



ending violence against women

Family Law Overview *by Pamela Cross, LLB*

Family law can be very confusing for anyone. Usually, people only turn to it when there has been a crisis in their family. Often, the laws themselves are difficult to understand or don't seem to offer what a family needs. The court process, too, is confusing, overwhelming, and even hostile at times.

This fact sheet provides an overview of what issues are covered by family law and the laws that are related to family breakdown. All the information reflects the realities and needs of abused women.

What issues are covered by family law?

When a family breaks down, many legal issues arise. The family law can help people sort out the following issues:

- custody and access
- child support
- spousal support
- division of property
- safety
- child protection
- divorce for people who were married

Many people are able to resolve these issues without going to court, but even so, they probably rely on Canadian and Ontario family laws to assist them.

Women leaving abusive relationships are less likely to be able to work out family law issues on their own. In fact, it may not be a good idea for a woman with an abusive partner to even try. Her partner may try to use family law as a way to keep power and control over her. He may use an issue like custody or access to intimidate her into agreeing to what he wants.

For these women, the formal family law is a very important tool.

What are the laws?

Most family laws are provincial. This means every province has its own set of laws. While these laws are not identical from one province to another, they are very similar.

People have to use the laws in the province where they were living when their relationship ended.

The only federal law related to family breakdown is the *Divorce Act*. This is the law that sets out how people can get a divorce.

In Ontario, there are a few laws that relate to family breakdown.

The *Marriage Act* sets out the rules about getting married.

The *Family Law Act* covers property division, spousal support and restraining orders.

The *Children's Law Reform Act* deals with custody, access and child support.

The *Child and Family Service Act* covers child protection.

The *Arbitration Act* contains the rules about family law arbitration.

Do these laws work well for abused women?

Very little family law is written to reflect the reality of woman abuse. The laws are gender neutral, and the issue of violence within families hardly ever appears specifically, with a few notable exceptions.

Most family laws, and the court processes that go with them, assume that there is a relatively equal balance of power between two people, which is not the case where there is a history of abuse.

In fact, this bias can sometimes create greater danger for abused women and their children. For example, family law related to children assumes they are better served by having a close relationship with both parents. This is not always true when there has been abuse in the family, and insisting on this kind of close relationship with the abuser can create unsafe situations for both the mother and the children.

Unfortunately, some of the people involved in the family law and court -- judges, lawyers, court clerks, mediators and others -- do not understand the dynamics of violence against women adequately, so their response is not always appropriate.

The law and processes also do not reflect the realities and needs of women from marginalized communities as well.

For example, there are serious challenges to having provincial family court or criminal court orders enforced on reserves because they are federal jurisdiction. This can leave women and children exposed to an ongoing risk of violence.

Inadequate legal aid creates barriers for women who do not have enough money to hire their own lawyer.

There is a serious lack of information and services in languages other than English and a general lack of cultural competency in the law and the court system.

What about the criminal court?

Many abused women are dealing with criminal law, too, if their partner has been charged with a criminal offence. In some cases, she may have been charged as well -- dual/counter charging is a significant problem, especially for women of colour and immigrant women.

This can make her family court experience even more challenging.

There is almost no communication between the two courts, and critical information is not shared, with the result that there can be orders from one court that conflict with the other OR that leave the woman exposed to possible future abuse/violence.

There are also different roles for the woman in the two courts: in criminal court she is a witness and not a party, does not have a lawyer and has very little control over what happens. In family court, she is a party, can have a lawyer and has control over her own part of the case.

The standards of proof in each court system are different.

In criminal court, the standard of proof is beyond a reasonable doubt, which means that there can be no reasonable explanation for what happened other than that the accused person did it. If there is any other reasonable explanation, the accused will be found not guilty.

In family court, the standard of proof is on a balance of probabilities, which means that one person's story is more likely to be true than the other person's story.

This standard of proof is generally easier to meet. Evidence may be acceptable in family court that is not in criminal court. The family court may accept that there has been abuse in the family even if the abuser was not charged by the police or convicted in the criminal court.

The focus of the two courts is also different. Criminal court is about society holding the accused person accountable for what he has done. Family court is about setting a plan in place to assist the family in moving on now that the parents have separated. These

differences can be confusing for a woman who is dealing with both court systems at the same time.

Is there anything hopeful for abused women going to family court?

There have been some positive changes to the laws in Ontario.

Amendments in 2006 to the *Children's Law Reform Act* require judges to consider violence and abuse within the family when making decisions related to custody and access.

Amendments to the *Arbitration Act* require that family law arbitration be conducted in accordance with Canadian and Ontario family law and prohibit the use of any private system of laws, including religious laws.

Recent amendments to the *Family Law Act* have strengthened the provisions relating to restraining orders so that anyone who breaches an order can be charged with a criminal offence.

In the fall of 2011, the government launched a new program called Family Court Support Workers, whose job is to assist survivors of domestic violence involved in the family court process. These people provide information about court process, assist women gather evidence of abuse, assist in communication with other people involved in the court process and provide ongoing emotional support.

All of these changes mean that women who have experienced abuse and their children are better supported as they move through the family court process and that the issue of violence is more likely to be understood and dealt with appropriately by the court.

This fact sheet contains general legal information only. It is not a legal document, nor is it a replacement for legal advice. Anyone in a situation involving family, immigration or refugee law is strongly urged to meet with a lawyer to understand fully their rights and responsibilities, the legal options available to them and appropriate legal processes. A lawyer can interpret the law and provide advice based on the personal facts and information in the specific case.

*For information about finding a lawyer in your community, contact Legal Aid Ontario at **1-800-668-8258** or **416-979-1446**.*

You can also visit Legal Aid Ontario online at www.legalaid.on.ca

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