



Improving Access to Justice for women in the NWT

Help for the Helpers!



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Objectives

- To increase your ability to support a **woman** through the EPO, criminal, child welfare and family law processes
- To provide you with information about presenting evidence of violence in these legal processes
- To increase your ability to assist women in making arrangements to leave or manage an **abusive relationship**



Disclaimer

- • This information is current to **February 2013**
- • This information is specific to the **Northwest Territories**
- • This is legal **information**, not legal advice



Common types of family Violence

- physical violence, sexual violence,
- financial abuse and psychological abuse
- the vast majority of victims of violence and abuse in intimate partner relationships are **women**
- the vast majority of those who commit acts of violence and abuse are **men**



Why the evidence is important

- • **Outcomes** are based on evidence provided
- • Judge must choose between **two sides**
- • Perpetrator will **deny** or minimize abuse
- • There are seldom **witnesses**
- • “**He** said versus **she** said”



Why women are sometimes reluctant to come forward

- **Personal** information
- Must **re-tell** it repeatedly
- Must tell it to many **strangers**
- **Fear, embarrassment, doubt**

... all good reasons



A Woman may have to provide...

detailed information about the abuse to:

- get services and court **orders**
- keep herself and her children **safe**
- ensure her **children's best interests**
are respected and protected



Who needs this information?

- • Legal Aid
- • Her **lawyer**
- • Mediation **screening** process
- • **Mediation**
- • **Court** documents
- • The **judge**



Two kinds of courts

- • Different in **purpose** and **structure**
- ?? **Criminal** court: most evidence is presented through live witnesses
- Victim Witness Assistance Program
- ?? **Family** court: most evidence is presented in written format



Obtain legal advice

- If possible, hire a **lawyer**
- If not, the Legal Services Board has **free services**
- ...the reality for most women leaving an abusive relationship is that they cannot afford a lawyer and they do not know where to start in getting help.



Family violence

- Family violence occurs when someone through their action or inaction causes any of the following to happen to another person in a family or intimate relationship:
 - • hurts or damages a person or property;
 - • causes someone to fear for their safety;
 - • causes someone to fear for the safety of a child in their care;
 - • causes a child in their care to fear for his or her safety;
 - • sexual abuse of a person or child in their care;
 - • forcible confinement; or
 - • psychological, emotional or financial abuse that causes harm or fear of harm to the applicant or a child in their care.



In Canada...

- ...about one in four couples who get separated or divorced have experienced the type of family violence called “spousal abuse”.
- People who have been separated or divorced are more likely than married people to say their spouse has abused them.
- Spousal abuse is a way to control another person by making her afraid.
- This type of abuse includes many different kinds of abuse, mistreatment or neglect.

If immediate danger... a few tips for women..

- **If you are afraid that your spouse will hurt you or your children, or if he has hurt or threatened you in the past, you need to protect yourself and your children.**
- **Call the RCMP if you are in immediate danger of being hurt or you've been hurt. You can also call the YWCA Alison McAteer House toll-free at 1-866-223-7775 and speak confidentially with a counsellor.**
- Remember that violence in relationships often gets worse at the time of separation or divorce. The risk of serious injury or death increases after separation.



Most important

- All violence is unacceptable. Not all violence is the same and there is not one type of behaviour that is spousal abuse. Instead, there is a range of behaviours that are abusive.

Abuse between spouses is not a private problem...

- Assaulting, threatening or harming another person is a crime, whether or not they are your spouse. The law applies equally regardless of gender or the status of the relationship.
- Both women and men can be victims of violence from a family member and violence can occur in heterosexual and same-sex relationships.
- However, throughout this section, the words “she” and “her” are used to describe the victim and the words “he” and “him” are used to describe the violent person. This reflects the fact that women are much more likely than men to be victims of family violence (85% of victims are female).



Spousal abuse occurs...

- spousal abuse is higher in:
 - lower income groups;
 - among younger couples;
 - common-law relationships; and
 - among
- Aboriginal Canadians.

