

Country and target area of study	Domestic Violence in British Columbia, Canada
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<p>I. Outline of the legal protection for domestic violence victims and their children</p> <p>※ Including the legal definition of domestic violence in your target area of study</p> <p>※ Including names of laws or regulations</p> <p>I, being a member of the Law Society of British Columbia (“BC”), can only advise with regards to the state of the law in BC. This includes the BC Family Law Act and federal laws that apply in BC. Other provinces in Canada may have different laws with respect to domestic violence.</p> <p>The Fundamentals of BC’s Legal System as it Relates to Domestic Violence</p> <p>The following are three fundamental concepts of BC’s legal system that must be understood in order to understand the laws relating to domestic violence:</p> <ol style="list-style-type: none"> 1. Domestic violence is addressed by criminal law and family law. 2. Family law is regulated at the provincial and federal level. 3. Family law is administered by two levels of court. <p>1. Domestic Violence is Addressed by Criminal Law and Family Law</p> <p>Domestic violence is addressed by both criminal law and family law. The purpose of criminal law is to allow the state to maintain order in society by dealing with offensive conduct. So under criminal law, the state has an interest in dealing with domestic violence whether or not the victim does anything beyond reporting the incident. On the other hand, the purpose of family law is to arbitrate disputes between family members. So under family law, a remedy will not be available if the victim does not take an active role. This is an important point because this means some remedies for domestic violence are available for “free” and pursued by the state (i.e. the Crown prosecutor) under criminal law whereas remedies for family law must be paid for by the victim and actively pursued by the victim. Although legal aid and free legal clinics may help alleviate the cost for the victim under family law, the victim nevertheless must pursue the claim against the abuser in the family law context. The implication of this distinction is that victims who have limited financial means and lack the motivation to pursue a claim against the abuser should be advised to seek remedies under criminal law if possible. However, there are limitations as to what remedies are available under criminal law, which are discussed further in this survey response.</p> <p>2. Family Law is Regulated at the Provincial and Federal Level</p>

Canada is a federation of many semi-autonomous provinces. Some laws are passed at the federal (national) level. Some laws are passed at the provincial level. Canada's constitution, the Constitution Act, 1867 (the "Constitution"), determines what area of law may be passed by each level. The legal framework for family law in Canada is confusing to many people because the authority to regulate family law matters is split between the federal and provincial levels. The authority to regulate "Marriage and Divorce" is given to the federal government under s. 91(26) of the Constitution whereas the authority to regulate "Property and Civil Rights in the Province" is given to the provincial government under s. 92(13) of the Constitution. Since family law deals with both of these matters (e.g. divorce, property division, rights of spouses and children), both the federal and provincial levels regulate family law. Family law is addressed by the federal government under the Divorce Act and by the provincial government under the Family Law Act.

Here is what makes things more complicated: It would be simple if, for example, the Divorce Act only addressed how to get a divorce and the Family Law Act is the only code addressing property and civil rights. But that is not the case. The federal Divorce Act not only addresses divorce, but also some matters closely related to divorce, such as child custody, child support, and spousal support. The provincial Family Law Act also addresses child custody, child support, and spousal support. What makes things even more complicated is that the Family Law Act uses different terminology from the Divorce Act. The Divorce Act uses "custody" to refer to the right to the care and upbringing of children but the Family Law Act uses "guardianship" and "parental responsibilities" to refer to this right, with certain distinctions being made between "guardianship" and "parental responsibilities". Visitation is called "access" in the Divorce Act and "parenting time" in the Family Law Act. The Divorce Act reflects the older family law concepts using technical legal terms such as "custody" and "access" whereas the Family Law Act, being a relatively newer code, reflects a more modern concept of family law using colloquial terms such as "parenting responsibilities" and "parenting time". The point of mentioning all of this is just to outline that different terminology is used in BC to refer to the same or similar thing. Where this survey has used a term to refer to any of these concepts (such as "visitation"), I have responded using the given term but the actual term used in BC may be different – even different between the two legal codes.

3. Family Law is Administered by Two Levels of Court.

In BC, there are two courts of first instance ("court of first instance" means a court where a claimant can start a claim – these are not appeal courts). There is the Provincial Court and the Supreme Court. The Supreme Court has more power than the Provincial Court. A Supreme Court judge can decide anything relating to family law, including the granting of divorce and the division of property. But a Provincial Court judge cannot grant divorce or the division of property. But a Provincial Court judge can make many other orders relating to family law available under the Family Law Act and criminal law, such as the protection of persons and granting of spousal and child support.

