condition is broken, a separate criminal offence known as "breach of recognizance" or "breach of undertaking" is committed. If this happens, the woman should report it to the police immediately.

### **Peace Bonds**

If a woman fears she may be harassed or abused in the future, and has good reason to believe so, she can get protection from the courts in the form of a peace bond. A peace bond is not a criminal conviction. It is a court order that requires another person to "keep the peace" for a certain amount of time and to obey any other conditions the court may add. As long as the conditions of the peace bond are met, the person will not be charged with a criminal offence. If the conditions of the peace bond are broken, however, the person may be charged and convicted of a criminal offence, be fined or jailed, and will then have a criminal record.

## Getting a Peace Bond



### How to Get a Peace Bond

The complainant must make and sign a statement called an “Information” stating that she fears for her safety and stating the reasons why she is afraid. In rural areas the Information is sworn at the local RCMP detachment; in larger centres it is sworn at the Police Station or Crown Prosecutor’s office. The defendant will then be required to appear in court on a certain date and time. On the court date, if the judge is satisfied that the complainant has reasonable grounds to fear for her safety or the safety of her family or property, the defendant will be asked to enter into a peace bond.

If the defendant agrees to the peace bond, the judge can grant the peace bond right away. The defendant must read and sign the peace bond.

By agreeing to sign a peace bond, the defendant agrees to certain conditions, such as to...

- keep the peace and stay out of trouble
- not harm or harass the complainant
- not see, phone, write or send messages to the complainant

If the defendant will not agree to the conditions, or sign the peace bond, the judge will order a hearing. A hearing is like a trial. The judge listens to both parties. Then the judge decides whether to order the peace bond.

A Crown Prosecutor will conduct the case on behalf of the complainant. The defendant may be represented by a lawyer or may speak for himself at the hearing. A peace bond can be ordered for the complainant’s protection for a period of up to twelve months, if the judge decides that her fears are justified.

The complainant should keep a copy of the peace bond with her at all times. She should call the police right away if any of the conditions of the bond are broken.

## Some Practical Considerations

### The Crisis

If assaulted, it is generally best to leave, if at all possible. If an abused woman decides she wants to call the police, she should try to do so as soon as possible after the assault.

If she believes that an assault is likely to occur, it may be possible for her to leave or call the police before it actually happens. The police may be able to prevent future abuse and provide some immediate protection.

It is important for her to tell the police if she thinks her life, or those of her children, is in danger, or if a weapon is being used. It will help the police to assess the urgency of the call.

### When the Police Arrive

When the police arrive they will assess the situation. If the abuser is violent they can restrain him. They will ask the woman questions privately about the situation to gather evidence about the assault. The police will decide whether there is sufficient evidence to lay charges.

Some of the things the police will want to know are...

- Does the woman have any visible marks of violence?
- Is there other evidence of assault, such as overturned furniture or torn clothing?
- Is there a past history of assault?
- Were there any witnesses to the assault?

### **Medical assistance**

If necessary, the victim should get medical attention for her injuries. Even if she thinks they are minor, she may ask the police to take her to an emergency clinic or hospital. It will help to have medical reports and photographs that document any injuries if the matter goes to trial.



### **Keep a Record**

A victim's testimony is an important part of the proceedings if the matter goes to trial. However, it is usually a few months before the trial takes place and by that time it may be difficult for her to remember all the details. For that reason it is a good idea for the victim to write down what happened as soon as possible while it is still fresh in her mind.

### ***Monetary Compensation***

The Provincial Victims Service can award compensation to victims of violent crimes if they were committed within Saskatchewan. This includes compensation for victims of relationship violence.

The victim or dependents of the victim may apply for compensation. Certain other persons may apply on behalf of a person under the age of 18, a person of unsound mind or a dependent adult. The application must be made within one year of the date of injury or death. In cases where the nature of the injury

is not readily apparent, the time period begins when the victim understands the nature of the injuries and recognizes the effects of the misconduct.

Compensation may be available for monetary loss resulting from injury, for example, if the victim is unable to go to work. Expenses for such things as medical bills, counselling, prescription drugs, eyeglasses or clothing may also be available. For items that have had to be replaced the victim should be prepared to provide receipts or other proof of expenses claimed.

