# The BC *Family Law Act*

## A Plain Language Guide for Women who have experienced abuse

CENTRE FOR FEMINIST LEGAL STUDIES

A Project of the Centre for Feminist Legal Studies 2013

This guide was completed as a project of the Centre for Feminist Legal Studies at the Faculty of Law, University of British Columbia by Laura Johnston.

Nothing in this guide constitutes legal advice, and it should not be relied on as such.

To contact someone about this guide, email cfls.familylawguide@gmail.com.

March 18, 2013

**Acknowledgements**

The author would like to thank Professor Susan Boyd for her valuable support and contributions in supervising the creation of this guide, as well as the many individuals and groups who generously reviewed drafts: Professor Fiona Kelly, Justice Donna Martinson, Zara Zuleman, Agnes Huang, West Coast LEAF, Women Against Violence Against Women, Battered Women's Support Services, Vancouver Rape Relief and Women's Shelter, Atira Women's Resource Society, Vancouver YWCA Legal Advocate, Vancouver YWCA Munroe House, Ane Mathieson, Nicolien van Luijk, Natalia Yudina, Karri-Lynn Hennebury, and Saskia van Stockum.

# Contents

# 1. Introduction

This guide has basic information on the *Family Law Act* in British Columbia (BC).

Family law is the law that governs legal parenthood, separation, divorce, caring for children after separation, dividing family property, spousal support, and child support. This guide focuses on problems related to separation.

The *Family Law Act* is a new law that came into effect March 18, 2013. The new law changed many things about family law, so terms or information you have heard about may be different now.

The *Family Law Act* is a BC provincial law, which means it applies to people who live in BC. Each province has its own law that addresses family law problems. If you have a family law problem that involves people or property in different provinces, this guide may not answer your questions.

This guide provides information and explains options, but does not give legal advice on which option is right for you. For legal advice, you must consult a lawyer.

*Although this guide discusses issues related to violence, this guide is about family law, not criminal law. For example, if a judge finds that your spouse has been violent to you in a family law proceeding, this does* ***not*** *mean that he has been charged with or convicted of a crime.*

*A legal matter is criminal when the government criminally charges and prosecutes a person. If your spouse has been criminally charged, the criminal proceedings will be separate from your family law matters.*

*Criminal proceedings may be considered in a family law proceeding if they are relevant to a child's safety, security or well-being (s. 37).* *See more information on this on page 13.*

## 1.1. Who is this Guide for?

This guide was written for women who are leaving or thinking about leaving a relationship with an abusive man and need information on family law problems. However, the information in this guide applies to a marriage-like relationship between any two people, for example, two people in a same sex relationship.

**Under the *Family Law Act*, the word "spouse" includes (s. 3):**

- a man you are married to,

**OR**

- a man you have been living with in a marriage-like relationship for at least 2 years (sometimes people call this common-law),

**OR**

- a man you have children with.

A "spouse" includes a man you have separated from or are about to separate from.

*Throughout the guide, you will see numbers in brackets at the end of a sentence or paragraph. These are references to the section of the Family Law Act that the information came from. For example, here (s. 3) means that you can find this information in section 3 of the Family Law Act.*

Although you may call your partner something else (for example, your boyfriend, your husband, or your ex) this guide will use the word "spouse" because that is the word the *Family Law Act* uses.

The *Family Law Act* **does not apply** when you are in a romantic or dating relationship with someone who you are not married to, not living with, or do not have children with. However, if a man you're romantically involved with or dating threatens you or is violent, it is still a criminal matter, and you can contact the police to make a report.

If you are **not married** to your spouse, only the BC *Family Law Act* will apply to your family law matters.

If you **are married** to your spouse, both the BC *Family Law Act* and the federal *Divorce Act* may apply to your family law matters. This guide does not have information on the *Divorce Act*.

## 1.2. What will this Guide Cover?

- What is considered “family violence” under the *Family Law Act*.
- Court orders to help protect you and your children from violence.
- What will happen with your children after separation:
  - What guardianship means and who will get guardianship of children.
  - What parenting responsibilities and parenting time are and how they will be divided between parents. This used to be called “custody and access”.
  - What can happen if one parent denies another parent parenting time or contact with a child.
  - When you may move with your child and what to do if you want to move with your child.
- What dispute resolution is and what different types of dispute resolution professionals do.
- Where you can get more help, information, and legal advice.

## 1.3. What will this Guide NOT Cover?

- Information about the federal *Divorce Act*, which may govern part of your family law problem if you and your spouse are married and you are trying to get a divorce.
- The division of family property, such as pensions or houses that you own.
- Spousal support payments and child support payments.
- Legal issues that can arise if your child was conceived using assisted reproduction, such as sperm donation or surrogacy.
- Issues relating to property on Indian reserves.
- Issues relating to immigration, such as spousal sponsorship.