The Provincial Court is a more informal court, with simpler rules, no filing fees, more locations, and available templates for forms. The Supreme Court is a more formal court with filing fees and more complicated rules. For this reason, a self-represented party should be advised to seek orders in the Provincial Court if possible. Some remedies for domestic violence are available in both courts, such as protection orders (explained below). But some remedies, such as a divorce, can only be obtained in the Supreme Court. It is possible to use each court strategically to get the necessary orders with the least amount of cost and legal fees. For example, a

domestic violence victim can apply for a protection order (to be explained further below) in the Provincial Court in order to secure his or her safety first, and then a divorce can be applied for in the Supreme Court to finalize matters at a later time.

Having explained these three fundamental concepts of BC's legal system, I will now highlight the relevant laws relating to domestic violence.

Domestic Violence under the Family Law Act

The Family Law Act came into force in BC on March 18, 2013 and it is considered a modern family law legislation that addresses modern family issues. It does not use the term "domestic violence" but rather the similar term "family violence". It contains an entire section (Part 9) titled, "Protection from Family Violence". The definition of "family violence" is found at section 1 ("Definitions") of the Family Law Act. It says,

"family violence" includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;"

This definition of "family violence" is in accordance with the modern expansive understanding of what constitutes family violence. Not only physical violence, but also emotional abuse, financial abuse, property damage, and exposure of family violence to a child are all considered family violence.

The purpose of the family violence sections in the Family Law Act is not to prosecute against perpetrators, but rather to provide the victim with remedies against family violence. Prosecution of domestic violence is addressed in the Criminal Code of Canada, explained further below.

The Supreme Court Family Rules and The Provincial Court (Family) Rules

The Family Law Act is the legal code for the “substance” of family law. The Supreme Court Family Rules and the Provincial Court (Family) Rules are separate legal codes for the “procedure” of family law. Family law lawyers must consult both the Family Law Act and the rules for the applicable court (i.e. Supreme Court or Provincial Court) to determine the course of action for a client. For example, the Family Law Act will say what kind of relief from family violence is available; and the Supreme Court Family Rules will say what paperwork and timeline is needed to obtain such relief in the Supreme Court. As mentioned above, the Provincial Court (Family) Rules are simpler than the Supreme Court Family Rules.

Criminal Code of Canada

The Criminal Code of Canada is Canada’s criminal law legislation that applies in all provinces. There is no criminal law specifically addressing “domestic violence” or “family violence”. When there is an allegation of domestic violence, the perpetrator can be prosecuted under any one or more of the following general offences:

- sexual offences against children and youth (ss. 151, 152, 153, 155 and 170-172)
- child pornography (s. 163.1)
- trespassing at night (s. 177)
- failure to provide necessities of life (s. 215)
- abandoning child (ss. 218)
- criminal negligence (including negligence causing bodily harm and death) (ss. 219-221)
- homicide - murder, attempted murder, infanticide and manslaughter (ss. 229-231 and 235)
- criminal harassment (sometimes called "stalking") (s. 264)
- uttering threats (s. 264.1)
- assault (causing bodily harm, with a weapon and aggravated assault) (ss. 265-268)
- sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (ss. 271-273)
- making indecent and harassing phone calls (s. 372)
- kidnapping & forcible confinement (s. 279)
- trafficking in persons (ss. 279.01)
- abduction of a young person (ss. 280-283)
- theft (ss. 322, 328-330, 334)
- theft by person holding power of attorney (s. 331)
- misappropriation of money held under direction (s. 332)
- theft of, forgery of credit card (s. 342)
- extortion (s. 346)
- forgery (s. 366)
- fraud (s. 380(1))
- mischief (s. 430)

Although there is no specific crime of “domestic violence”, violence that is domestic in nature can be considered an aggravating factor when sentencing an accused under these crimes. Section 718.2(a)(ii) of the Criminal Code of Canada states:

“718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

[...]