In order to apply, the victim can phone collect to the Provincial Victims Services Office in Regina at 306-787-3500.

## ***The Victims of Domestic Violence Act***

Saskatchewan has a law concerning victims of domestic violence and provides additional ways to help fight domestic violence. The law covers women and men who suffer violence from their live-in partners, whether they are married, living common law or in a gay or lesbian relationship. It applies to parents of children whether they have ever lived together or not. The law also protects children and seniors living in a family relationship.

Domestic violence includes physical harm and damage to property, forced confinement and sexual assault. A threat that causes a reasonable fear of physical harm or damage to property is also domestic violence.

The law creates three ways to deal with domestic violence. These are emergency intervention orders; victim's assistance orders; and warrants of entry.

## ***Emergency Intervention Order***

This order gives relief to a victim in an emergency. Special Justices of the Peace are available at any hour to hear an application for an order. Police officers, mobile crisis workers and victims services coordinators can help victims apply for an order. Before making an order, the Justice of the Peace must determine that domestic violence has occurred. The Justice of the Peace must also be satisfied that the case is serious or urgent enough that it should not wait for a judge to hear it. A Justice of the Peace may give an order without the person who committed the violence being present.

A victim of domestic violence may ask for an emergency intervention order for..

- exclusive occupation of the home
- a police officer to remove the abuser from the home
- a police officer to supervise while the abuser or the abused person takes personal belongings from the home
- a restraining order saying that the abuser may not contact the victim

After a Justice of the Peace makes an emergency intervention order, the abuser must be given notice of it. The order does not take effect against that person until he gets notice.

Because emergency intervention orders are designed for an emergency, they must be confirmed afterwards by a judge. The judge must look over the order and the supporting papers within three working days of getting the documents from the Justice of the Peace. If the judge is not satisfied that there was evidence for the order, the judge can schedule a rehearing of the matter.

A person against whom an emergency order is made may ask a judge to review the order at any time.

## ***Victim's Assistance Order***

A victim's assistance order is similar to an emergency intervention order, but is designed to be used in non-emergency situations. This type of application is made to a judge who may make any of the orders available as emergency intervention orders. Other orders are available too. For example, the judge may order the abuser to pay compensation because the victim has suffered a loss of money as a result of the abuse. Compensation can be for things such as loss of earnings, medical and dental expenses, out-of-pocket losses, moving expenses, or legal expenses.

## ***Warrant of Entry***

Warrants of entry are designed to be used where there is concern about a person who cannot act on their own. A Justice of the Peace may order that a police officer be allowed to enter and search a place. The order may be made only after the potential abuser has refused to give the police officer access to a person who may be a victim of domestic violence. It gives the holder of the warrant the right to go into the home. They may assist or examine the possible victim and may remove the victim from the home, if necessary.

## **Family Law**

The family law system settles, among other things, private disputes between people in family relationships. Both parties can hire separate lawyers and try to settle the matter through negotiation. Failing that, the parties can go to court and have the matter settled by a judge. Some family law remedies, such as spousal support and the division of property, are only available to spouses. Under the law "spouses" include married couples and common-law couples who have lived together for two years or more, including same-sex couples. The parents of a child are also

considered spouses, by law, even if they have lived together for less than two years, if they have lived together in a relationship of some permanence.

The family law system deals with matters such as...

- restraining orders
- separation
- divorce
- child custody
- child support
- division of property
- exclusive possession of the family home
- continuing protection of the family

## ***Restraining Orders***

Family law can be used to get protection similar to that provided by a peace bond. It is called a restraining order.

A court can issue a restraining order that places limitations on how a spouse or partner can contact their spouse or partner. The court may grant a restraining order if it is satisfied that someone's safety is threatened. It may forbid an abuser from approaching his spouse or partner in any way, either directly or indirectly.

Once a restraining order is in place, the police can enforce it. If the abuser does not obey the order he can be fined or put in jail.

