

If you Leave... Your Guide to Child Custody and Parenting

If you are thinking about leaving an abusive relationship with your children, it is important to understand what steps you need to take to maintain custody of your children after you have left. This guide will explain the basics of what you need to know about applying for an interim (or temporary) child custody or parenting order after you have left an abusive relationship.

It is a good idea to gather the information you need to make a custody or parenting application before you leave. Make it part of your safety planning and talk to a lawyer about your options. For more information on safety planning, visit www.humanservices.alberta.ca/abuse-bullying/15727.html, call the Family Violence Info Line at 310-1818, or contact your local family violence information centre.

For more detailed information, read our **Families and the Law Series: Child Custody and Parenting** booklet—available for free at www.cplea.ca/publications.

What is an interim child custody or parenting order?

If you have left an abusive relationship with your children, you should apply for an interim child custody or parenting order as soon as possible. An interim custody or parenting order can grant you temporary custody of your children until a full court hearing can be held. If you do not apply for interim custody, you could potentially face serious consequences in the future including criminal charges or loss of custody. It is a good idea to talk to a lawyer before you leave your relationship to discuss your options for securing custody of your children.

In some cases, you may reach an agreement with your spouse or partner regarding custody of your children before you leave the relationship. However, if you have any of the following situations apply to you, you should still apply to court for a formal custody order to prevent future problems:

- You are concerned about your children’s safety when they are with the other parent. A good question to ask is: “If we were still in a relationship, would I leave the children alone with the other parent/guardian?”
- You feel unsafe or intimidated by your spouse or partner.

- Your spouse or partner has prevented you from seeing your children.
- Your spouse or partner is ignoring the situation and won't deal with your relationship breakdown.
- Your spouse or partner has taken the children and can't be located.

It is recommended you seek legal assistance to help you apply for a child custody or parenting order. You can find a family law lawyer in your area by calling the Lawyer Referral Service at 1-800-661-1095. If you are unable to afford a lawyer, call Legal Aid Alberta at 1-866-845-3425 to see if you're eligible for their service or contact your local community or student legal clinic (see full list at www.pbla.ca/gethelp/item.5602-Help_for_Individuals).

If you plan to file an application for child custody or parenting without legal assistance, you must first contact the Government of Alberta's Resolution and Court Administration Services at 1-855-738-4747 or visit www.rcas.alberta.ca. They can direct you to the right court forms and answer any questions you may have about court procedures. In some jurisdictions, you will need to meet with a court intake worker or family court counselor before making your application. Be sure to let the worker or counselor know if you have experienced family violence or are fearful for your safety or the safety of your children.

For more detailed information, read our **Families and the Law Series: Child Custody and Parenting** booklet – available for free at www.cplea.ca/publications.

How do I apply for a child custody or parenting order?

First, seek legal advice and representation if you are able to do so. If you plan to represent yourself, start by contacting the Government of Alberta's Resolution and Court Administration Services at 1-855-738-4747 or visit www.rcas.alberta.ca for location information. In some jurisdictions, you will need to meet with a court intake worker or family court counselor before making your application.

If you were married you can apply for a child custody order under the *Divorce Act* or a parenting order under the *Family Law Act*. If you were not married, you can only apply for a parenting order under the *Family Law Act*. While there are some differences between a child custody order and parenting order, both will give you custody of your children if you make a successful application.

To make an application under the *Divorce Act* in Court of Queen's Bench:

1. To file an application for child custody in the Court of Queen's Bench, you must attend the **Parenting After Separation** seminar offered by the Government of Alberta. It is offered as a six-hour in-person course or a three-hour online course. You will receive a certificate of completion to file with your application. Visit <http://pas.albertacourts.ab.ca/> for more information.



If you have experienced family violence, there is an additional course that you can take called **Parenting After Separation for Families in High Conflict**. This three-hour course is offered in Calgary and Edmonton. It is voluntary, but sometimes judges will order you and your spouse to attend it. However, you do not have to attend the program with your spouse. There is no cost to attend.

2. Fill out and file a **Statement of Claim for Divorce** (Form FL-1) or a **Statement of Claim for Divorce and Division of Matrimonial Property** (Form FL-3).
3. Once the Statement of Claim is filed with the court, you have to fill out and file a **Family Application** (Form FL-18), which is where you request child custody.
4. Write an **Affidavit** (Form CTS3819) that details why you are seeking child custody. You should include information about your personal situation along with records to support the information you provide. For example, if you tell the court that you want sole custody because you fear for your children's safety when they are with the other parent, you will need to provide evidence like police reports, children's psychological records, or letters from teachers to support your statement. You will need to swear that all information included in the affidavit is true. For more information, see our resources **Writing an Affidavit** or **Representing Yourself in Court**, available at www.cplea.ca/publications.
5. You will need to arrange to have the court documents served on your spouse. In Alberta, you must use a third party to serve your court documents, such as a process server, friend, or family member. For more information, see our resource **Serving Documents on an Abusive Party**, available at www.cplea.ca/publications or www.willownet.ca.