(ii) evidence that the offender, in committing the offence, abused the offender’s spouse or common-law partner,

[...]

shall be deemed to be aggravating circumstances;”

This means a judge may render a stricter sentence for offences that are domestic in nature. Thus, even though the Criminal Code of Canada does not provide for any particular “domestic violence offence” per se, any offence can be dealt with as a domestic violence offence under this sentencing provision.

IV. Legal process regarding domestic violence	
1	Protective measures for domestic violence victims
※	Including order that prohibits the abuser from approaching the victim, and victim’s children or relatives, an order that obliges the abuser to vacate the residence shared as the main home with the victim, etc.
(1)	Outline (please specify your target area of study)
	Protective measures are available under both the Family Law Act and the Criminal Code of Canada.
	Protection Order under the Family Law Act
	A person can apply under s. 183 of the Family Law Act for “orders respecting protection”. These are commonly called “protection orders”. An “at-risk family member” can apply for such an order for him or herself or on behalf of another “at-risk family member”(s. 183(1)(a)). The Family Law Act defines "at-risk family member" as “a person whose safety and security is or is likely at risk from family violence carried out by a family member;” (s. 182). A protection order can include any one or more of the following terms (s. 183(3)):
	“(a) a provision restraining the family member from
	(i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,

(ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,

(iii) following the at-risk family member,

(iv) possessing a weapon, a firearm or a specified object, or

(v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;

(b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

(c) directions to a police officer to

(i) remove the family member from the residence immediately or within a specified period of time,

(ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or

(iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(e) any terms or conditions the court considers necessary to

(i) protect the safety and security of the at-risk family member, or

(ii) implement the order.”

A judge may grant a protection order if “family violence is likely to occur” and the person for whom the order is being sought is “an at-risk family member” (s. 183(2)). To determine this, the court may consider factors listed in s. 184(1), which includes:

“(a) any history of family violence by the family member against whom the order is to be made;

(b) whether any family violence is repetitive or escalating;

(c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive

and controlling behaviour directed at the at-risk family member;

(d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

(e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;

(f) the at-risk family member's perception of risks to his or her own safety and security;

(g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.”

Peace Bond under the Criminal Code of Canada

The protection order under the Family Law Act is limited to ordering protection from a violent “family member”. So a family law protection order cannot be issued against a violent boyfriend or girlfriend, for example. A peace bond under the Criminal Code of Canada operates similarly to a family law protection order, but a peace bond can be issued against anybody who has caused fear of bodily injury to another person. The other person does not have to be a family member.

The terms of a peace bond can contain terms that are similar to those in a protection order under the Family Law Act, including the prohibition of visiting and contacting the victim.

The drawback of a peace bond from a victim’s perspective is that the Criminal Code of Canada does not have the same expansive definition of “family violence” as found in the Family Law Act. I have seen a case where an alleged victim successfully obtained a protection order under the Family Law Act against her husband for alleged emotional abuse (i.e. leaving mean notes to her every day); but I do not think a peace bond would have been issued in such a case. Usually some incident of physical abuse or fear of physical abuse is required to satisfy a judge to issue a peace bond.

(2) Necessary time to obtain the orders

Protection Order under the Family Law Act

Normally, court applications will take a few weeks to be heard by a judge. This is because an applicant is normally required to give notice of the claim to the other party and the other party is given a few days to respond. But under the Supreme Court Family Rules s. 10-9, a protection order under the Family Law Act can be made in the Supreme Court on “short notice” or “without notice” to the other party. There is a similar method in the Provincial Court under the Provincial Court Family Rules, s. 20(3). The legal system recognizes that many protection orders will be useless unless they can be obtained quickly and in secret from the violent family member. An urgent “without notice” application for a protection order

can be heard by a judge and granted on the same day that the application is filed in court, subject to the availability of the court's time.

Peace Bond under the Criminal Code

If a person is acting violently, the victim can call the police and the offending person will be arrested or instructed to attend court at a later date. The police officer will provide information to a judge outlining the victim's fears. If a judge finds reasonable grounds for the fear, a peace bond can be issued within a day or two. It is also possible to apply for a peace bond directly to a judge without going through police.

(3) Term of validity of the orders

Protection Order under the Family Law Act

The Family Law Act s. 183(4) says, "Unless the court provides otherwise, an order under this section expires one year after the date it is made."