If you have questions on these topics, you should look for other information or contact a lawyer for legal advice. There is a list of resources at the end of this guide, on pages 24 – 25.

## 2. Family Violence

This section explains how **family violence** is defined in the *Family Law Act* and gives some examples. Family violence includes physical abuse, sexual abuse, psychological or emotional abuse and exposing a child to violence (s. 1).

**Physical abuse:**

- Pushing, hitting, punching, choking, kicking, biting, forced confinement, or depriving someone of the necessities of life, like food.
- Attempts to physically abuse.

Note: If you use reasonable force to protect yourself or someone else from violence, this will **not** be considered family violence.

**Sexual abuse:**

- Unwanted sexual touching, forcing someone to have sex and any sexual touching of a child.
- Attempts to sexually abuse.
    - For example, your spouse tried to force you to have sex, but then stopped.

**Psychological or emotional abuse:**

- Intimidation, harassment, coercion, or threats to you, another person, a pet or property.
    - For example, your immigration status is sponsored by your spouse, and he threatens to have you deported or to withdraw his sponsorship.
- Restricting you from controlling your finances or from making your own decisions.
    - For example, your spouse will not let you go out with friends or tells you what time you have to be home by.
- Following or stalking you.
- Intentionally damaging property.

**Exposing a child to violence directly or indirectly:**

- For example, if your spouse is violent to you and your children see it, hear it, or see your injuries, both he and you may be seen as exposing your children to family violence. If you are being accused of exposing your children to violence because your spouse was violent to you, it may help to explain what you did to try to protect your children from being exposed.

# 3. Court Orders for Protection

This section discusses court orders you can apply for if you have separated from your spouse, or you are about to, and you are worried he will hurt you or your children.

## 3.1. Protection Orders

The *Family Law Act* has introduced a new court order called a **Protection Order.** You can apply to the BC Provincial Court or BC Supreme Court for a Protection Order even if you are not ready to make an application for other matters, like a parenting arrangement. A court can also make a Protection Order without being asked – that is, even if you haven't applied for one (s. 183(1)(a)).

A court may make a Protection Order if the court finds that (s. 183(2)):

- you, your children, or any of your family members are **at risk for family violence,**

and

- **family violence is likely to happen**. Family violence includes anything in the definition of family violence, discussed in section 2 on page 4 of this guide.

If your spouse breaks or violates a term of the Protection Order, you can call the police to enforce the order. A police officer may take action to enforce the order if she or he has reasonable grounds to believe the order has been violated. For example, if a Protection Order says that your spouse is not allowed to come to your home and he does, a police officer can take him off the property (s. 188).

A Protection Order expires one year after it is made, unless the court orders that it should last for a different length of time (s. 183(4)).

If you have a Protection Order, you can apply to court to change the order before it expires. For example, if your Protection Order will expire soon, but you are still concerned for your safety, you can apply to court to extend the order (s. 187).

*Under the old BC family law, a court could make a similar order, called a restraining order. These orders won't be made under the new law.*

*If you have a restraining order that was made under the old law, it will still be in effect. The new law has not changed it.*

A court can make the following orders in a Protection Order (s. 183(3)):

- An order that your spouse cannot:
  - communicate directly or indirectly with you or your children,
  - come to your or your children's residence, property, business, school, or workplace, even if your spouse owns the place or has a right to possess it,
  - follow you or your children,
  - own or carry a weapon.
- An order that places limits on how your spouse may communicate with you or your children.
- A direction to a police officer to:
  - remove your spouse from the residence,
  - accompany your spouse or you to the residence to supervise the removal of personal belongings,
  - take weapons from your spouse.
- An order that your spouse must report to court or someone named by the court.
- Any other terms or conditions that the court considers necessary to protect the safety and security of you or your children or to implement the order.

*If you have a Protection Order as well as another order under the Family Law Act, and the two orders say different things, the Protection Order "trumps" and the other order is suspended (s. 189).*

*For example, if there is an order that your spouse can have parenting time with the children, and a Protection Order states that your spouse is not allowed to communicate with you and your children, the order for parenting time is suspended, and your spouse must obey the Protection Order by not communicating with you and your children.*

In deciding whether to make a Protection Order, the *Family Law Act* tells the court to consider the following things. It will help if you give your lawyer or the court evidence on these things (ss. 184(1), 185):

- any history of family violence by your spouse,
- whether his violence is repetitive or getting worse,
- whether psychological or emotional abuse shows your spouse is trying to control you, for example, he tries to control who you see or where you go,
- whether you intend to separate from your spouse or have recently separated,
- any of your spouse's circumstances that increase the chances he will be violent, for example, he abuses drugs or alcohol, he has lost his job, he has financial problems, he has mental health problems associated with an increased risk of violence, he has access to weapons, or he has a history of violence,
- your perception of your and your children's safety and security, for example, whether you are afraid he will hurt you or your family,
- any of your circumstances that increase your vulnerability, including whether you're pregnant, your family circumstances, your immigration status, your health, and whether you are financially dependent on him,
- if your child is at risk from your spouse, whether your child may be exposed to family violence unless a Protection Order is made.