## ***Property***

### **Getting Back into the House**

A spouse can apply for an order for exclusive possession of the matrimonial home. If granted, the order will allow a spouse peaceful possession of the family home without interference from the abuser.

Such an order directs the abuser to vacate the home for a specified period of time. The court may also further restrain him from entering or visiting the home if the spouse requests it. His right of ownership may be suspended, preventing him from selling the family home. He may also be ordered to pay the rent or mortgage.



The court will always try to take into account the interests of the children and will try to place them in a situation that is as close to normal as possible. Other factors considered by the court are the availability of other accommodation and the financial situation of both spouses.

The spouse should keep a copy of any court order with her if she wants the police to enforce it. They must be able to examine the order to determine whether it has been violated.

If the woman invites her spouse onto the premises, she may be responsible for the order being breached and the police will be hesitant to enforce it. As well, a court can vary the order if satisfied that there has been a material change in circumstances.

### **Personal Belongings**

If an abused spouse does not want to apply for an exclusive possession order or remain in the family home, she will likely want to return to the house briefly to get her own personal belongings. This may not be a problem if her spouse consents. However, without that permission she may wish to consult a lawyer and make an application to the courts to allow her to get her things (see the information under *The Victims of Domestic Violence Act*).

### **Division of Property**

Under *The Family Property Act*, when spouses separate, the court generally assumes that each spouse has an equal share in the family assets and that the property will be divided equally.



Some exceptions, to the assumption that property will be divided equally, are...

- property owned by either spouse before they became spouses
- property given to or inherited by either spouse before they became spouses
- property obtained by either spouse after the spousal relationship ends

Saskatchewan law directs the courts to equally divide the family home except where it would be unfair because of an unusual situation or unfair to a parent who has custody of the children.

For couples that are not legally recognized as spouses, there is no right to each other's property, unless they can prove that they have an interest in it. For example, if only one partner is the sole owner of the common residence, the other partner would have to prove an interest by showing such things as having...

- paid for part of the purchase price, or contributed to the purchase in some other manner
- contributed to the improvement of the property

This sort of claim is called a trust action.

### **Disposing of Assets**

If one spouse thinks the other spouse will sell or give away some of the family property, she can apply to the court, through her lawyer, for a restraining order which will prohibit him from doing so. If her spouse has already sold or given away some of the property, the court may order that it be returned for division or consider its value when dividing the remaining property.

## **Children**

### **Custody Orders or Custody Agreements Are Important**

Both parents have the right to raise and care for their children. If they are living together they share this responsibility. The problem arises when parents separate and the children have to be shared in some way. The parents might agree how this is to be done. They can sign a written agreement that determines custody and access. The parents can agree to share custody or decide that one parent will have custody and the other parent will have access. If they can't agree, the court can be asked to decide for them. A declaration of the court is called a custody order. It will specify who the children are to live with and when the other parent can visit them.



Parents should have a written custody agreement or a custody order. If one parent does not honour the agreement or order, the other parent can go to court and get help from the police. For example, if a mother has custody of a child through a custody order or agreement, and the father takes the child away, the mother can go to court for help. The court can order the police to enforce the custody order or agreement. If a person willfully resists or disobeys any court order, he or she can be fined or sent to jail.

### **Deciding Custody**

Custody is determined on the basis of what the court thinks would be in the best interest of the children. The court looks at such things as...

- a child's relationship with both parents
- which parent is best suited to have custody
- any special needs of the child and which parent can best deal with those needs

- long-term plans of each parent for the care and education of the child
- the wishes of the child

The assistance of a lawyer is generally needed to make an application for custody. Although it can take some time to get a final order, a court will usually grant an interim custody order which gives one parent temporary custody until the matter is finally resolved. An interim order may also be obtained for other matters, such as access.

When a court decides to give one parent sole custody it usually gives visiting rights to the other parent. The court will refer to this as "access". The court is of the view that it is the right of every child to see and associate with both parents. Access rights are denied only in exceptional circumstances, such as where it would likely cause the child physical or emotional harm.

