

# **SPEAKING OF ABUSE**

Violence Against  
Aboriginal Women in  
Relationships



Information about a woman's rights

January 2004

**For help in your community, call:**

**Police**

Call 911, or look for the emergency police number in your community inside the front cover of your Telus phone book.

**VictimLINK — help and information 24 hours a day**

Call 1-800-563-0808.

**If you have a speech or hearing impairment**

Call the 24-hour Telus Relay Centre at 711 or 1-800-972-6509 (for TTY users with special needs).

**For more information about who can help in your community, see page 49 of this booklet.**

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This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help.

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# Introduction

## Who this booklet is for

This booklet is for any Aboriginal woman who needs legal information about her rights because she is being abused, assaulted, or harassed by her husband, boyfriend, or ex-partner. If you suspect that an Aboriginal woman you know is being abused, please give this booklet to her.

The information in this booklet is for Aboriginal women who have remained with an abusive partner, or who have left or are trying to leave. When a woman tries to leave a partner who is abusive, the man may become more violent. This booklet can help you put together a safety plan if you decide to leave your abusive partner.

If you know someone who is being abused in a gay or lesbian relationship, the information in this booklet also applies to him or her.

## What this booklet is about

This booklet explains what you can do to protect your safety — whether you choose to leave or to stay with an abusive husband, boyfriend, or ex-partner — and what kind of help you can get from the police, victim services, courts, and people in your community.

This booklet includes information about —

- what violence in a relationship is;
- what you can do if your husband, boyfriend, or ex-partner has assaulted you or threatened to assault you, or is criminally harassing you;
- what the police do when they are called;
- what the court process is;
- how to apply for a peace bond or restraining order;
- what to do if you choose to end your relationship; and
- who can help with emotional support and legal advice.

## **What is an advocate or victim service worker?**

An advocate can be anyone in your community who wants to help you with your situation: a relative or friend, or someone working at your local women's centre, transition house, or family service agency. A victim service worker can also be your advocate.

If you are in an abusive relationship, you can get free help from an advocate or victim service worker in your community. This person can help you and your children — whether you decide to leave or stay in the relationship.

Throughout British Columbia, there are community-based victim service programs, some of which mainly serve Aboriginal women who are in abusive relationships and/or experiencing violence. You can also find victim

service workers at most police stations, or you can call VictimLINK at 1-800-563-0808.

You may or may not want to go to an Aboriginal advocate or a community-based victim service worker from an Aboriginal service agency. The choice is yours. There is information available to you whether or not your advocate or victim service worker is Aboriginal.

You may want to have an advocate or victim service worker with you when you are dealing with the police and the courts, to provide emotional support and to —

- help you find out what your rights are,
- help you learn what you will have to do in court,
- be with you in court,
- help you find out information about your case, and
- help you find information about the services in your community that you may need.

An advocate or a victim service worker may also be able to help the police and other people in the justice system with your case. For example, they can talk to the police about —

- interviewing you,
- giving you information, and
- helping you participate in interviews or in court.

If you cannot find an advocate or victim service worker in your community, call VictimLINK at 1-800-563-0808. If you would feel more comfortable with an Aboriginal



advocate or victim service worker, make sure you ask for one when you call VictimLINK. A staff member will direct you to the Aboriginal advocate or victim service worker nearest to you. If you are concerned about going to local agencies in your community or on reserve for help because people might know you, VictimLINK can give you information anonymously.

Native courtworkers can also help by explaining legal situations to you and speaking on your behalf in court. Native courtworker services are available in both urban and rural communities.

## Important — please read:

In BC, the government says that the police and the courts must treat violence against women as a serious crime. They must do everything they can to stop it.

The government's Violence Against Women in Relationships policy recognizes that there are many types of abuse, and that abuse can happen in all kinds of intimate relationships. The government is particularly concerned, though, about widespread violence against women by their male partners. Because of this, the focus of the Violence Against Women in Relationships policy is on women who are being abused, or who have been abused, by men in married, common-law, or dating relationships.

The information in this booklet is based on the Violence Against Women in Relationships policy.

It is important to remember that **violence against women is not a private, family matter. Assault and harassment are crimes.**

*Note:* This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. See "Who can help?" on page 49 of this booklet.

# 1. Violence against women in relationships – What does it mean?

When people talk about violence against women in relationships, they are usually talking about abuse. Abuse includes a range of behaviour — from intimidation and threats to physical or sexual assault. An abuser uses threats and violence to gain power and control over his partner and take away her self-worth.

## Some examples of abuse

Abuse can be physical, sexual, emotional, psychological, verbal, or financial. The following are some examples of abusive behaviour:

- humiliating or degrading you in front of others
- isolating you or stopping you from leaving your home (includes removing the phone, taking the only vehicle when you live far from town, not letting you see friends or family)
- yelling at you, insulting you, or calling you names

- constantly criticizing you and blaming you for everything
- controlling and limiting what you do, where you go, and who you see
- threatening to hurt you, your children, someone you know, or anything that is special to you (like a pet or something you treasure)
- frightening you by driving recklessly or threatening you with a weapon
- breaking your things or damaging property
- taking your money or controlling all the money in the household and not letting you have any
- threatening to have you removed from the reserve
- opening and reading your mail or other private papers
- following you or watching you wherever you are
- repeatedly phoning you (for example, at work or in the middle of the night)
- forcing you into sexual activity that you do not want
- shoving, slapping, choking, punching, or kicking you
- hurting you with an object of any kind

Abuse may start out as verbal or emotional and gradually increase to physical or sexual violence. After incidents of abuse, your partner or ex-partner may be very sorry or very loving. If you are involved with a man who is abusive, you may be feeling frightened, confused, and alone.