The court may make a Protection Order, even if (s. 184(4)):

- a previous Protection Order has been made,
- your spouse doesn't live with you at the time,
- you and your children are at a shelter, transition house, or other safe place,
- criminal charges may be or have been laid against your spouse,
- you and your spouse have a history of separating and getting back together,
- other orders have been made under the *Family Law Act*.

## 3.2. Temporary Exclusive Occupation of Family Residence

You can apply to the BC Supreme Court for an order giving you **temporary exclusive occupation of a family residence**. If the court makes this order, it means that you have the right to live in the residence for a certain period of time and your spouse is not allowed to live there. This order can apply to the place you normally live or a place that is owned, leased or rented by either you or your spouse or both of you. This order does **not** mean that the residence or property belongs to you, and you will not be allowed to sell it or give it away – the property division will still have to be decided later (s. 90).

## 3.3. Conduct Orders

The BC Provincial Court or the BC Supreme Court can make a **Conduct Order** – an order that you, your spouse, or your children must do or must not do certain things. The purpose of the Conduct Order is to help settle a family law dispute, to manage behaviours that are making settlement difficult, or to prevent misuse of the court (s. 222). For example, if your spouse is making many applications to court as a way to harass you, the court may consider this misuse of the court. A Conduct Order can be made even if other orders have been made under the *Family Law Act*, like a temporary exclusive occupation order.

Conduct Orders may be useful if the court has denied you a Protection Order. As the next best alternative, you could ask the court to make a Conduct Order about how your spouse behaves. However, remember that the court can give a Conduct Order to anyone in a family law dispute, including you.

Unlike a Protection Order, if your spouse breaks a term of the Conduct Order, you cannot call the police to enforce it. Instead, you would need to go back to court. If the court finds that your spouse didn't follow the order, the court can respond by making another order or fining your spouse (s. 228).

Some examples of Conduct Orders are (ss. 224, 225, 226):

- Requiring that you or your spouse participate in family dispute resolution.
- Requiring that you, your spouse, or your children participate in counselling or programs.
- Setting limitations or conditions on communication between you and your spouse.
- Requiring you or your spouse to pay rent, mortgage or bills for the family residence.
- Prohibiting your spouse from cancelling utilities at the family residence.
- Requiring that someone supervise the removal of belongings from the family residence.

# 4. Children

This section discusses issues related to children after separation. While you may simply think of yourself as your child's parent, the terms **parent**, **guardian**, **parenting responsibilities**, **parenting time**, and **contact** with a child all mean different things under the *Family Law Act*.

## 4.1. Parents and Guardians

If you and your spouse are the child's biological parents, then when you separate, both parents are considered the child's **guardians** (s. 39(1)). You and the child's other parent can make an agreement or a court can order that a biological parent is not a guardian on separation (s. 39(2)).

A child's biological parent who has never lived with the child and has not regularly cared for the child will **not** be considered a child's guardian (s. 39(3)). If you marry or live with a man who is not the child's biological parent, that does **not** automatically make that man the child's guardian (s. 39(4)). A person who is not a biological parent can apply to a court to be appointed as a guardian, for example, a child's grandparent (s. 51).

## 4.2. Parenting Responsibilities and Parenting Time

The new *Family Law Act* introduces new terms for how parenting is split up after you and your spouse separate: **parenting responsibilities**, **parenting time**, and **contact**. These terms replace the old BC family law terms "custody" and "access".

**Only a child's guardians can be given parenting responsibilities and parenting time** (s. 40(1)). People other than a guardian who want to spend time with a child can be given contact with a child. Contact is discussed in section 4.3, on page 14.

*The federal Divorce Act still uses the terms "custody" and "access", not "parenting responsibilities", "parenting time", and "contact". If you are married to your spouse and you are getting a divorce, the parenting agreements and orders may be made under the Divorce Act, not under the BC Family Law Act.*

If there is no agreement or order in place, the *Family Law Act* states that each child's guardian may exercise all parental responsibilities in consultation with the child's other guardian. This means that if you share guardianship of your child with another parent, you usually have to consult with the other guardian when making major decisions about the child. The *Family Law Act* says that guardians must exercise their parenting responsibilities in the best interests of the child (s. 43(1)).

You do **not** have to consult with the child's other guardian if it would be unreasonable or inappropriate in the circumstances (s. 40(2)). For example, if you have to make a medical decision quickly, or if you are hiding from your spouse at a transition house for your safety, it would likely be considered reasonable for you to make decisions on your own.