Spousal abuse occurs

- Almost half of all women who separated and been physically abused in a prior relationship also reported serious emotional abuse in that relationship.
- Victims of spousal abuse often experience depression, anger, fear, drug and alcohol problems. This is especially common when there is both physical and emotional abuse, or if the physical abuse happens a lot and is really bad. However, even a single act of physical abuse can be very intimidating or psychologically destructive especially when combined with emotionally abusive or degrading conduct.
- Women are much more likely to be injured or terrorized by their spouse's abuse. There is a lot of psychological research that women, in general, are more likely to be emotionally scarred by spousal abuse, and that men use violence and threats of violence to exert emotional control over their female partners.

Spousal abuse occurs...

- In separating/divorcing families both men and women may be involved in verbal and physical aggression. Women are much more likely to be injured or terrorized by their spouse's abuse just because most men are physically stronger and can protect themselves better against female aggression.



What are the consequences of living with an abusive partner?

- Family violence eats away at a woman's sense of self-worth and value. The dynamics of family violence results in constant stress, which can cause or aggravate many psychological, physical or emotional conditions. These consequences can continue even after the abuse stopped.

Common psychological consequences..

- • nervousness or intense stress;
- • anxiety (ie. Panic attacks);
- • flashbacks of abuse events;
- • poor self-esteem;
- • feelings of depression;
- • insomnia or nightmares; and/or
- • difficulty or inability to make decisions.
- The list above are symptoms that together could suggest post-traumatic stress disorder (PTSD). PTSD is a psychological and physical reaction to severe stress.

Physical consequences

- **Physical Injuries**
- • many types of physical injuries can arise from physical violence. These injuries can be mild, moderate, severe or even lethal.
- As well as physical illness

The effect on children

- Children's health is linked with children's safety and security. Children living in a home with family violence are at risk of significant harm both from direct abuse by the violent parent and from hearing or witnessing harm to their non-violent parent. Children's health can also suffer as the family violence reduces the ability and capacity of the non-abusing parent to parent effectively.
- In families where there is family violence, children are frequently abused by the violent parent and this can have long term damaging effects on mental health, sense of identity and ability to form relationships, and may cause anxiety, panic attacks, nightmares, bed-wetting. Youth from violent families have an increased risk of self-harm, drug and alcohol misuse and running away from home.

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To leave or not to leave

- That is the question?
- Whether a woman makes a choice to stay in the relationship or
 leave the relationship there are many questions to answer.

Finding a safe place

- One way to protect the woman and her children is to leave the home and stay with other family, friends or check into a hotel.

Women can also choose to go to an emergency shelter for abused women and children if available in your community.

- The RCMP if asked will generally help the woman leave the home to go to a safe place. The community social service worker can also help by providing air flight or transportation out of your community to one of the shelters in the NWT.

Emergency protection orders (EPO)

- If you are in immediate danger, you can apply for an emergency protection order (EPO). An EPO can be issued in several circumstances:
 - if family violence has occurred;
 - if someone is at immediate risk and needs protection; or
 - if there is an immediate risk of property damage. An EPO can be issued by a Justice of the Peace in an ex parte hearing (only one party gives evidence and it is without notice to the other party) and is effective immediately.
- It can protect you from:
 - a spouse or former spouse;
 - someone who lives with you or who has lived with you in a marriage like or family relationship;
 - a parent of your child; your child or grandchild.

When you apply for an EPO

- Several things will be looked at, including:
 - • the nature of the family violence;
 - • the history of family violence;
 - • whether there is immediate danger to person or property;
 - • the best interests of the person applying for the order or any child involved (including those under the care of the person applying for the order).



Children

- Parents share custody when they are living together. If they are separating, they will have to decide who will have the children or how they will share custody of the children. If the parents cannot agree, then an application may be made to the courts for a decision.
- If a woman is forced to leave the home for her own safety and she takes the children with her, she should contact a lawyer **IMMEDIATELY** to settle the custody matter.
- If a woman is forced to leave the home for her own safety and does not take the children with her, but believes she will want custody of them, she should contact a lawyer **IMMEDIATELY** to seek legal advice.

Legal protection from family violence

- For anyone suffering from family violence or at risk of family violence, there is protection under the law. The *Protection Against Family Violence Act* gives people in abusive situations ways to protect themselves from their abusers.
- Under the act, a victim of abuse can get a protection order or emergency protection order to
 - keep them safe from spouses and violent family members.
- The act defines family violence to include abuse that is physical, sexual, emotional, or
 - financial abuse that causes harm or fear of harm to a person or that person's child. It also includes denying help to someone in need of aid and confining someone against their will.