## What is against the law?

Any kind of abuse is harmful. But many kinds of abuse are also against the law — they are crimes, and the police can investigate and recommend that charges be laid when they report to Crown counsel (the lawyer for the government). Crown counsel then decides if there is enough evidence to lay charges. Assault is the most common charge used in these circumstances. Criminal harassment (stalking) is another important charge to know about.

### Assault

If your husband, boyfriend, or ex-partner does any of the things listed below, it is assault and it is a crime:

- He hits you or physically hurts you.
- He threatens to hit you or physically hurt you, and he has given you reason to believe that he can do it.
- He forces you to do things for his sexual pleasure that you do not want to do.

### Criminal harassment (stalking)

Criminal harassment is unwanted attention: a pattern of threats and actions that makes you afraid for your safety or your children's safety. It may make you feel you cannot do what you want or go where you want.

If anyone, especially an ex-partner, does anything listed below that makes you afraid for your safety, it is criminal harassment (stalking) and it is a crime:

- He contacts you over and over again (for example, at work or at home in the middle of the night).
- He makes indecent phone calls to you or calls you again and again and hangs up without speaking.
- He follows you or watches you or other family members (for example, he parks his car outside your house).
- He threatens you or other family members or friends.
- He sends you gifts you do not want.
- He threatens to destroy property or harm your pet.
- He does anything else that is threatening and that makes you afraid he will harm you.

If any of the things described above are happening to you, call the police right away. To help the police with your case, keep a written record of every incident, including what happened, the date, the time, and where it happened. Assault and criminal harassment are against the law. You have a right to protection.

If there is not enough evidence for the police to get involved, you can ask your family, friends, and neighbours for moral support or to be witnesses to anything that happens. The publication *What To Do If You Are Being Stalked*, from the BC Ministry of Community, Aboriginal and Women's Services, contains useful information if you are afraid you are being stalked. It is available online at [http://www.mcaaws.gov.bc.ca/womens\\_services/stalking](http://www.mcaaws.gov.bc.ca/womens_services/stalking).

No one should live in fear in her own home. No one should accept the pain and loss of dignity associated with either physical or emotional abuse. Children should not have to see their mothers being abused or be abused themselves. There is evidence that children who live in violent situations begin to accept this as a normal part of life and often become violent themselves. Asking for help and breaking the silence is the key to breaking this continuous cycle in our communities.

## **Are you the only one?**

No. Women of all age groups — from all economic and social classes and all racial and cultural groups — can be abused.

A 1993 survey conducted by Statistics Canada found that 25 percent of all women have experienced violence from a husband, boyfriend, or ex-partner. One in six women who are now married reported violence by her husband. One half of the women who have been married before reported violence by their ex-husbands. Abuse by boyfriends or on dates is also common.

In the First Nations population, the numbers are even higher. A 1989 study by the Ontario Native Women's Association revealed that while 1 out of every 10 Canadians has experienced some form of abuse, 8 out of 10 Aboriginal women have been abused or assaulted.

The 1999 *General Social Survey* on victimization also showed that women are more likely than men to experience more severe

forms of violence. It found that women were more than twice as likely to report being beaten, five times more likely to be choked, and twice as likely to have a gun or knife used against them.

Another study showed that a woman may experience as many as 35 violent incidents before she will call the police. In Canada, an average of two women are killed by their partners every week.

It is hard for any woman to take action to stop abuse in a relationship. If you are a senior or a woman with disabilities, you may be particularly dependent on your husband or boyfriend to take care of your daily needs. This could make it especially difficult for you to protect yourself from abuse.

You may also feel particularly isolated because of language, pressures from family, or racism. You may have more difficulty convincing people that the abuse is really happening. If someone in your family has been abused (an aunt, mother, cousin, or sister) and tries to tell you that abuse is normal because it happened to her, do not believe her. It is not normal and breaking the cycle of family violence can begin with you.

If you are being abused, it is important to remember:

**Violence against women in relationships is not a private, family matter. Assault and harassment are crimes. If you are being assaulted or harassed, call the police.**



You can also call your band social worker for advice and support. Abusers rarely stop on their own or seek help voluntarily.

## 2. Planning for your safety and your children's safety

It can be very difficult to leave a relationship when you are being abused. But whether you choose to stay or to leave, **your safety must come first**. The police and court orders may be able to offer some protection, but there are limits to what they can do.

To help keep you and your children safe, you need to have a safety plan — whether you have decided to leave or stay in your relationship.

A safety plan means thinking about what you need to stay safe, getting information, and talking over your plan with people who can help. Making a safety plan means doing things like —

- telling neighbours or friends to call the police if they hear frightening or loud noises or see anything suspicious
- memorizing the telephone number of a transition house or safe home for women
- thinking about where you can go if you decide to leave (a place that is safe, like a transition house, where your partner or ex-partner will not be able to find you)

- putting some money in a safe place, a little at a time, and cancelling joint credit cards
- packing a suitcase for you and the children and leaving it with a friend
- putting an extra set of house and car keys in a safe place
- getting legal advice about your situation
- putting IDs, Indian status cards, and other important papers for you and your children in a safe place

Read “If you leave a violent relationship” (page 23) and “What if you want to end the relationship?” (page 45) for more suggestions about your children and other safety issues.

Remember, planning for your safety is something you need to think about regularly, especially if your circumstances change (for example, if you move, have more children, become ill, or your situation gets more abusive). Ask someone you trust to help you with your safety plan. It could be your advocate, your victim service worker, your band social worker, a trusted Elder, or a friend.

# 3. Going to the police

## Calling the police

If your husband, boyfriend, or ex-partner has hit you, sexually abused you, or is threatening or harassing you, **call the police**. The emergency telephone number is inside the front cover of the phone book. It is **911** in the Vancouver/Lower Mainland area and in many other parts of BC. Be sure to check the number for your community. **If you have a speech or hearing impairment, you can call the 24-hour Telus Relay Centre at 711 or 1-800-972-6509** (for TTY users with special needs).