Some examples of **parenting responsibilities** are (s. 41):

- making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child,
- making decisions about where the child will live,
- making decisions about with whom the child will live and associate,
- making decisions about the child's education and participation in extracurricular activities, including the nature, extent and location,
- making decisions about the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity,
- applying for a passport, licence, permit, benefit, privilege or other thing for the child,
- giving, refusing or withdrawing consent for the child, for example, giving consent for health care treatment,
- requesting and receiving information about the child from third parties, for example, from teachers or doctors.

**Parenting time** is time that a guardian spends with a child. Unlike parenting responsibilities, which a child's guardian has automatically, parenting time must be arranged under an agreement or an order from a court or a dispute resolution professional. During a guardian's parenting time, she or he may make day-to-day decisions affecting the child, and control and supervise the child unless an agreement or order states she or he may not do these things (s. 42).

*How are Parenting Responsibilities and Parenting Time split up?*

A **parenting arrangement** refers to how parenting responsibilities, parenting time, and decisions about children are split up between guardians. Sections 4.1 and 4.2 explained that on separation, it is presumed that both parents are guardians and that both guardians share parenting responsibilities. However, you and your spouse can make a different agreement, or a court or a dispute resolution professional can order a different parenting arrangement.

There are different ways a parenting arrangement can be made:

- You and your spouse can make an agreement about how to share parenting responsibilities and parenting time. You can do this on your own, or you may use a service provider like a lawyer or a mediator. Once you sign an agreement, you are bound by it. It can be difficult and expensive to change terms in an agreement. Before you sign anything, consider the arrangement carefully. It is a good idea to speak to a lawyer to get legal advice first. If you cannot afford a lawyer, there are some suggestions for low-cost and free legal advice and information in sections 6.2 and 6.3 on pages 24 – 25. If you want information on changing an agreement, see section 4.4, Changing Parenting Arrangements, on page 14.

- A court can order that you and your spouse participate in a dispute resolution process. For example, a court can order that you must go to a dispute resolution professional, who will help you and your spouse reach an agreement about parenting arrangements. For information on dispute resolution, see section 5 on pages 20 – 23.

- A court can make an order about a parenting arrangement.

**The *Family Law Act* states that the only consideration for making a decision about parenting arrangements is what is in the best interests of the child**. This is true whether parents make an agreement, a dispute resolution professional makes a decision about parenting arrangements, or the court orders a parenting arrangement. This means decisions will be made based on what the decision maker thinks is best for the child, not based on what would be best for the parents or what the parents want.

No particular type of parenting arrangement is presumed to be in the best interests of the child. That means there is **no** presumption that (s. 40(4)):

- parenting responsibilities should be shared equally between guardians,
- parenting time should be shared equally between guardians, or
- guardians must make decisions together.

The law allows for one guardian to be given all the parenting time, parenting responsibilities and decision making. However, courts and professionals are very reluctant to deny a guardian any time with his or her children, no matter what the circumstances are. Sometimes courts view a guardian who appears resistant to the other guardian spending time with the child as uncooperative or unreasonable.

If you do not want your spouse to have parenting time or responsibilities with your child, you should make it clear that you think it is not in the best interests of the child because of his history of violence. If you claim that your spouse has been abusive, it will be up to you to convince the court or professional. Courts and professionals do not always believe women when they say their spouse was violent to them or their children. The more information and evidence you provide, the more likely it is that you will be believed. The *Family Law Act* states that an agreement, decision or order is **not** in the best interests of a child unless it protects a child's physical, psychological and emotional safety, security and well-being as much as possible (s. 37(3)).

*If you have a previous custody and access arrangement under the old BC family law (the Family Relations Act), that agreement or order is still in effect even though a new law has been passed. A person who had custody or guardianship of a child under the old law will be considered a guardian who has* ***parenting responsibilities and parenting time*** *under the new Family Law Act. A person who had only access, but not custody or guardianship of a child, under the old law only has* ***contact*** *with a child under the new Family Law Act (s. 251).*

**To decide what is in the best interest of a child in making a parenting arrangement, all of the child's needs and circumstances must be considered, including (s. 37):**

- the child's health and emotional well-being,
- the child's views, unless it would be inappropriate to consider them,
- the nature and strength of the relationships between the child and significant persons in the child's life,
- the history of the child's care,
- the child's need for stability, given the child's age and stage of development,
- the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities,
- the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member,
- whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs,
- the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members,
- any civil or criminal proceeding relevant to the child's safety, security or well-being.

**If your spouse has been violent to you or your child, a court must consider (s. 38):**

- the nature and seriousness of the violence,
- how recently the violence occurred,
- how often the violence occurred,
- whether any psychological or emotional abuse shows a pattern of coercive and controlling behaviour directed at you,
- whether the violence was directed toward the child,
- whether your child was exposed to violence that was not directed at her/him,
- the harm to your child's physical, psychological and emotional safety, security and well-being as a result of the violence,
- any steps your spouse has taken to prevent himself from being violent again,
- anything else that is relevant.