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In an EPO a J.P. may direct that:

- • the person who has committed the family violence (the respondent) not communicate with you;
- • you have the exclusive right to occupy a residence;
- • the police are to remove the other person from a residence;
- • the police are to accompany you to a residence so that you can collect your belongings;
- • you should temporarily be entitled to exclusive use and possession of other items;
- • the respondent cannot damage, sell, or take property that you also own;
- • the respondent turn over to the police, any weapon that he owns or any document that permits him to own or purchase weapons within a specified period not exceeding 90 days.

More on EPO

. The EPO will usually be reviewed within three working days (no more than 7) of being received by the Supreme Court in Yellowknife. The Supreme Court can uphold the decision of the Justice of the Peace and confirm the EPO making

- it an order of the Supreme Court. If the Supreme Court judge does not think that the order should have been made, or if there is some question about the terms of the order or the evidence, the judge can call for a hearing of the matter. Everyone involved will be provided notice of the hearing date and time and will have the opportunity at the hearing to participate.
- The original order remains in effect until the Supreme Court either confirms the original order, changes parts or all of the order, or cancels the order altogether.
- Ex parte order – an order made by the court upon application of one party to an action without notice to the other.

Review of EPO

- A review hearing of the EPO may be done over the telephone. In order to set up a teleconference
- contact the Supreme Court Registry in Yellowknife at 1-866 -822 -5864 . It is necessary to contact the Court Registry immediately regarding the hearing if making a request to be heard by telephone.

HOW TO APPLY FOR EPO

1. Call 1-866-223-7775 or your local RCMP and tell them that you want to apply for an Emergency Protection Order (EPO).
2. You will need to tell them what is happening at your home and why you need help right away.
3. The person you call will help you talk to a specially trained Justice of the Peace, who will decide whether you need emergency protection.
4. If the Justice of the Peace decides that you need emergency protection, they will grant the order. The RCMP will give you and the abusive person a copy of the Emergency Protection Order and will help to make sure you are safe. They will also help you if the other person disobeys the order.
5. The Supreme Court in Yellowknife will review the order and either confirm the order or direct that a hearing be held. You will receive notice of the decision.
6. Contact the court worker closest to your community or Legal Aid immediately if you receive notice of hearing.



note

- **Note:** The Territorial Courts have no jurisdiction over property located on a reserve under the *Indian Act*, and may not make an order dealing with the use of the family home when it is located on a reserve. (there are two reserves only in the NWT to which this applies)

Steps to take if there is a hearing

- 1. The Supreme Court in Yellowknife reviews all EPO granted within 3 days of receiving them, and the Justice of the Peace will forward the EPO, the tape recording of the application and any notes for review by the court.
- 2. A judge of the Supreme Court will review the order and either call for a hearing on the evidence or confirm the order.
- 3. If a hearing is called both parties will receive notice from the court with the date and time of the hearing.
- 4. The Emergency Protection Order remains in effect until the Judge makes a decision at the hearing.
- 5. Contact the Court Worker closest to your community or Legal Aid IMMEDIATELY if you are served notice of a hearing.

Responding to an EPO

- 1. The RCMP will serve (give you a copy of) the Emergency Protection Order; the Order has immediate effect so read and obey the conditions carefully.
- 2. If you disagree with the Order or the conditions of the Order, contact the Court Worker for your community or call Legal Aid at 1-867-873-7450.
- 3. Disobeying the conditions of the Order is an offence and you could be subject to a fine of up to \$5,000.00 or jail up to 6 months or to both.
- 4. You have the right to apply to the Supreme Court in Yellowknife to either set aside or change the Order. Contact the Court Registry at toll free 1-800-822-5864.
- 5. You have the right to seek a lawyer for advice on what your rights are and what you are required to do respecting this Order.

Protection orders



- A protection order applies when the immediate situation is not an emergency and you need protection for longer than 90 days and there are further matters to deal with. The length of a protection order is not limited by the legislation. It takes longer to get this kind of order and it is helpful to have a lawyer make this application. The Protection Order is an order of the courts and is granted only after a hearing of the matter in front of a judge.