Peace Bond under the Criminal Code

The Criminal Code of Canada s. 810(3) says, "(3) If the justice or summary conviction court before which the parties appear is satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for the fear, the justice or court may order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a period of not more than 12 months."

(4) How to start legal process

Protection Order under the Family Law Act

A protection order can be sought by filing an application in court. The necessary paperwork includes the Notice of Application (which lays out the orders sought and the basis for seeking them) and affidavit(s), which is a written statement of relevant facts sworn by the applicant.

Although a Family Law Act protection order can be heard by a judge and granted quickly, preparation for the application can often take very long especially if the victim is not in the mood to deal with the issue. The Notice of Application itself is not complicated to prepare, but the affidavit must be drafted with extreme care because the judge will decide the application based on the facts in the affidavit. The applicant has to explain many things, such as the family history and the history of family violence, and include documentary evidence to support the claim. I have found that some clients have great difficulty remembering and writing down these facts, often due to mood disorders such as depression and lack of motivation.

Peace Bond under the Criminal Code

If the police is called, the police will deal with the legal process to obtain a peace bond. If the victim wishes not to go through the police, he or she must go to the court registry and fill out a form called the Information and set a hearing date. The applicant must appear in person on the hearing date and explain the situation to the judge.

(5) Whether appointing a lawyer is mandatory or not

Appointing a lawyer is not mandatory. Anybody can represent him or herself in either the Supreme Court or the Provincial Court. However, only a lawyer can act as a representative in legal matters. Protection orders can be sought at either the Provincial Court or the Supreme Court, so a self-represented party should use the Provincial Court.

(6) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that these orders can be sought even in the victim's absence from BC. Many foreigners seem to hold the perception that all court applications require the victim to appear in person before a judge. But this is not true. There are many mechanisms that allow applications to be heard in the absence of the victim. Most applications under the Family Law Act are conducted by written material. So it is possible to hire a BC lawyer while being away in the foreign country and supply the necessary court material from overseas. Any material that must be sworn (i.e. affidavits) can be sworn before a notary in the foreign country and delivered to the BC lawyer.

(7) Any other useful information related to protective measures for victims

If the abuser fails to abide by the terms of the protection order or the peace bond, the incident should be reported to the police to arrest the abuser.

The following is a general comment that applies to other orders referenced in this survey: Many victims lack the financial resources necessary to obtain comprehensive legal advice and representation. Seeking a remedy in court on your own can be very intimidating. But if a desperate victim has no other recourse and cannot find anybody's help, it would be worthwhile just to go to a Provincial Court registry, ask for an application form, and write in plain language the order being sought. The registry staff will most likely not help with the wording (that seems to be their policy) but a victim can do his or her best to fill out the form, asking that the hearing be on a "without notice" basis (so that the abuser does not find out about the application), and file the form. The victim should appear before the judge on the scheduled hearing date and do his or her best to ask the judge for the remedy. A Provincial Court judge will most likely help a victim by listening carefully and translating the victim's plain English words into proper legal wording for the order. Many laypersons underestimate the extent that a Provincial Court judge will go through to ensure that justice is done for vulnerable people.

2 Possible countermeasures expected to be taken by the abuser when a victim takes protective measures described in 1

- ※ Including an appeal against the orders described in 1, filing a petition for an exeat order, lodging a complaint against the victim on the ground that the victim also used violence on the abuser, etc.

(1) Outline (please specify your target area of study)

Protection Order under the Family Law Act

The abuser may respond to dispute the protection order by filing a prescribed response form and filing affidavit(s) outlining his or her version of the facts. A protection order that was obtained without notice to the abuser will usually state that the abuser may apply to set aside the order on two or more days' notice to the applicant. The abuser must deliver notice of the response to the victim.

(2) Term of validity of the countermeasures

If the abuser successfully argues against the protection order and the judge vacates the order, that is the end of it for the time being.

(3) Measures that can be taken by the victim against the countermeasures by the abuser

If the abuser files a response to challenge the protection order, the victim (or his or her lawyer) must attend court again on the hearing date for resolving the dispute. If the victim wishes to provide additional facts to refute the abuser's version of facts, the victim may ask the judge to include that new evidence.

(4) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that the abuser's countermeasures can also be challenged even in the victim's absence from BC. The considerations I have explained above in IV(1)(6) of this survey response also apply to responding to the abuser's countermeasures.