## 4.3. Contact with a Child

The *Family Law Act* uses the word **contact** to refer to time that an adult who is **not** a child's guardian spends with a child. For example, if your child's father is not the child's guardian, but wants to spend time with the child, he is asking for contact. Or, if a man you were in a relationship with, who is not the child's parent or guardian, wants to spend time with the child, he is asking for contact. Other relatives, like the child's grandparents, may also ask for contact.

**There are two ways someone can get contact with a child:**

1) If all the child's guardians agree, you can make an agreement that someone can have contact with the child.
2) The person who wants contact with the child can apply to the BC Provincial Court or the BC Supreme Court (s. 59). The court will decide whether to order that the person may have contact with the child based on whether it is in the child's best interest (discussed on page 13). If the court makes a contact order, the court can also order how the contact will take place.

## 4.4. Changing Parenting Arrangements

If there is no agreement or order in place about parenting arrangements, but you and the child's other guardian(s) have had an **informal parenting arrangement** in place long enough to become part of the child's routine, you must not change the informal arrangement without consulting the other guardian(s) in that arrangement. However, you do not have to consult if it would be unreasonable or inappropriate in the circumstances. For example, if you and your ex-spouse had an arrangement that he spends time with your children on weekends, but he threatens your safety and you leave with the children to stay in a transition house, it would likely be considered unreasonable or inappropriate for you to consult with him (s. 48(1)).

If you have an informal parenting arrangement in place, you can change the arrangement by making an agreement with the other guardian(s), or, if you cannot reach an agreement, by applying for an order from the court (s. 48(2)).

If you want to change an **agreement** you and your spouse made about parenting arrangements, and your spouse will not agree to the change, you can apply to court to set aside an agreement. If the court is satisfied that the agreement is not in the best interests of the child, then the court will set aside the agreement (s. 44). The best interests of the child include all of the factors discussed on page 13. However, it can be very difficult to convince a court to change an agreement that you made.

If you want to change an **order** that was made about parenting arrangements, you can apply to court to change or set aside the order. If the court is satisfied that there has been a change in the needs or circumstances of your child, then the court will make a new order that is in the best interests of the child (s. 47). A court will only be willing to make a new order if there has been a fairly significant change.

## 4.5. Moving with a Child

This section discusses what you can do if you want to move to another place with your child after you and your spouse have separated. Sometimes this is called “relocation” or “mobility”.

*If NO Agreement or Order is in Place*

If you want to move, and there is **NO agreement or order in place** about a parenting arrangement, you can try to reach an agreement with your child’s other guardian(s) about moving. If you reach an agreement with the other guardian(s), you can move.

If there is **NO agreement or order in place**, you cannot reach an agreement with your child’s other guardian(s), and the move will have a significant impact on your child’s relationship with her or his other guardian(s), you can apply to court for a parenting arrangement order. The court must consider what parenting arrangement would be in the best interests of the child (discussed on page 13), and the reasons why you want to move (s. 46). For example, if you want to move because you think you will have a better chance of finding work or to be closer to other supportive family members, the court may consider the move in the child’s best interests.

*If a Written Agreement or Order is in Place*

If there **is a written agreement or order in place** and you want to move with your child, and the move will have a significant impact on that child's relationship with her or his other guardian(s) or another significant person in her or his life, then you must give notice to the other guardian and anyone else who has contact with the child. The notice must be given in writing, at least 60 days before you move, and must state the date and location of the proposed move (ss. 65, 66).

The BC Provincial Court or the BC Supreme Court can grant you an exemption from all or part of the requirement to give notice if you satisfy the court that you cannot give notice without a risk of family violence OR if there is no ongoing relationship between your child and the other guardian or person having contact with the child. For example, if you want to move and you do not want to tell your spouse where you are going because you think he will hurt you or your children if he knows where to find you, the court can give you permission to move without giving him notice (s. 66(2)).

If you give notice that you would like to move and you reach an agreement with the child's other guardian or person who has contact with the child, then you may move with your child on the proposed date or after it.

If you give notice that you are moving and the child's other guardian(s) or person who has contact with the child does not file an application in court within 30 days for an order prohibiting (not allowing) relocation, then you may move with your child on the proposed date or after it. This means, for example, that if you give your ex-spouse written notice that you are going to move, it is not enough for him to simply tell you that he objects to the move. He must file an application in court for an order prohibiting the move (s. 68).

This also means that if your spouse gives you notice that he is leaving with your child, and you do not want him to leave the area with your child, you must file an application in court to prohibit the move within 30 days.

*If you are worried that your spouse will try to leave the area with your child, you can apply to BC Provincial Court or BC Supreme Court for an order that he cannot leave a specific area with the child (s. 64).*

If you and the child's other guardian(s) cannot reach an agreement about the move, then you can apply to court. The court can order that you may move with the child, or that you are not allowed to move with the child. This court's decision will partly depend on whether you have more parenting time, or substantially equal parenting time with the child's other guardian.