When the police answer, give your name and address. The person who answers the phone needs to know what is happening. Try to speak slowly and clearly. You need to answer all the questions you are asked.

Tell the police —

- that you are in danger,
- what your partner or ex-partner is doing or has done,
- if he has a weapon and what it is,
- if he has been violent before,
- if the violence has increased in severity,
- if you have children with you,
- if either you or the children have been hurt,

- if he has tried to choke you,
- if he has threatened you or your children, and
- if you already have a criminal peace bond or civil protection/restraining order.

If you do not have access to a phone, try to get to a safe place where you can use a phone, like a relative's, friend's, or neighbour's house.

## **What happens when the police come?**

When the police come to your house, they will talk to you to find out what has happened. Tell them if you are afraid for your safety and what your husband, boyfriend, or ex-partner has done to make you afraid.

Tell the police if you have tried to leave the relationship or have told your partner you are leaving. The police should know about this because your partner or ex-partner may become more violent as a result.

If the police find that your husband, boyfriend, or ex-partner has assaulted or threatened you, or that he might do it again, they will probably arrest him (see page 18). The government's policy about violence against women in relationships says the police must arrest the man if there is a risk that the abuse will continue. They can arrest him even if you do not want them to.

If your husband, boyfriend, or ex-partner leaves before the police arrive, the police can

still arrest him if they find him. If you know where he is, tell the police.

The police should give you a card with their name(s) and phone number and your police case number on it (ask for this card if you do not get it). If your partner or ex-partner returns, you can ask the police to come back.

## **Getting to a safe place**

If there is a transition house or safe home in your area, you can ask the police to take you and your children there. Take the children with you to protect them and improve your chances of getting custody later. Or ask the police to take you and the children to friends, relatives, or a motel.

If you have been hurt, the police can take you to a hospital or doctor. Most hospital emergency departments will be able to help you. They will also collect medical evidence of the assault. Remember: You have the right to ask questions about any medical examinations, to have a friend or advocate with you, and to refuse treatment.

If you stay in the family home, it is a good idea to have the locks changed. It is also a good idea to enlist the support of your community and ask your family and friends to help you. Maybe you can have someone come and stay with you until you feel safe. You have no reason to feel ashamed. You did not deserve to be abused, so you do not need to keep silent about your partner or ex-partner's crime. **Abuse is a crime, and you are the victim.**

## Arrest

If the police arrest your husband, boyfriend, or ex-partner, one of these two things can happen:

- He will be released, but the police or courts will make an order that tells him there are certain things he cannot do (for example, contact you or go to your house); or
- He will be kept in jail, possibly overnight, and will have to appear in front of a justice of the peace or judge in a courtroom for a “bail hearing.”

### The bail hearing

At the bail hearing, the judge will decide if your husband, boyfriend, or ex-partner should be let out of jail while the court is dealing with the charges against him. The judge will say what things he has to do to be released. These things are called the “conditions of bail.” For example, a condition of bail may be that he cannot own guns or other weapons (firearms) or use drugs or alcohol.

### No contact orders

The judge can order your husband, boyfriend, or ex-partner to stay away from your home or your workplace and not to contact you either directly or indirectly. The judge does this by making a “no contact order.” This means your partner or ex-partner cannot phone you or write to you, send gifts, or ask someone else to give you a message.

If you want a no contact order, you should tell the investigating police officer. The police will want to know about other times that your

partner or ex-partner has been violent. The police will then put the reasons for having a no contact order in their report to Crown counsel. Crown counsel is the lawyer for the government who will tell the judge why your husband, boyfriend, or ex-partner should stay away from you.

### **Conditions of bail**

Ask your advocate or victim service worker to help you find out from the Crown counsel's office what the conditions of bail are. Keep a copy of the no contact order with you at all times.

If your husband, boyfriend, or ex-partner does not do what the conditions of bail or the no contact order say, he can be arrested again and charged with "breach" of bail or an order. If he breaks any of the conditions of bail or a no contact order, phone 911 or the police emergency number in your community.

### **Getting information about the case**

If you want to find out what is happening with your partner or ex-partner's case, phone your advocate or victim service worker or the Crown counsel's office. Under the Victims of Crime Act, you have the right to get up-to-date information about the case, including information about —

- the organizations and services that can help you;
- compensation for injuries;



- how the criminal justice system works;
- the status of the police investigation and the court case;
- information about the jail term or supervised sentence that your husband, boyfriend, or ex-partner may get if he is convicted; and
- your right to privacy.

For information about any orders against your partner or ex-partner, and to make sure that orders are registered, call VictimLINK at 1-800-563-0808.

## **The police prepare a report**

Even if the police do not arrest your husband, boyfriend, or ex-partner, they are required to investigate your case and prepare a report. They will do this even if you have not been hurt or if you do not want to be a witness. They will ask you questions about what happened. (It is important to tell the police as many details as you can remember.)

The police will then give this report to Crown counsel, who decides whether or not your husband, boyfriend, or ex-partner can be formally accused of a crime (“charged with a criminal offence”).

If the police interview you again later, you can bring your advocate or victim service worker with you.

## **Will the man be charged?**

In BC, the government's policy on violence against women in relationships says that charges must be laid if there is evidence of assault, criminal harassment, or any other offence related to this policy. If the police believe a man has committed assault or criminal harassment in a relationship, they must send a report to Crown counsel and ask for approval to charge him. **The police do not need your agreement or consent to do this.**

Remember: you have the right to know the status of the police investigation and the court case involving your partner or ex-partner. Even if —

- no charges are laid by Crown counsel, or
- you are not satisfied with the Crown's decision,

you have the right to an explanation. You can also complain. Talk to your advocate or victim service worker to find out what you can do.

## **What if no charges are laid?**

Even if no charges are laid, you can still take steps to protect your safety by getting a protection order (a peace bond in criminal court or a restraining order in civic court). See "What else you can do" on page 38.