Protection orders

- The judge making a protection order has more options under the legislation and can do things that cannot be done with an EPO. For example, the judge can order the respondent to go to counselling, or to pay for medical and dental costs, repair or replacement of items destroyed, counselling services, or other costs caused by the respondent's violence.
- You do not need to go to court to get a protection order. Your lawyer can bring the application on your behalf and the matter may be heard in chambers through sworn affidavits.
- A protection order can be granted *ex parte* but is not effective until the other party who was not at the hearing, has been served with a copy of the order granted at the hearing. In the case of a hearing for a protection order at which the other party does not appear even though they have had notice of the hearing be sure that the other party is served with the order (given a copy of the order).

Warrants of entry



- A judge can grant a warrant of entry allowing the police to enter a home where there is reason to believe that someone is being kept from communicating with others and may be suffering from family violence.
- This warrant will allow the police to enter a home and search it. The police can then assist or examine the person who may be suffering from family violence if they are in the home, remove them from the home, and remove anything that may show that the person is or has been the subject of family violence.

Restraining orders



- A restraining order is a protection order made by a judge in family court to help protect you from another person.
- The order will list certain conditions, depending on what you ask for, that your spouse or ex-spouse must follow. Most of the time the order will say that your spouse or ex-spouse can have no direct or indirect contact with you or your children – no visiting the home or workplace, no phone calls or letters, and no messages through other friends or relatives. Talk with a lawyer about getting the order and discuss the conditions that will keep you and your children safe.

Restraining order

- The order can be obtained by making a court application under the *Children's Law Act* or the *Family Law Act*. When you apply for a restraining order you are called the *applicant* and the other person against whom the order is being sought is called the *respondent*. The court will not automatically order specific terms of the order. You must be sure to ask the court for the terms that are going to apply in your circumstances and which are going to help keep you safe.

Restraining order



- Most people apply for a restraining order at the same time they are making an application on other family law matters. If you have suffered from family violence but are not currently in an emergency situation, you can apply for a restraining order at the same time as other family matters.

Restraining order

- In a non-emergency situation, notice of the application for a restraining order must be given to the respondent. That person can then go to the application hearing and tell the judge their side of the events and speak against the order being granted.
- In an emergency it is possible to make an application for a restraining order, *ex parte*, without giving the other person notice of the hearing. If an order is granted on an *ex parte* application, the court will set a date to review the order so that the person named in the restraining order can be there to present their side if they wish to. The order will be effective as long as the order has been served on the respondent. (A copy must be given to the respondent)

Restraining orders

- A restraining order can force your spouse or ex-spouse to:
 - stay away from you or any children in your lawful custody;
 - not communicate with you or children except as the order allows;
 - surrender any weapons to authorities;
 - keep from possessing certain property.
- A person who breaks a condition on a restraining order can be arrested without a warrant. Make sure that you have a copy of the restraining order to provide to the police.

Peace bond



- A peace bond can be used when you are afraid for your safety, your children's safety or the safety of your property. A peace bond cannot protect you from emotional or financial abuse. It is an order from a criminal court and requires someone to keep the peace and obey any other conditions that the court puts on the order.
- You need to make a formal complaint to the RCMP and you must give and swear to a statement called an "information" giving the details of why you are afraid for your safety. The RCMP will then direct the process, you will need to attend a hearing of the matter and give evidence usually in a JP Court in the community. The court will require evidence in order to justify restricting the freedom of another person.

Peace bond

- A peace bond can be granted for a maximum of 12 months and is enforceable anywhere in Canada. Breach of a peace bond is a criminal offence for which the person can be arrested and charged. Make sure you have a copy of the peace bond.
- If you agree to see the other person or invite him home to talk while the peace bond is in effect he may then be able to apply to the court for the order to be lifted because even you are not keeping the terms. There must be a real or perceived threat from the person you are getting the peace bond against.

Peace bond

- A peace bond is an order made by a judge with conditions such as to be on good behaviour and keep the peace and likely to have no contact with the victim.
- You can apply for a peace bond for protection from anyone, including someone you have only been dating relationship with like an ex-boyfriend.
- You must have reasonable grounds to believe that the other person will harm you or your children or your property.



Changing an order

- Before you make a request for any changes to a peace bond, restraining order or emergency protection order, speak with your lawyer, a victim service worker or a counsellor from Alison McAteer House. Talk to them about how this will affect your safety and the safety of your children.
- Remember the order was put in place to protect you.



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