**If you have more parenting time with your child than the other guardian**, the move will be considered in the best interests of the child, as long as you satisfy the court (s. 69(4)):

- that the proposed move is made in good faith – that is, you have a sincere reason to move and you are not lying or doing it for a malicious reason. The court will consider the reasons for the move, whether the move is likely to increase your or your child's quality of life, whether you gave notice, and whether there are any restrictions on moving in a written agreement or order (s. 69(6)). For example, if you have a better chance of finding work or you have supportive family members in the place you propose to move to, the court may see the move as likely to increase your and your child's quality of life.

**and**

- that you have proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardian, people who have contact with the child, and other people who have a significant role in the child's life.

**If you and the child's other guardian have substantially equal parenting time**, in order to move, you will need to satisfy the court (s. 69(5)):

- that the proposed move is in the best interests of the child (discussed on page 13);

**and**

- that the proposed move is made in good faith – that is, you have a sincere reason to move and you are not lying or doing it for a malicious reason. The court will consider the reasons for the move, whether the move is likely to increase your or your child's quality of life, whether you gave notice, and whether there are any restrictions on moving in a written agreement or order (s. 69(6)). For example, if you have a better chance of finding work or you have supportive family members in the place you propose to move to, the court may see the move as likely to increase your and your child's quality of life.

**and**

- that you have proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardian, people who have contact with the child, and other people who have a significant role in the child's life.

## 4.6. Denying Parenting Time or Contact

This section discusses what will happen if someone is denied parenting time or contact that they are entitled to under an agreement or an order. This could happen if you deny someone parenting time or contact they are entitled to, or if someone denies you parenting time or contact you are entitled to. The *Family Law Act* treats situations when the denial is "wrongful" differently than when the denial is "not wrongful".

*When denial is wrongful*

If someone is denied parenting time or contact, that person can apply to BC Provincial Court or BC Supreme Court to have the agreement or order enforced. If the court decides that the denial was wrongful, the court can order (s. 61(2)):

- That your family participates in dispute resolution (see section 5 on pages 20 – 23 for information on dispute resolution).
- That you, your spouse, or your child must attend counselling or another program.
- That the person who was denied gets a specific time to make up for lost parenting time or contact with the child.
- That the transfer of the child be supervised by someone.
- That the guardian who denied the parenting time or contact has to pay the denied person for their travel expenses, lost wages, or child care expenses.
- That the guardian who denied the parenting time or contact has to pay a fine up to $5000.

If the court is concerned that the guardian who denied the parenting time or contact will not obey the court order, the court can order that guardian to give money to the court as security, or report to someone.

*You cannot deny a guardian parenting time that he is entitled to on the grounds that he has failed to pay child support that he owes for that child. If you deny someone parenting time because of a failure to pay child support, that may be considered "wrongful".*

*If your spouse repeatedly fails to exercise his parenting time or contact, a court can order him to reimburse you for lost wages, child care expenses, or travel expenses that you lost because he failed to exercise his parenting time or contact. The court can also make orders to try to ensure he exercises his parenting time or contact in the future (s. 63).*

*When denial is NOT wrongful*

The *Family Law Act* states it is **not** wrong to deny someone parenting time or contact in these situations (s. 62(1)):

- The guardian reasonably believes the person will be violent to the child.
- The guardian reasonably believes that the person was drunk or high on drugs.
- The child was sick, and a doctor writes a note that says the parenting time or contact is not appropriate.
- In the 12 months before the denial, the person failed repeatedly and without reasonable notice or excuse to use their parenting time or contact.
- The person told the guardian that they were not going to use their parenting time or contact and then changed his or her mind without giving the guardian reasonable notice.
- Other situations that the court thinks are enough to justify denial.

## *Tips*

When a court considers whether your belief was "reasonable" they will not just consider whether you believed it at the time. The court will also consider whether someone else in your shoes at the same time would have believed the same thing. For example, if you thought your spouse was drunk when he was picking up the children and you denied him parenting time, the court will ask whether another person in your shoes would also have thought your spouse was drunk.

If you are having problems with your spouse exercising his parenting time or contact, it might help to keep a journal or notebook where you write down notes of dates and what happened. For example, if your spouse often does not come to exercise parenting time or contact or often comes late, you can write down when this happens. It may help you to have these details written down if there is a dispute in the future.

## 5. Out of Court Dispute Resolution

This section explains what dispute resolution is and introduces some types of dispute resolution processes. **Dispute resolution** is an out of court process where you and your spouse negotiate with each other to reach an agreement. There is a strong emphasis in the new *Family Law Act* on using a dispute resolution process instead of, or at least before going to court (s. 4). The *Family Law Act* requires lawyers to tell you about options for dispute resolution (ss. 8, 197).

You do not have to participate in a dispute resolution process **unless** a court orders that you must. A court can make an order that you and your spouse must participate in an out of court dispute resolution process (s. 224).