(5) Any other useful information related to countermeasures to be taken by abusers

The general comments outlined above in IV(1)(7) of this survey response also apply to responding to the abuser's countermeasures.

3 Legal process for claiming living expense to the abuser

(1) Outline (please specify your target area of area)

A spouse can claim spousal support to cover living expenses. But in BC, abusive conduct by itself does not create a greater obligation for compensation. The relevant question is whether the abuse "causes, prolongs or aggravates the need for spousal support" (Family Law Act, s. 166(a)). For example, if a husband abuses his wife but the wife remains resilient and suffers no ill economic consequence, then the wife cannot claim spousal support on the basis of the abuse itself. However, if the husband abuses his wife to the point that the wife is emotionally or physically unable to support herself, then a judge determining spousal support can place responsibility on the husband to support the wife as compensation.

(2) Necessary time to obtain the orders

Spousal support can be claimed under the Family Law Act on an interim basis (that means before a final trial to determine everything, such as splitting of assets). Interim orders can be obtained by an application that takes about two weeks to be heard. The Criminal Code of Canada does not provide for any collection of living expenses from the abuser.

(3) Term of validity of the orders

There is no universal term of validity for spousal support orders. A judge can order any term that is fitting for the circumstances of the case, taking into consideration relevant factors such as the length of the marriage, the needs of the seeking spouse, and whether the seeking spouse's lack of income earning capacity was due to the fault of the abusive spouse. An order can also be changed later if circumstances change.

(4) How to start legal process

An interim spousal support order can be sought by an application to the court. The necessary paperwork includes the Notice of Application (which lays out the orders sought and the basis for seeking them) and affidavit(s), which is a written statement of relevant facts sworn by the applicant.

(5) Whether appointing a lawyer is mandatory or not

Appointing a lawyer is not mandatory. Anybody can represent him or herself in either the Supreme Court or the Provincial Court. However, only a lawyer can act as a representative in legal matters. Spousal support can be sought at either the Provincial Court or the Supreme Court, so a self-represented party should use the Provincial Court.

(6) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that spousal support can be sought even in the victim's absence from BC on an interim basis. The considerations I have explained above in IV(1)(6) of this survey response also apply to seeking spousal support, with an exception. The exception is if the abuser heavily contests the application for spousal support and applies for a trial to settle the matter to finality. A trial permits witnesses, including the parties to the dispute, to provide oral testimony. If a trial is called, the victim should appear as a witness to his or her own case, or risk having the judge hear only the abuser's side of the story.

(7) Any other useful information related to measures for claiming living expense to the abuser (including administrative measures to claim living expense to the abuser)

There is a government-run program called the Family Maintenance Enforcement Program which will help collect spousal support for free on behalf of the seeking spouse. This is a government-run collection program with the full force of the law at its disposal, so it can enforce payment by taking measures against a non-paying spouse by garnishing funds and withdrawing government benefits, including licenses.

The general comments outlined above in IV(1)(7) of this survey response also apply to seeking spousal support.

4 Divorce process involving domestic violence victim

(1) Outline (please specify your target area of study)

In Canada, a divorce is available in three circumstances:

1. The couple has been living separate and apart for at least one year;
2. The other party committed adultery; or
3. The other party “treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.” (Divorce Act, s. 8(2)(b)(ii))

Although the law recognizes abuse as a reason for divorce, it is often not practical to claim this reason for divorce. If the abusive spouse contests the divorce, the divorce proceeding can easily take at least one year to resolve. By then, it is simpler to apply for divorce on the basis that the couple has been living separate and apart. A couple is considered to be “living separate and apart” even if they continue residing in the same home as long as their intent is no longer to live as a couple. For this reason, divorce on the basis of abuse is theoretically possible but is often not claimed in practice.

(2) General trend of the legal decision about child custody in divorce process involving domestic violence victim

The general trend is to decide child custody by considering only the best interests of the child. In the past, courts seemed likely to consider the wishes of the parents, but the wishes of the parents now take a backseat. This was codified into law at s. 37(1) of the Family Law Act:

“In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.”

This does not mean that family violence is irrelevant; but it means the family violence must be considered in relation to what is best for the child (Family Law Act, s. 38). So if a father was very abusive to the mother, but the father was very nice to the children, the father’s abuse to the mother might have very little effect on an assessment of the father’s child custody rights.