### **Leaving Children Behind at the Time of Crisis**

A mother will not lose parental rights by leaving children behind at a point of crisis, but it is essential that she contact a lawyer and receive legal advice about custody and access without delay. If no action is taken within a reasonable time, the court may later conclude that she doesn't really want custody of her children. Or, if enough time passes so that they have become used to living with their father, the court may not want to uproot them. The best interests of the children will be the guiding principle.

## ***Support Payments***

### **Maintenance and Child Support**

Getting financial assistance through the courts is a very complicated area of family law and may require a lawyer. In almost all cases the court will order the non-custodial parent to help support the children.

In addition to child support payments, a spouse may be ordered to help support his spouse.

When deciding whether a maintenance order is appropriate, and if so, determining the amount, the court will consider factors such as...

- the means, needs and other circumstances of the spouse
- how long the spouses have lived together
- what role each spouse had in running the household
- any court order or agreement regarding maintenance of the spouse or children
- the effect the spousal relationship or its breakdown has had on each spouse's financial position, and
- the ability of each spouse to be able to support himself or herself within a reasonable period of time

In awarding spousal maintenance, the court does not consider any misconduct of the spouses in relation to the spousal relationship, such as cruelty or adultery, unless it has impacted the other spouse financially.

The court is working on the assumption that spouses have an obligation to become financially independent of one another.

## ***Separation***

Spouses and partners can leave a relationship whenever they want - there is no legal process that is required for a couple to separate. Once a couple has begun living separate and apart they will be considered "separated".

When a couple separates it may be by mutual consent. The couple may want to resolve the problems that come with the break-up of the relationship. This can be done by oral or written agreement. The terms could include how their property will be divided, how much maintenance will be paid to whom, and who will have custody of the children.

Written separation agreements are useful for tax purposes and provide a guideline as to what is expected of each party. But if one of the parties does not honour the agreement, the other must take him or her to court and sue as they would with a contract. The only exception to this is if one of the parties does not follow the agreement as it relates to custody or access (see *Children*).

Legal advice is particularly important in abusive relationships where the parties may not have equal bargaining power. It is important that both parties understand what they are signing and the alternatives that are open to them.

## ***Ending a Marriage***

Divorce is the ending of a legal marriage. It leaves the parties free to marry again. Divorce proceedings can sometimes be very complicated, especially if the divorce is contested or if the parties cannot come to an agreement over matters of child and spousal support, or custody of the children. It is a good idea for people considering divorce to consult a lawyer about handling their case.

### **Grounds for Divorce**

A divorce can only be granted by a court order. A court may grant a divorce if there is a breakdown of the marriage. Marriage breakdown can be established when...

- the parties have lived apart from each other for one year
- one of the parties has committed adultery (had sexual intercourse with someone else) and has not been forgiven by the other party
- one of the parties has subjected the other to cruel treatment, including physical and mental abuse, of such a nature that it is intolerable to continue to live with him or her (see *The Behaviour*)

Either party can begin formal divorce proceedings when the parties no longer live together as a couple. Although divorce proceedings can begin as soon as the couple stops living together, generally the divorce will not be finalized until they have lived separate and apart for a period of one year. In the case where adultery or cruelty is established, the divorce may be finalized sooner.

A brief attempt at reconciliation, or getting back together, during the year will not prevent the couple from divorcing if the reconciliation is unsuccessful. Reconciliation of the marriage is encouraged. It is provided in the *Divorce Act* that if the couple wants to try to mend their relationship, they can live together for a period of up to 90 days without affecting their divorce action.

A divorce may be granted together with an order dealing with custody, access, maintenance and division of property. When the divorce is granted, the court will issue a judgment for divorce. The divorce becomes final thirty-one days after the judgment is issued. The purpose of the waiting period is to allow time for either party to appeal the judgment.

## ***Ending Other Spousal Relationships***

Other than living separate and apart, unmarried spouses do not need to go through any legal procedure to end their relationship. Unmarried spouses generally have 24 months after they separate to claim an interest or benefit stemming from that relationship. Individuals leaving common law or same-sex relationships should check the specific legislation or benefit program to determine the time frame within which claims must be made.