Some examples of dispute resolution processes are:

- **Mediation** – a process where you and your spouse negotiate while a neutral third party tries to help you reach an agreement together. Mediators do not make decisions for people.
- **Collaborative Law** – a process where you and your spouse agree that you will not go to court, and instead you and your lawyer negotiate together with your spouse and his lawyer to reach an agreement.
- **Arbitration** – a process where you and your spouse agree that an arbitrator will make binding decisions for you in your family law dispute.
- Using the services of a **family justice counsellor** or a **parenting coordinator**.

The *Family Law Act* states that family law professionals like family justice counsellors, parenting coordinators, and lawyers have a duty to ask questions to find out if there has been violence in your family before beginning a dispute resolution process (s. 8).

It may be difficult for you to go through a dispute resolution process or to get a fair result if your spouse has been controlling or abusive. Dispute resolution is based on the idea that two people come to the process with the same amount of power and resources to bargain with. The assumption is that both of you are willing to make compromises to reach a fair agreement.

If your spouse usually made decisions for both of you, if he controlled the finances, or if he is used to getting his way, it may be very difficult for you to assert what you want and difficult for him to see your perspective and make compromises.

This is especially true if your spouse has an advantage going into the process. For example, if he has more money than you, if he has a better paying job or higher education level than you, or if he has permanent resident or citizenship status in Canada and you do not. If making sure your children stay with you is the most important thing to you, and your spouse knows that, he may try to use that as a bargaining tool to make you agree to an unfair property division or spousal support arrangement.

This does not mean that you should never take part in dispute resolution. If it is safe and workable for you, it can be cheaper and faster than going through a court process. But it is worth thinking carefully about whether you believe you and your spouse will be able to reach a fair agreement before you agree to participate.

### *Tips*

If you decide to participate in a dispute resolution process, or a court orders that you must, there are some things you can do to try to make the process more fair.

For example, you can ask to meet with the professional who will facilitate the process alone and tell them what your concerns are before having a group meeting with your spouse.

Some dispute resolution processes can take place without you and your spouse sitting down in the same room together. The professional who will facilitate the process can meet with you, then meet separately with your spouse, and go back and forth between you to try to reach an agreement. This is sometimes called “shuttle mediation”.

You can also ask whether you can have an advocate, transition house worker, rape crisis worker or lawyer with you during the process. The law does **not** say that a dispute resolution professional must let you have a support person with you during dispute resolution. But if a dispute resolution professional won’t agree to you having a support person with you, you can try to find another professional who will.

## 5.1. Family Justice Counsellors

A **family justice counsellor** is a government employee. They may provide you with information or give you a referral to another service or agency (s. 10). At the time this guide was written, the wait times to meet with a family justice counsellor were very long.

A family justice counsellor may also be appointed by a court to assess the needs of your child, the views of your child, or the willingness and ability of you or your spouse to satisfy your child's needs (s. 10). This means that the family justice counsellor may interview you, your child, or your spouse and prepare a report for the court. Under the old family law, these reports were sometimes called a "custody and access report" or a "section 15 report". You should receive a copy of this report. The court can order that you and/or your spouse pay a fee for this (s. 211).

## 5.2. Parenting Coordinators

A **parenting coordinator** is a professional who helps you and your spouse with implementing a parenting arrangement. People use a parenting coordinator when they already have an agreement or order in place for parenting arrangements, but they cannot agree on how the arrangement is put into place or carried out.

You will only use a parenting coordinator if you and your spouse agree to use one or the court orders that you must use one (s. 15). The court can order that you and your spouse go to a parenting coordinator even if you do not want to. At the time this guide was written, there was no government funding for parenting coordinators and the fees they charge are usually very expensive. If you do not have enough money to pay for a parenting coordinator, you should make this clear to the court.

A parenting coordinator may assist you and your spouse to make an agreement by creating guidelines and strategies about how to communicate and solve conflicts about parenting arrangements (s. 17). If you and your spouse cannot reach an agreement, a parenting coordinator may also make a binding decision about parenting arrangements or contact with a child that you and your spouse **must** follow (s. 18). When making this decision, the parenting coordinator must consider only the best interests of the child, not the interests of the parents (s. 18(2)). The best interests of the child include all of the factors discussed on page 13.

The *Family Law Act* states that you **must** give a parenting coordinator any information the parenting coordinator asks for. If the parenting coordinator asks for your permission to request or receive information about you, your spouse, or a child from other people who are not in your family (s. 16) you **must** give them this permission. For example, the parenting coordinator can ask you to give her permission to get information from your child's teacher about your child.

## 5.3. Mediators

A **mediator** is a professional who helps you and your spouse come to an agreement on family law problems after separation. Mediators do not make decisions for you. Any professional with at least 2 years of experience in a family related profession who takes mediator training can be a mediator. Lawyers, social workers, nurses, or teachers can be a mediator.