(3) General trend of the legal decision about the residence of the child in divorce process related to domestic violence victims

Since the general trend is toward assessing only the best interests of the child, there is no universal rule such as “the abused spouse gets to reside with the children”. However, in many cases it is the mother of the children who is abused and it is the mother who has spent the most time with young children. So practically speaking, such mothers would most likely be granted greater custody rights and be permitted to reside together with the child.

(4) General trend of the legal decision about the childcare expenses in divorce process related to domestic violence victims

The support of childcare expenses, known in BC as “child support”, is determined by a straightforward formula called The Federal Child Support Guidelines. The amount of payable basic child support is calculated based on the income of the paying parent and the number of children to support. There are ways to adjust this payment, especially in cases where there is shared custody. However, adjustments are not made to compensate for family violence.

(5) General trend of the legal decision about visitation in divorce process related to domestic violence victims

As with child custody, the general trend in visitation rights is also going towards considering only the best interests of the child. Some people consider visitation as a parent’s right. However, courts in BC have made it clear that visitation is not the parent’s right but a child’s right – hence the question is whether it is in the child’s best interest to be visited by the parent, and not whether the parent should have the right to visit the child. This is not to say that parents do not have the right to see their child, but that a parent’s right to see their child is subordinate to the best interests of the child. While this view might seem disadvantageous to parents, this could actually be advantage for parents in some circumstances. For example, if a parent has abused the other spouse, we might consider that the abusive parent should not have his or her right respected. But if the focus is on the child’s right to see his or her parent, the abusive parent’s moral deficiencies are irrelevant in determining visitation rights. Such a parent could be granted visitation rights as long as the abuse was not directed to the child.

(6) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that divorce, child custody, and visitation rights *could* be sought even in the victim’s absence from BC on an interim basis. The considerations I have explained above in IV(1)(6) of this survey response also apply to seeking divorce, child custody, and visitation, with an exception. The exception is if the abuser heavily contests the application for divorce, child custody, and visitation and applies for a trial to settle the matters to finality. A trial permits witnesses, including the parties to the dispute, to provide oral testimony. If a trial is called, the victim should appear as a witness to his or her own case, or risk having the judge hear only the abuser’s side of the story.

(7) Any other useful information related to divorce process involving domestic violence victim

The general comments outlined above in IV(1)(7) of this survey response also apply to seeking child custody and visitation. However, as mentioned above, divorce cannot be granted by a Provincial Court judge. Therefore, a divorce must be applied for in the Supreme Court. Fortunately, there is a self-help website that explains how to apply for an uncontested divorce in the Supreme Court: <http://www.familylaw.lss.bc.ca/guides/divorce/>. “Uncontested” means the other party (i.e. the abusive spouse) does not wish to challenge the divorce. This may be the case if both parties agree to the terms of

the divorce. But if the divorce is contested, a judge at trial must determine the matter to finality. There is no simple self-help guide for contested divorces. However, templates for the necessary forms can be found in the British Columbia Family Practice Manual, Volume 2, at the Courthouse Library at 800 Smithe St, Vancouver, BC V6Z 2E1.

5 Legal process for child custody modification

(1) Outline (please specify your target area of study)

In BC, a judge may order child custody modification if a two-part test is satisfied. First, the applicant must satisfy the judge that there has been a material change in the circumstances of the child (Divorce Act, s. 17(5); Family Law Act, s. 47). Material change means the circumstances have changed in a fundamental way. Second, the judge must be satisfied of the proposed change considering only the best interests of the child (Divorce Act, s. 17(5); Family Law Act, s. 37(1)).

(2) How to start the legal process for child custody modification

Child custody modification is available in both the Provincial Court and the Supreme Court. In both courts, an application can be started by filing a prescribed application form and supporting affidavits. Templates for Provincial Court forms are available at the Provincial Court registry and the content can be hand-written. The Supreme Court does not give out any forms, but templates for these forms can be found in the British Columbia Family Practice Manual, Volume 2, at the Courthouse Library at 800 Smithe St, Vancouver, BC V6Z 2E1.