## **Finding a Lawyer**

An individual searching for a lawyer will often ask friends to recommend one. Alternatively, the Law Society of Saskatchewan operates the Lawyer Referral Service. The Lawyer Referral Service

will give the caller the names of two lawyers who have indicated a preference in the area of the law you need. A maximum of \$25 will be charged for the first half-hour consultation. The Lawyer Referral Service can be contacted toll-free at 1-800-667-9886. Another method often used is to make a few phone calls to firms listed in the yellow pages, inquiring whether they are experienced in family law and what their fees are. Many lawyers offer free initial consultations.

Legal Aid lawyers are available to act for eligible people who cannot afford to hire a lawyer and who need assistance in the areas of criminal law and family law. Individuals will generally be eligible if...

- they are receiving Social Assistance
- they are earning incomes that are not above the Social Assistance level
- legal costs are so great that their income would be reduced to the Social Assistance level

To contact Legal Aid, look under the Government of Saskatchewan blue pages in your telephone directory or in the yellow pages under "lawyers".

Family law can be very complicated, especially in matters of property, custody and divorce. A woman leaving an abusive relationship may be particularly vulnerable. A lawyer can help her to better understand her rights and the legal options that are available to her.

## More Information

### **National Clearinghouse on Family Violence**

Public Health Agency of Canada  
Address Locator: 1907D1  
7<sup>th</sup> Floor Jeanne Mance Building  
Tunney's Pasture  
Ottawa, ON K1A 1B4

Tel: 1-800-267-1291 or (613) 957-2938

Fax: (613) 941-8930

Web Site: <http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/>

A national resource centre that provides information about family violence, including a referral and directory service, fact sheets, research findings, statistics and much more. All services and publications are available free of charge in both English and French.

### **Provincial Association of Transition Houses (PATHS)**

Tel: (306) 522-3515

Fax: (306) 522-0830

E-mail: [paths@sasktel.net](mailto:paths@sasktel.net)

Web Site: [http://www.abusehelplines.org/paths\\_info/paths.html](http://www.abusehelplines.org/paths_info/paths.html)

PATHS is a non-profit organization that provides services to abused women and children, including fact sheets, pamphlets, posters and resource materials.

# Abuse Help Lines

Found in the front of SaskTel's Telephone Directories, the Abuse Help Lines provide information about abuse and contact information for helping agencies.

You are not alone.  
Help is available.  
Talk to a friend or one of the  
many organizations that offer  
support services.

**No one deserves to be  
abused.**

## free legal information

PLEA publications are available free through your local library, at distribution points throughout Saskatchewan, and electronically on our web site at

[www.plea.org](http://www.plea.org)

### *pamphlets*

Arrest (also available in Plains and Woods Cree)	Health Care Directives
Assault	HIV/AIDS, The Law and You
Babysitting	Jail or Bail
Becoming a Lawyer	Joint Tenants or Tenants in Common
Being a Witness in Criminal Court	Legal Careers
Bicycling	Names and Name Changes
Busted	Peace Bonds
Child Abuse and Neglect	Renting a Home (overview)
Child and Spousal Maintenance	Sexual Assault
Child Protection Services	Social Assistance: Appeals
Custody and Access	Social Assistance: Applying
Debts	Social Assistance: Special Needs, Advances, Overpayments
Going to a Lawyer	Single Parents (overview)
Going to Criminal Court	Youth Criminal Justice Act
Going to Youth Justice Court	
Harassment, Intimidation and Threats	

### *booklets*

Abuse of Older Adults	Farm Financial Difficulties
Abusive Relationships	Human Rights
Administrative Law	Non Profit Organizations
Automobiles - Buying and Selling	Older Adults and the Law
Buying and Selling a Home	Patients Rights
Buying Stuff	Power of Attorney
Consumer Contracts	Renting a Home
Consumer Fraud	Single Parents
Consumer Wisdom	Small Claims Court
Criminal Law	Special-care Homes
Death in the Family	Warranties and Guarantees
Debts and Credit	Wills and Estates
Drugs, Alcohol and the Law	When Couples Separate
Environmental Law and the Farmer	

Please note that some of the listed publications may be available in electronic format only.