To make an application under the *Family Law Act* in Provincial Court:

1. Fill out and file a **Claim** (Form FL-10) for a parenting order.
2. Write an **Affidavit** (Form CTS3819) or fill out a **Statement** (Form FL-39 Parenting). A statement is similar to an affidavit – it contains your written evidence and facts supporting your application for a parenting order. Statements are designed to help you structure and focus your evidence. You can write an affidavit instead of a statement, if you prefer. For more information, see our resources **Writing an Affidavit** or **Representing Yourself in Court**, available at www.cplea.ca/publications or www.willownet.ca.



The *Family Law Act* assumes that both parents are the guardians of the children and will share equally in responsibility and decision-making for them. If you have experienced family violence, you may believe that shared guardianship will not work for your family. In that case, you can file a **Statement (Form FL 40 Parenting (Sole Guardian))** in which you ask the court to name you as the only guardian of your children. In this Statement, you will be asked about the other parent/guardian's involvement with the children and to explain to the court why it is in the best interests of the children that you be named the sole guardian.

3. You will need to arrange to have the court documents served on your spouse. In Alberta, you must use a third party to serve your court documents, such as a process server, friend, or family member. For more information, see our resource **Serving Documents on an Abusive Party**, available at www.cplea.ca/publications or www.willownet.ca.

Resources to help you make an application:

- If you plan to represent yourself, you must start by contacting the Government of Alberta's Resolution and Court Administration Services at 1-855-738-4747 or visit www.rcas.alberta.ca. They can direct you to the right court forms and answer any questions you may have about court procedures. In some jurisdictions, you will need to meet with a court intake worker or family court counselor before making your application. Be sure to let the worker or counselor know if you have experienced family violence or are fearful for your safety or the safety of your children.
- All court forms listed above can be found online at <https://albertacourts.ca/court-of-queens-bench/publications-forms/family-law-forms>.
- Read **Making a Court Application in the Court of Queen's Bench** at https://albertacourts.ca/docs/default-source/Family-Justice-Services/FJS_Making_Applicn_With_Applicn_12.pdf.
- Read other CPLEA resources – available for free online www.cplea.ca/publications:
 - **Domestic Violence Series: Writing an Affidavit**
 - **Domestic Violence Series: Serving Documents on an Abusive Party**
 - **Domestic Violence Series: Preparing for Court**
 - **Families and the Law Series: Representing Yourself in Family Court**
 - **Families and the Law Series: Child Custody and Parenting**

How long will it take for my application to be heard in court?

This depends on many things including availability of court dates at your nearest courthouse and the complexity of your application.

How much does it cost to file an application for a child custody or parenting order?

If you are filing an application under the *Divorce Act* in the Court of Queen's Bench, here are the costs:

- Statement of Claim for Divorce (Form FL-1) or a Statement of Statement of Claim for Divorce and Division of Matrimonial Property (Form FL-3): \$260
- Family Application (Form FL-18): \$50

If you are filing an application under the *Family Law Act* in Provincial Court, here are the costs:

- Claim (Form FL-10): \$50

Please note that court fees vary on an annual basis. Visit www.albertacourts.ca or your local courthouse to verify current fees.

If you cannot afford to pay these fees, you can apply for a waiver of court fees, if you meet certain eligibility criteria. For help applying for a waiver, contact your local legal clinic or Resolution and Court Administration Services.

More information about court fees and waivers can be found online at <https://albertacourts.ca/resolution-and-court-administration-serv/changes-to-court-fees>.

What information do I need to include in my application for a child custody or parenting order?

If you are making an application under the *Divorce Act* in Court of Queen's Bench:

Your application should state exactly what you want the court to order in terms of custody and/or access (visiting rights). The court has the power to order any conditions or restrictions that it views as fit and just that are in the best interests of the children. For example, if you can present evidence to the court that your spouse presents a safety risk to your children, you can ask the court to order supervised access. This would require a third party to supervise any visits between your spouse and children.

In your application, you must persuade the court that your request is in the best interests of your child(ren). In determining what is in the best interests of the child, courts will consider (note: this list is not exhaustive):

- any family violence, including its impact on the safety of the child and other family members, the child's general well-being, the ability of the abusive party to care for and meet the needs of the child, and the appropriateness of making an order that would require the parents to co-operate on issues affecting the child;
- any civil or criminal proceedings that are relevant to the safety or well-being of the child;
- what situation ensures the greatest possible protection of the child's physical, psychological and emotional safety;
- the child's physical, psychological and emotional needs, including the child's need for stability, taking into consideration the child's age and stage of development;
- who has cared for the child;
- the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- the child's views and preferences, where appropriate; and
- any plans proposed for the child's care and upbringing.



A complete list of factors that a court may consider can be found in Section 18 of the *Family Law Act*—<http://www.qp.alberta.ca/documents/Acts/F04P5.pdf>. Even if you're making an application under the *Divorce Act*, it is a good idea to review this list while drafting your application.