(3) Whether appointing a lawyer is mandatory or not

Appointing a lawyer is not mandatory. Anybody can represent him or herself in either the Supreme Court or the Provincial Court. However, only a lawyer can act as a representative in legal matters. Child support modification can be sought at either the Provincial Court or the Supreme Court, so a self-represented party should use the Provincial Court.

(4) General trend of the legal decision about child custody modification

As with other orders relating to children, the general trend is towards considering only the best interests of the child and to treat domestic violence as a negative factor only if it impacts the child.

(5) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that child custody modification *could* be sought even in the victim's absence from BC on an interim basis. The considerations I have explained above in IV(1)(6) of this survey response also apply to seeking child custody modification, with an exception. The exception is if the abuser heavily contests the application for the child custody modification and applies for a trial to settle the matter to finality. A trial permits witnesses, including the parties to the dispute, to provide oral testimony. If a trial is called, the victim should appear as a witness to his or her own case, or risk having the judge hear only the abuser's side of the story.

(6) Any other useful information related to legal process for altering child custody

The general comments outlined above in IV(1)(7) of this survey response also apply to seeking child custody modification.

6 Legal process for getting permission to move to another place with children

(1) Outline (please specify your target area of study)

In BC, the factors involved in getting permission to move to another place with a child is similar to the factors involved in a child custody modification. This makes sense because relocating with a child is in effect a modification of that child's existing custody and visitation arrangement. So similar considerations apply as in an application for child custody modification. The Family Law Act introduced some additional factors in determining whether to grant relocation of a child, but basically the test is still whether the proposed change is in the best interests of the child (as established as legal precedent in the case, *Gordon v. Goertz*, [1996] 2 S.C.R. 27).

(2) How to start the legal process for getting permission to move to another place with children

A relocation order is available in both the Provincial Court and the Supreme Court. In both courts, an application can be started by filing a prescribed application form and supporting affidavits. Templates for Provincial Court forms are available at the Provincial Court registry and the content can be hand-written. The Supreme Court does not give out any forms, but templates for these forms can be found in the British Columbia Family Practice Manual, Volume 2, at the Courthouse Library at 800 Smithe St, Vancouver, BC V6Z 2E1.

The Family Law Act lays out additional notice requirements in the case of applying for relocation. The applicant must give 60 days' notice of the location and the time of proposed relocation to all other guardians and persons having contact with the child (Family Law Act, s. 66(1)). However, a judge may waive this requirement if notice cannot be given without incurring a risk of family violence by another guardian or a person having contact with the child (Family Law Act, 66(2)(a)).

(3) Whether appointing a lawyer is mandatory or not

Appointing a lawyer is not mandatory. Anybody can represent him or herself in either the Supreme Court or the Provincial Court. However, only a lawyer can act as a representative in legal matters. Relocation orders can be sought at either the Provincial Court or the Supreme Court, so a self-represented party should use the Provincial Court.

(4) General trend of the legal decision related to moving to another place with children

As with other orders relating to children, the general trend is towards considering only the best interests of the child and to treat domestic violence as a negative factor only if it impacts the child. The Family Law Act introduced additional factors in determining whether to grant relocation of a child (i.e. the reason for

the relocation; whether the proposed relocation is made in good faith; whether the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians). However, recent court interpretations have made the best interests of the child the only relevant factor, having interpreted these additional factors in the Family Law Act as ultimately relating to the best interests of the child.

(5) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that a relocation order *could* be sought even in the victim's absence from BC on an interim basis. The considerations I have explained above in IV(1)(6) of this survey response also apply to seeking a relocation order, with an exception. The exception is if the abuser heavily contests the application for the relocation order and applies for a trial to settle the matter to finality. A trial permits witnesses, including the parties to the dispute, to provide oral testimony. If a trial is called, the victim should appear as a witness to his or her own case, or risk having the judge hear only the abuser's side of the story.

In addition, given that a judge will consider only the best interests of the child in determining relocation, immigrants/foreigners should be prepared to address the potential handicap that a child might experience if he or she relocates to another country. Many victims of domestic violence wish to relocate back to their home country to seek the help of family there. But there needs to be a plan to make sure the child can adapt academically and socially in the new environment. It would be much easier to satisfy a judge of the relocation if the child is still young and able to adapt and learn the foreign language.

(6) Any other information related to moving to another place with children

The general comments outlined above in IV(1)(7) of this survey response also apply to seeking a relocation order.