## **What if you do not call the police right away?**

It is a good idea to write down what happened and report the assault or harassment as soon as

possible, so that you remember the details. (Include the time, place, date it happened, and as many specific details as you can remember about what happened.) This makes it easier for the police to get the evidence they need.

Even if you do not call the police right away, you still have the right to get help. Call the police or go in person to the police station to report the assault or harassment. If you can, take your advocate or victim service worker with you.

## 4. If you leave a violent relationship

### What about the children?

When you leave your home, take the children with you to protect them and improve your chances of getting custody (the right to take care of them) later. If you cannot take the children, go back to get them as soon as you can without putting yourself in danger (that is, know where your husband, boyfriend, or ex-partner is). If you cannot go back to get them, call your advocate or victim service worker right away to ask for help and find out what you can do.

Be careful about your own safety if you go back for the children. Ask a police officer to come with you. Phone the police in advance to set up a time. The police can make sure that you are safe, but they cannot force your husband, boyfriend, or ex-partner to give you the children if you do not have a court order giving you custody.

If he refuses to let you take the children or has a court order giving him custody, get legal advice right away.

If you are afraid that your children are in danger, call the nearest office of the Ministry of Children and Family Development. Or call the Helpline for Children at: (604) 310-1234. See also “Planning for your safety and your children’s safety” (page 13).

## Your home

Even if you leave the home at first, you may be able to get an order later from a judge that says you have the legal right to stay in the home with your children. This is called an “exclusive occupancy order.” You need a lawyer to go to court with you to get this order. (See “Who can help?” on page 49.)

If you stay in the home and your husband, boyfriend, or ex-partner is arrested, you may be able to get a no contact court order that says he must stay away from your home. (See “The bail hearing” on page 18.)

Different rules apply to Aboriginal women who live in family homes on reserve. You should contact your band office right away if you are thinking about ending your relationship or have already left, and ask the following questions:

- Do I have the right to live on reserve?
- Who has rights to the land my home is on?
- What kind of housing do I live in?
- What are the band’s policies about housing on my reserve?

The answers to these questions may help you figure out whether or not you can stay in the family home on reserve. When the decision

about whether or not you can stay in the family home falls under federal law (the Indian Act) instead of provincial laws, it may be subject to your band's policies. Not all bands have the same policies, but **if you do not have the right to live on reserve, it is unlikely that you will be able to stay in the family home.**

The fact sheet *Can You Stay in the Family Home on Reserve?* — available from the Legal Services Society — contains more detailed information about housing on reserve (see the back of this booklet for information on how to order this fact sheet).

## **What to do about money**

If you have a place to stay for now, but you do not have enough money, contact your local Ministry of Human Resources (welfare) office or your band office, if you live on reserve, and apply for hardship assistance. This is **emergency money** that you can receive quickly. Ask your advocate, victim service worker, or band social worker to go with you.

If you are living on reserve and want to apply for welfare, contact your band's social development worker for more information. Welfare policy on reserve is different from welfare policy off reserve. Band social development workers on reserve have to follow the policy set out by Indian and Northern Affairs Canada when making decisions about welfare. For more information, see the Legal Services Society booklet *Welfare Rights on Indian Reserves in British Columbia*. See the

back cover of this booklet for information on how to order this publication.

If you decide to stay separated from your partner and you have no money, you can apply for regular “income assistance” (welfare/disability benefits). It is important to get off hardship assistance and start receiving income assistance as soon as possible. When you are on hardship assistance, there are some benefits you cannot get.

If you apply for welfare, the financial assistance worker will ask you to apply to court to get financial support (maintenance) from your husband, boyfriend, or ex-partner. If you do not want the ministry to pursue support because of the abuse, explain this clearly to the worker. He or she can choose not to pursue child support if you or your children are in danger of violence from your partner or ex-partner. Contact legal aid to see if you are eligible for free legal help (see page 51).

If you already receive money, like a pension or disability cheque, contact the office that sends you the cheques to tell them you have separated from your partner. Give them your new address.

Remember, it is important to tell the office(s) sending you money (income assistance, child support, pension, or disability) that you have just left an abusive relationship.

If you have money in a joint bank account, take your money out right away. If you have credit cards in both your names, contact the credit card company to cancel them or get your

name removed. If your pension or disability cheque is automatically deposited into your joint bank account, make other arrangements. If you own a house, car, or other property together, get legal advice.

## **How to get legal help**

You may need to talk to a lawyer right away about the children, money, home, or other property you shared with your boyfriend or husband. If you cannot afford a lawyer, go to a legal aid office to apply for legal aid. See “Who can help?” on page 49. Tell the person you talk to that it is an emergency and that you and your children are at risk of physical violence from your partner or ex-partner.

If you do not qualify for legal aid, you have several other options. The Lawyer Referral Service will give you the name of a lawyer in your community who can help. You can talk to this lawyer for 30 minutes for \$10. If you want to hire this lawyer for more help, ask how much he or she will charge you.

In many provincial courthouses, there are family duty counsel (lawyers) who help people with family law problems. You may be eligible for help from family duty counsel even if you do not qualify for legal aid. If you do not have your own lawyer and you qualify financially, duty counsel can give you advice and attend court with you on some matters, including getting an emergency restraining order. If you



do not qualify financially, duty counsel may still be able to help you.

LawLINE is a toll-free telephone service that provides general legal information and, in some cases, advice about legal issues. It is a service for people who cannot afford a lawyer but do not qualify for legal aid.

Local women's organizations and Native courtworkers may also be able to recommend a lawyer or legal services to you.

For more information on these services, see "Who can help?" on page 49.

# 5. The court process

When a man is charged with assault or criminal harassment, he (and you) will have to go to court. This court process is difficult for anyone, but especially for a woman who has been assaulted or harassed. The case may move slowly through the system. At times, you may feel as if you are the one who is being charged with an offence.