## 5.4. Arbitrators

An **arbitrator** is a professional who makes binding decisions for you and your spouse on family law problems after separation. Not all arbitrators can make decisions on all family law problems. An arbitrator who is a psychologist or counsellor can only make decisions about child-related issues and straightforward child support. Arbitrators who are lawyers can make decisions about any family law problem, including spousal support and property division.

*If you tell any professional, like a lawyer, family justice counsellor, parenting coordinator, mediator, or arbitrator, anything about a child being abused or neglected, they **may be obligated to report this to a child welfare worker with the Ministry of Children and Family Development**, who may begin an investigation. They may make this report even if you tell them that your spouse abused the child in the past, and he no longer has access to the child. They may make this report even if your spouse never abused your child, but he abused you and they think that the child was exposed to this abuse.*

*Under some circumstances, information you tell a lawyer will be kept confidential and not reported to the Ministry. It is important that before you tell a professional anything, you ask them what they will keep confidential and what they may have to report.*

# 6. More Information, Help, and Legal Advice

## 6.1. Finding a Lawyer

If you can afford a lawyer, many transition houses, rape crisis centres, women's centres, and women's support services keep lists of family law lawyers who are experienced in situations where there has been violence in the family. You can contact your local women's organization and ask if they keep a list of family law lawyers (see page 25 for a list of organizations).

You can also call the Lawyer Referral Service of BC, who will provide you with the names of a few lawyers in your area. Using this service, the lawyer will charge you $25 for the first 30 minutes of consultation. Any further work the lawyer does will cost additional money. You can find more information on the Lawyer Referral Service by calling 604-687-3221 or at http://www.cba.org/bc/initiatives/main/lawyer_referral.aspx.

## 6.2. If you Cannot Afford a Lawyer

This section explains what you can do to get legal advice if you cannot afford to hire a lawyer to represent you.

*Legal Aid for a Lawyer*

**Legal aid** services are free legal services provided by the government. Legal aid will pay for a lawyer to take your case and represent you if your income is below a certain level and you have a certain type of legal problem. At the time this guide was written, legal aid would only pay for a lawyer to represent you if you had one of the following problems:

- You need an immediate court order to ensure you or your children's safety or security, for example, a Protection Order (discussed on page 5).
- There has been a serious denial of parenting time or contact.
- A parent or guardian threatens to remove children permanently from the province.

If you do not qualify for a legal aid lawyer to represent you, you may qualify for legal aid to pay for a few hours of **advice** with a family law lawyer. Speaking with a lawyer for a little while may be helpful if you are representing yourself in court and want a lawyer to check your documents or answer a particular question.

There are also **duty counsel** at the BC Provincial Court and the BC Supreme Court. Duty counsel are lawyers paid by legal aid to help low income people with their family law problems. Even if you do not qualify for a legal aid lawyer, you may still qualify for legal aid to pay for you to speak with duty counsel. To find more information on legal aid, and to see if you qualify for legal aid, you can look on the Legal Services Society of BC website at http://legalaid.bc.ca/.

## 6.3. More Information

The following is a list of resources with more information on family law, court forms, court rules and fees, and how to prepare yourself for court:

- BC *Family Law Act* – http://www.bclaws.ca
  - On the BC Laws website, click on the "Laws" tab, then on the letter "F" tab, then on "Family Law Act"
- BC Ministry of Justice: Family Justice – http://www.ag.gov.bc.ca/family-justice/index.htm
  - Provides a website with information and runs Justice Access Centres in Vancouver, Victoria, and Nanaimo that offer information and help with family law matters in-person and over the phone
- Legal Services Society Family Law in BC – http://www.familylaw.lss.bc.ca/
  - Provides a website with information and runs a Family LawLINE with lawyers who give free legal advice over the phone for people with low income
- Supreme Court BC: Online Help Guide – http://www.supremecourtbc.ca/family-law
- Clicklaw – http://www.clicklaw.bc.ca/
- Access Probono – http://www.accessprobono.ca/
- JP Boyd's BC Family Law Resource – http://www.bcfamilylawresource.com/

Women's centres, women's support services, rape crisis centres and transition houses provide free and confidential support, counselling, information, and advocacy to women who have experienced violence. The following is a list of some women's organizations:

- Atira Women's Resource Society – 604-331-1407 – http://www.atira.bc.ca/legal-advocate
- Battered Women's Support Services – 604-687-1867 – http://www.bwss.org/
- Downtown Eastside Women's Centre – 604-681-8480 – http://www.dewc.ca/
- Sources Women's Place – 778-565-3638 – http://www.sourcesbc.ca/
- Women Against Violence Against Women – 604-255-6344 – http://www.wavaw.ca/
- Vancouver Rape Relief & Women's Shelter – 604-872-8212– http://www.rapereliefshelter.bc.ca/
- YWCA – 604-895-5800 – http://www.ywcavan.org/