It is important to know that under the *Divorce Act*, the court will not take into account a parent's past conduct unless it is relevant to the parent's ability to care for the children.

If you are making an application under the *Family Law Act* in Provincial Court:

Your application should state exactly what you want the court to order in terms of parenting and guardianship. The court has the power to order any conditions or restrictions that it views as fit and just that are in the best interests of the children. For example, if you can present evidence to the court that your spouse presents a safety risk to your children, you can ask the court to order supervised parenting time or limit the other parent / guardian's powers, responsibilities, and entitlements.

Under the *Family Law Act*, the court is required to make all decisions based on the best interests of the child, including consideration of any family violence. In your application, you must persuade the court that your request is in the best interests of your child(ren). In determining the best interests of the child, the *Family Law Act* requires judges to:

- ensure the greatest possible protection of the child’s physical, psychological and emotional safety;
- consider all the child’s needs and circumstances, including:
 - any family violence, including its impact on the safety of the child and other family members, the child’s general well-being, the ability of the abusive party to care for and meet the needs of the child, and the appropriateness of making an order that would require the parents to co-operate on issues affecting the child;
 - any civil or criminal proceedings that are relevant to the safety or well-being of the child;
 - the child’s physical, psychological and emotional needs, including the child’s need for stability, taking into consideration the child’s age and stage of development;
 - who has cared for the child;
 - the child’s cultural, linguistic, religious and spiritual upbringing and heritage;
 - the child’s views and preferences, where appropriate;
 - any plans proposed for the child’s care and upbringing;
 - the nature, strength and stability of the relationship between the child and anyone living in the child’s home and any other significant person in the child’s life;
 - the ability and willingness of each parent/guardian to care for and meet the needs of the child and to communicate and co-operate on issues affecting the child;
 - taking into consideration the views of the child’s current guardians, the benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian; and
 - the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship.

Family violence is defined under the *Family Law Act* as any behaviour that causes or attempts to cause physical harm to a child or another family or household member. This behaviour can include forced confinement; sexual abuse; or, causing a child, family, or household member to reasonably fear for his or her safety. This definition does not include the use of reasonable force against a child as a means of correction.

Will I have to see my abusive spouse or partner to get custody?

After you make your application for child custody or parenting, it will have to be given to your abusive spouse or partner. However, in Alberta you cannot personally serve these documents and must get a third party to do this for you, such as a process server, friend, or family member. For more information, see our resource **Serving Documents on an Abusive Party**, available at www.cplea.ca/publications or www.willownet.ca.

On the day of your court hearing, it is likely that your abusive spouse or partner will be present in the courtroom to present his or her side of the story. It is a good idea to bring a trusted friend or family member for support. Be prepared to hear a version of events that you may not agree with during the court hearing. Do not interrupt, make faces, or roll your eyes. Try not to be confrontational or sarcastic. Remain seated while the other side is speaking. You may have a chance to talk to the judge again to challenge the evidence that you disagree with.

If you have hired a lawyer to represent you, then you will not be required to have any direct contact with your abusive spouse or partner. Your lawyer will speak to the court and your abusive spouse or partner on your behalf.

For more information on how to prepare for court, see our information sheet **Preparing for Court**, available at www.cplea.ca/publications or www.willownet.ca.

What is Safe Visitation?

There is a provincial program called Safe Visitation, created for families experiencing family violence. It provides a safe, structured environment for children to visit with the parent they don't live with. Visit: <http://www.humanservices.alberta.ca/abuse-bullying/15780.html>. Families are referred to the safe visitation sites by Alberta Child and Family Services.

Help & Further Information

- **Legal Aid Alberta** may be able to provide you with legal representation if you meet financial eligibility guidelines. Call 1-866-845-3425.
- Your local community or student legal clinic may be able to help you fill out custody and parenting court forms or assist you in getting court filing fees waived. See full list of locations at www.pbla.ca/gethelp/item.5602-Help_for_Individuals.
- If you plan to represent yourself, you must start by contacting the Government of Alberta's Resolution and Court Administration Services. Call 1-855-738-4747 or visit www.rcas.alberta.ca.
- Family Law Court forms are available online:
<https://albertacourts.ca/court-of-queens-bench/publications-forms/family-law-forms>
- **Making a Court Application in the Court of Queen's Bench:**
https://albertacourts.ca/docs/default-source/Family-Justice-Services/FJS_Making_Applicn_With_Applicn_12.pdf
- Family Law Information Centre Booklet on **Guardianship, Parenting, Custody, Access, and Contact:** https://albertacourts.ca/docs/default-source/Family-Justice-Services/fjs_gen_info_guardianship_12.pdf?sfvrsn=0
- Download our free booklets, **Child Custody and Parenting** and **Representing Yourself in Family Court**. Visit www.cplea.ca/publications under Family Law.



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Funding provided by

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