It is important to remember, though, that many women who have gone through this process have found it helpful in the end, and there are people who can help you. For example, it is a good idea to have your advocate or victim service worker with you as you go through the court process. This includes any interviews that you have with the police or Crown counsel, as well as court hearings and the trial itself.

## Crown counsel

Crown counsel is the lawyer for the government. After the police have prepared their report, Crown counsel decides if there is enough evidence to charge the man who assaulted or harassed you.

It is important to remember that Crown counsel makes this decision — and does not need your agreement to do so. Crown counsel is not acting as your lawyer. He or she will consider if it is in the interests of the public to lay charges, and if it is likely that the judge will find your husband, boyfriend, or ex-partner guilty.

## **Being a witness**

If Crown counsel decides that the case will go ahead, you are an important witness. You will be asked to “testify” (say what happened to you) at the trial. Crown counsel is required to make every possible effort to interview you before the trial and explain what will happen in court. (In some areas of the province, Crown counsel at the trial might not be the same person who first interviews you.) If you do not hear from Crown counsel, call to find out about the progress of the case, or contact your advocate or victim service worker.

If you live in a rural community, sometimes the only time that you will see Crown counsel will be shortly before the court date. You can also contact the Native courtworker or band social worker for more information before the court date.

If you need an interpreter, be sure to tell Crown counsel before your interview, so that he or she can arrange an interpreter for your interview and for the trial. Or you can arrange for your own interpreter by bringing someone with you who can translate for you at the

interview and for the trial. You need an interpreter if you feel more comfortable speaking your own First Nations language, or you can express yourself better in a First Nations language. If you have a disability, let Crown counsel know what assistance you will need, such as special transportation.

You will be given a paper called a “subpoena.” It tells you that you have to come to court and when the trial is going to happen. The subpoena will probably be delivered to you in person, but it may come in the mail, or you may have to pick it up from the police station.

If you decide that you do not want to be a witness, the case may still go ahead, especially if there are other witnesses or there is other evidence that the assault or harassment took place. However, the judge may tell you that you have to testify. This happens when the judge is satisfied that you can give material (important) evidence, and you have received a subpoena telling you that you have to appear in court. While you may ask to be excused from being a witness, you must show up at the trial if you receive a subpoena. If you do not, a warrant may be issued for your arrest.

## **Victim impact statements**

Crown counsel may ask if you want to fill out a victim impact statement. In this statement, you can explain what effect the assault or harassment has had on you and your children. Crown counsel uses this statement when he or

she recommends to the judge what kind of sentence the man should get if he is convicted.

Usually Crown counsel will interview you before the trial. He or she will also mail you a victim impact statement form for you to fill out, a brochure about the form, and a letter that says who you can ask for help. (You can also ask your advocate or victim service worker for help with filling out the victim impact statement form.) If Crown counsel does not talk to you about a victim impact statement, ask him or her about it.

## **The first appearance**

You do not usually have to be in court or say anything at a first appearance, although you can be there if you want to. Crown counsel's office will tell you if you need to be present. The man who assaulted you (called "the accused") will be ordered to appear in front of the judge or justice of the peace. At this "first appearance," he will usually be asked if he intends to get a lawyer and if he plans to plead guilty or not guilty.

If your partner or ex-partner says he is guilty, there will not be a trial. The court will set a sentencing date. At that time, the judge will say what will happen to your husband, boyfriend, or ex-partner (see "Sentencing" on page 35). The judge may order him to go to a treatment program for abusive men or to get treatment for drug or alcohol addiction. (You can talk to Crown counsel about asking the judge to order treatment.)

If your partner or ex-partner says he is not guilty, a trial will be held at a later date.

If your partner or ex-partner has been in jail until the first appearance, the judge may now release him on bail until the trial starts. Usually, being released on bail will include the condition that he stays away from the family home and that he not contact you. This means that he cannot even telephone you or give someone else a message for you. Another condition may be that he cannot have a gun or other weapons.

You need to know about the conditions of bail. Ask your advocate or victim service worker who you should call to find out what bail conditions have been set, or call the BC Victim Safety Unit at 1-877-315-8822.

## **Peace bonds**

Depending on the history of abuse, Crown counsel may consider applying for a peace bond instead of holding a criminal trial. A peace bond allows the judge to set conditions on your partner or ex-partner for up to one year without giving him a criminal record. (See “Peace bonds” on page 39.)

## **The trial**

Before your partner or ex-partner’s trial, you may want to visit the courthouse to watch some other trials and see what happens. You can have your advocate, victim service worker, or anyone else you want go with you to see another trial. This person can also go to court with you for your partner or ex-partner’s assault trial.

Crown counsel will present the Crown's case first:

- Crown counsel will present evidence to show that the offence happened. You will be called as an important witness. **If you do not want to give your address out loud in court, be sure to tell Crown counsel before the trial begins.**
- Crown counsel may call other witnesses, such as the police, friends or neighbours, and perhaps your doctor. Your children will not be asked to be witnesses unless it is absolutely necessary.
- If there are pieces of evidence, such as torn clothing, photographs of your injuries, a weapon, or medical records, Crown counsel may present these as part of the case.

The lawyer defending your partner or ex-partner (the accused) will then present his or her case. The process is the same as it was for Crown counsel. Often, your partner or ex-partner will be called as a witness, but not always. The Crown's witnesses, including you, will be questioned ("cross-examined") by your partner or ex-partner's lawyer. The defence lawyer's questions may be more difficult and confusing for you to answer than the Crown's. That is because the defence lawyer's job is to challenge the Crown's case. If you do not understand the questions, ask for an explanation. If you do not know the answer, tell the court. Remember, you are telling your story to the judge.

In some cases, your partner or ex-partner may decide to defend himself without a lawyer. If that happens, you may have to deal with your husband, boyfriend, or ex-partner questioning you when you testify.

After hearing the facts presented by both sides, the judge will make a decision.

## **If he is found not guilty**

If your husband, boyfriend, or ex-partner is found not guilty, this does not mean that the judge did not believe you. Criminal trials follow strict rules of evidence, and the law says that the accused has to be proven guilty “beyond a reasonable doubt.”

In rare cases, Crown counsel will decide to appeal a judge’s decision. Appeal judges make their decisions based on a transcript (written record) of the tape recording of the evidence made at the original trial.

## **If he is found guilty**

If your husband, boyfriend, or ex-partner is found guilty, he will be sentenced. This means that the judge will decide what should happen to him. The judge may decide the sentence right away or at a later date.

## **Sentencing**

Before deciding on a sentence, the judge may ask for a pre-sentence report. A probation officer prepares this report and may interview you. (Probation officers supervise people who



are released on bail and people who are found guilty and sentenced to community orders.) Be clear with the probation officer about any concerns you have about your safety and the safety of your children.

If you completed a victim impact statement, the probation officer should have seen it. If you wrote the victim impact statement right after the assault happened, you may want to update it. The information in it will help Crown counsel recommend a sentence and will help the judge decide.

If your husband, boyfriend, or ex-partner is found guilty, these are some of the sentences he could receive:

- a conditional discharge (he will not get a criminal record)
- probation (his sentence is suspended as long as he meets the conditions the judge sets; for example, he has to stay away from you and the children or attend a treatment program)
- a conditional sentence (such as a jail term that he serves in the community)
- a jail term

## **After sentencing**

It is important to tell Corrections staff and the Parole Board if your address or phone number change so they can send you up-to-date information about parole hearings and release dates for your husband, boyfriend, or ex-partner. You can also contact the Victim Notification Unit for information about when your partner or ex-partner is going to be

released. To get the phone number for your area, call VictimLINK at 1-800-563-0808.

It is also important to stay in touch with your advocate or victim service worker for ongoing support and information.

## 6. What else you can do

If your husband, boyfriend, or ex-partner is —

- not charged, or
- charged, but not convicted,

there are other legal steps you can take to protect your safety and get some other kinds of help.

### Protection orders

A protection order is an order made by a judge to protect one person from another.

A protection order will list certain conditions that the person named in it *must* follow — usually, that your partner or ex-partner can have no direct or indirect contact with you or your children: no visits to your home or workplace, no phone calls or letters, and no messages through a friend or relative.

If your partner or ex-partner disobeys the conditions of the protection order, he may face serious consequences, which may include a fine and/or jail.

Peace bonds and restraining orders are two different types of protection orders. Both types of orders are made by a judge in court — criminal court for peace bonds, civil court for

restraining orders. Both are registered in the BC Protection Order Registry (see page 42) after they are signed by the judge and can be enforced anywhere in BC. Ask the judge or your lawyer to include in your order a police enforcement clause that will direct the police to respond if the person named in the order does not follow the conditions outlined in it. This means the police can arrest the person named in the order if you are in danger.

See also *For Your Protection: Peace Bonds and Restraining Orders* online at [http://www.pssg.gov.bc.ca/victim\\_services/publications/index.htm](http://www.pssg.gov.bc.ca/victim_services/publications/index.htm) (scroll down the page to find the title) or at <http://www.lss.bc.ca> (under “Legal Info”).

## Peace bonds

You need to go to the police to ask for a peace bond (also known as an “810 recognizance”). The police will investigate your request the same way they investigate a criminal case.

A police officer will ask you to describe what has happened to make you feel afraid or in danger. Tell the officer if you have kept any notes about past violence or assaults, if you have received any threatening letters or messages, or if there is anyone who saw your husband, boyfriend, or ex-partner being violent or threatening you.

There is no fee to apply for a peace bond, and you do not need a lawyer to apply. The police will send your request to a lawyer employed by the government (Crown counsel).

The lawyer will handle your case in criminal court if he or she agrees that is the right way to proceed.

At the court hearing, you will be asked to explain to the judge why you are afraid of your partner or ex-partner and what has happened to make you feel this way. Your partner or ex-partner (or his lawyer) will be allowed to ask you questions during the hearing.

If the judge decides you have reasons to be afraid, the judge will order your partner or ex-partner to sign the peace bond. The peace bond will contain a list of conditions that your husband, boyfriend, or ex-partner must obey and the date the peace bond will expire (up to a maximum of one year). He may also be asked to deposit a certain amount of money to make sure he keeps his promise to obey the conditions.

If you leave the province, your peace bond is still valid and can be enforced anywhere in Canada.

### **Restraining orders**

You can apply for a restraining order in either Provincial or Supreme Court without going through the police.

If you are in the process of applying for divorce, child custody, guardianship, access, or support, the same court will handle your application for a restraining order. If you are not going through this process, talk to a lawyer to find out which court is the most appropriate

for you. A family justice counsellor can also give you information about the courts.

You may apply for a restraining order with or without the help of a lawyer (it is your choice), but you should hire one if you can. You will be responsible for paying the lawyer's fees, unless you qualify for legal aid. Most Provincial Courts have family duty counsel who may be able to help you get a restraining order (see "Who can help?" on page 49).

If you have a lawyer, he or she will handle the application and work with court staff to schedule a court hearing. If you are applying without a lawyer, ask court staff for information about the application process and how to arrange for a court hearing. Court staff will let you know when you need to appear in court.

The judge at your hearing will make a decision based on the evidence presented. If the judge grants the order, that order will list the exact conditions your partner or ex-partner must follow.

A restraining order has no time limit, unless the judge in your case includes a specific expiry date. However, a restraining order from BC will probably not be considered valid in another province. If you move out of BC, you may have to apply for another restraining order in your new province.

## **Keep a copy of your protection order**

Keep a copy of your peace bond or restraining order with you at all times. Although court staff will send the peace bond or restraining order to the BC Protection Order Registry right away (see page 42), it is a good idea to keep it on hand to show the police if you need to call them.

If the protection order includes your children, you should also give a copy to anyone who is responsible for them when they are out of your care, such as their teachers, child care providers, coaches, or other instructors. Tell them to call the police if your partner or ex-partner does not follow the conditions in the peace bond.

## **BC Protection Order Registry**

The BC Protection Order Registry is a computer database of protection orders — including both peace bonds and restraining orders — issued by BC courts.

If you call the police to say that your partner or ex-partner has not obeyed the conditions of a protection order, the police can phone a central number at any time of the day or night to get up-to-date information about what your order says and whether it is still valid. They can then act to enforce the order right away.

You can make sure your protection order is registered in the database by calling VictimLINK

toll free at 1-800-563-0808, 24 hours a day, seven days a week.

If the person named in your order is in a provincial jail, you can also file a confidential contact information form through a victim services office (call VictimLINK to find the office nearest to you) or your local courthouse. Victim Safety Unit staff will contact you when your partner or ex-partner is about to be released.

## **Victim Safety Unit**

You have the legal right to information about the status of an offender who has been sentenced to a provincial jail for committing a crime against you. The Victim Safety Unit (VSU), Ministry of Public Safety and Solicitor General, operates an automated notification system to provide information 24 hours a day, every day of the year.

You can register with VSU if you are the victim of an offender who has received a jail sentence of less than two years in a provincial correctional institution. In some cases, relatives of victims can also register. Contact VSU toll free at 1-877-315-8822 for details.

## **Crime Victim Assistance Program**

If you have been abused, the Crime Victim Assistance Program may be able to help you. The program is administered by the Victim Services Division of the Ministry of Public Safety and Solicitor General, and is governed by



the Crime Victim Assistance Act and Regulations. Under the act, victims of certain crimes, immediate family members of an injured or deceased victim, and some witnesses may be eligible for financial assistance or benefits. Some of the benefits available through the program include counselling, income support, medical expenses, and rehabilitation assistance.

Ask the police, your advocate, or your victim service worker about the program and how to apply for assistance, or contact the Crime Victim Assistance Program toll free at 1-866-660-3888. You can also find out more about the program online at [http://www.pssg.gov.bc.ca/victim\\_services/cva/index.htm](http://www.pssg.gov.bc.ca/victim_services/cva/index.htm).

# 7. What if you want to end the relationship?

If you want to end the relationship, whether you are married or living common-law, talk to a lawyer or family justice counsellor. It is important to remember that **if there has been violence in the relationship, mediation is rarely helpful**. Tell the lawyer or counsellor if you do not want mediation services.

If you cannot afford a lawyer, apply for legal aid (see page 51). The following sections are about some of the things you can discuss with your lawyer.

## Maintenance and support

Maintenance and support are the legal terms used for money paid to you and/or your children by your ex-partner. Both parents have a legal duty to care for their children. Your children's father may be ordered by a court to give you money to help support the children if they are living with you. (He may or may not be ordered to pay money to support you as well.) The government now has guidelines about how much child support he will have to pay. You can call the province's family justice services

information line for free from anywhere in BC, at 1-888-216-2211.

If the court has ordered the children's father to pay maintenance or support, the Family Maintenance Enforcement Program may be able to help you collect the money from him. Call the program at 1-800-663-3455 (toll free).

## **Custody**

Custody is a parent's legal right to take care of the children. If you leave the relationship, apply right away to family court for a temporary custody order for your children — even if you did not take the children with you. You need a lawyer for this.

Later, when you go to court to settle things, the judge will decide who gets custody based on what is “in the best interest of the children.” Read “What about the children?” (page 23) and “Planning for your safety and your children's safety” (page 13) for more information about children.

## **Guardianship**

Guardianship and joint guardianship gives parents the right to make decisions about how their children are raised (including education, religious training, etc.). It is important to talk to your lawyer about this issue when making custody arrangements.

## **Access**

Access is the legal term for the children's right to see the parent who does not have custody. A

judge may decide that the father can see the children, even if he has assaulted you. You can ask for restrictions or conditions on the father's access.

Sometimes the judge may order "specified access." This means that the father will be allowed to see the children only on certain days and at certain times. Sometimes the order will require that the father follow certain conditions, like not drinking or using drugs for 48 hours before the visit or not taking the children out of the province.

The judge may also order "supervised access," which means that the father can only see the children when someone else is there.

## **Separation agreements**

A separation agreement is a legal document that says what you and your ex-partner have agreed to about such things as maintenance, custody and access, and dividing up your property. Before signing a separation agreement, get legal advice separately from your ex-partner.

## **Property**

If you are married, you have a right to a fair share of the family assets, such as the car, house, furniture, and other things that the family used together. If you are living common-law, you may also have a right to a fair share of the family assets.

Remember, however, that different laws apply to Aboriginal people in matters involving

a family home or property located on reserve land. See “Your home” on page 24 of this booklet.

For more information, see the booklets *If Your Marriage Breaks Up* and *Living Common-Law* or the fact sheet *Can You Stay in the Family Home on Reserve?* — available from the Legal Services Society (see the back of this booklet for information on how to order them).

# 8. Who can help?

## In your community

In this section, we list phone numbers for some of the organizations that can help you. If you have trouble finding phone numbers for the organizations listed below in the white or blue pages of your phone book, talk to your advocate or victim service worker, or call or visit your local library for help.

### Aboriginal

Here are some people and agencies that may be able to help:

- Band social development offices
- Native child and family workers
- Native justice workers
- Native friendship centres
- Tribal council offices
- Transition houses

For contact information, see the online publication *A Guide to Aboriginal Organizations and Services in British Columbia* at [http://www.mcaaws.gov.bc.ca/aboriginal\\_dir/aboriginal\\_guide.pdf](http://www.mcaaws.gov.bc.ca/aboriginal_dir/aboriginal_guide.pdf), or *First Nation Profiles* at [http://pse2-esd2.ainc-inac.gc.ca/FNProfiles/FNProfiles\\_home.htm](http://pse2-esd2.ainc-inac.gc.ca/FNProfiles/FNProfiles_home.htm).

### Children

- Helpline for Children: Call (604) 310-1234.

## Legal

- **Dial-A-Law** — Dial-a-Law is a library of taped messages prepared by the Canadian Bar Association, BC branch, that provides practical information on a wide variety of legal topics: Call **1-800-565-LAWS (5297)**.
- **Family duty counsel** — Lawyers known as family duty counsel can be found in many provincial courts. They can give you brief legal advice about your legal rights and options, and information about court procedures. They also speak in court for people on some matters. For the location and hours of duty counsel offices, call your local legal aid office (see page 51), or your local court registry. To find your local court registry, look in the blue pages of your phone book under “British Columbia — Court Services.”
- **Family justice counsellors** — Family justice counsellors are accredited family mediators who can give you legal information about your options if you are going to court for a custody issue, or offer you alternatives to going to court. They can also provide referrals to other organizations that can help you. Call Enquiry BC at **(604) 660-2421** (in Vancouver), **(250) 387-6121** (in Victoria), or **1-800-663-7867** (toll free in the rest of the province) and ask to be connected to the family justice centre nearest to you.
- **Family Maintenance Enforcement Program** — This program is operated by the Ministry of Attorney General. You can apply to this program if you are having trouble getting your court-ordered support payments

(maintenance) from your ex-partner. The program will make sure that your ex-partner makes all his payments or take him to court if he does not: Call **1-800-663-3455** (toll free).

- **Lawyer Referral Service** — The Lawyer Referral Service (run by the Canadian Bar Association) can recommend a lawyer if you think you need legal help but do not know a lawyer. For \$10, a lawyer will talk to you for 30 minutes. After this interview, you can ask the lawyer what his or her fees are and arrange to pay for legal services: Call **1-800-663-1919** (toll free).
- **Legal aid (Legal Services Society)** — Legal aid is a provincial service that provides legal help for people who have serious legal problems and can't afford to pay a lawyer. To get a legal aid lawyer to represent you in court, you have to meet some financial eligibility rules and have certain kinds of legal problems.

To find a legal aid office, look in the white pages of your phone book under “Legal Aid — Legal Services Society” or in the yellow pages under “Lawyers — Legal Aid — Legal Services Society.” You can also call the Legal Services Society Call Centre at **(604) 408-2172** (Lower Mainland) or **1-866-577-2525** (elsewhere in BC). If your hearing is impaired, you can call a province-wide toll-free number to be connected to a teletypewriter (TTY) **1-877-991-2299**.



- **LawLINE** — LawLINE is a toll-free telephone service that provides general legal information and, in some cases, advice about legal issues. It is a service for people who cannot afford a lawyer but do not qualify for legal aid.

LawLINE is staffed with lawyers and paralegals, and can arrange immediate access to telephone interpreters, including those who speak Aboriginal languages.

Call **(604) 408-2172** (Lower Mainland) or **1-866-577-2525** (elsewhere in BC). After dialing the phone number, press “7” to connect to LawLINE.

### **Lesbian, Gay, Transgendered, and Bisexual**

- **Prideline** — information, referrals, and peer support for the lesbian, gay, transgendered, and bisexual community: Call **1-800-566-1170**.
- **Urban Native Youth Association** — “Two Spirited” youth worker: Call **(604) 254-7732**.
- **“Healing Our Spirit”**: Call **(604) 879-8884** or **1-800-336-9726** (toll free).

### **Safety**

If you need a safe place to go, try one of the following:

- **Transition houses**
- **Women’s centres**
- **Crisis centres**

## Online resources

- Ministry of Public Safety and Solicitor General, Victim Services Division — To access the Victim Services Directory or to get information about the Crime Victim Assistance Program, Victim Safety Unit, or VictimLINK, go to:  
[http://www.pssg.gov.bc.ca/victim\\_services/index.htm](http://www.pssg.gov.bc.ca/victim_services/index.htm)
- Ministry of Community, Aboriginal and Women's Services — Women's Services home page: [http://www.mcaws.gov.bc.ca/womens\\_services/index.htm](http://www.mcaws.gov.bc.ca/womens_services/index.htm)  
 Online Women's Services Directory:  
<http://www.bcconnects.gov.bc.ca/citevnt/womenserv.htm>

## VictimLINK

1-800-563-0808

VictimLINK staff can talk to you about your problem and provide you with information, support, or referrals to a service or contact in your community. This is a free, confidential service, available 24 hours a day. The line is TTY accessible and provides interpretation services for all the major languages spoken in British Columbia.

VictimLINK can also give you information about the BC Protection Order Registry and any orders you may have registered. For further information see <http://www.pssg.gov.bc.ca/protection-order-registry/index.htm>.

## **If it is an emergency**

Check inside the front pages of your phone book for emergency numbers in your community. If you have a speech or hearing impairment, call the 24-hour Telus Relay Centre at **711** or **1-800-972-6509** (for TTY users with special needs).

**This booklet is provided free by:**

For more free (in BC) copies of this and other LSS publications, contact the organization above or write to:

**Distribution**

Legal Services Society  
1500 – 1140 W. Pender Street  
Vancouver, BC V6E 4G1  
Phone: (604) 601-6075  
Fax: (604) 682-0965  
E-mail: [distribution@lss.bc.ca](mailto:distribution@lss.bc.ca)



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This booklet is also available in Chinese, English, Farsi, French, Punjabi, Russian, Spanish, and Vietnamese, and on the LSS website (<http://www.lss.bc.ca>).