7 Legal process for changing visitation schedules

(1) Outline (please specify your target area of study)

In BC, a judge may order changing visitation schedules if a two-part test is satisfied. First, the applicant must satisfy the judge that there has been a material change in the circumstances of the child (Divorce Act, s. 17(5); Family Law Act, s. 47). Material change means the circumstances have changed in a fundamental way. Second, the judge must be satisfied of the proposed change considering only the best interests of the child (Divorce Act, s. 17(5); Family Law Act, s. 37(1)).

(2) How to start the legal process for changing visitation schedules

Changing visitation schedules is available in both the Provincial Court and the Supreme Court. In both courts, an application can be started by filing a prescribed application form and supporting affidavits. Templates for Provincial Court forms are available at the Provincial Court registry and the content can be hand-written. The Supreme Court does not give out any forms, but templates for these forms can be found in the British Columbia Family Practice Manual, Volume 2, at the Courthouse Library at 800

Smithe St, Vancouver, BC V6Z 2E1.

(3) Whether appointing a lawyer is mandatory or not

Appointing a lawyer is not mandatory. Anybody can represent him or herself in either the Supreme Court or the Provincial Court. However, only a lawyer can act as a representative in legal matters. Changing visitation schedules can be sought at either the Provincial Court or the Supreme Court, so a self-represented party should use the Provincial Court.

(4) General trend of the legal decision about changing visitation schedules

The general trend, with the introduction of the Family Law Act, is to move away from the concept that one parent is the custodial parent and the other parent only has “access” to the child. In many cases, one parent will end up spending most of the time with the child and another parent will spend little time (e.g. one day a week). But changing from the “custody/access” concept toward the apportioned “parenting time” concept may help to rid the unnecessary stigma of the parent who only has access and to encourage cooperation between parents. For example, a parent who sees the child only once a week may have 10% parenting time, which in substance is the same as having access under the old system for that same amount of time, but he or she is now considered just as much a “parent” as the other parent who has 90% parenting time. This trend seems to be in accordance with the overall trend of building a family law regime around the best interests of the child rather than around the rights of parents.

(5) Useful information for victims who are immigrants/foreigners

Victims who are immigrants/foreigners should be advised that changing visitation schedules *could* be sought even in the victim’s absence from BC on an interim basis. The considerations I have explained above in IV(1)(6) of this survey response also apply to seeking to change visitation schedules, with an exception. The exception is if the abuser heavily contests the application for changing the visitation schedule and applies for a trial to settle the matter to finality. A trial permits witnesses, including the parties to the dispute, to provide oral testimony. If a trial is called, the victim should appear as a witness to his or her own case, or risk having the judge hear only the abuser’s side of the story.

(6) Any other useful information related to legal process for changing visitation schedules

It is permissible to deny the abuser’s right to visitation if there is a legitimate fear that the abuser will direct family violence toward the child. However, the victim should be prepared to provide evidence of this fear in case the abuser takes legal action. The victim’s fear should be based on real, current, fear of harm against the child, and not based on retaliation for past conduct or fear against him or herself.

The general comments outlined above in IV(1)(7) of this survey response also apply to seeking to change visitation schedules.

8 Retaining a lawyer

(1) How to find a lawyer with expertise in dealing with domestic violence

Not all lawyers who practice family law have expertise in dealing with domestic violence. Some lawyers specialize in uncontested divorces. Some lawyers specialize in mediation. Some lawyers specialize in large asset divisions. If swift action is needed to deal with domestic violence, a person should contact the law firm and ask if the firm focuses on dealing with domestic violence. It is my opinion that a law firm that specializes in both criminal law and family law is best for dealing with domestic violence because domestic violence covers both of those areas of law.

(2) How to find a lawyer who is good at foreign languages

The only way to know for certain is to call the law firm and confirm. Some law firms advertise that they serve clients in a foreign language. Sometimes it is not the lawyer but an assistant who knows the foreign language. Some clients prefer to speak in the foreign language directly with the lawyer, but often there is no choice because lawyers who have expertise in domestic violence and speak the preferred minority foreign language, such as Japanese, are limited.

It is possible for a lawyer who is good at a foreign language to act as a “general practitioner” to consult the client and then outsource the work to another lawyer with expertise in domestic violence. This might result in increased legal fees, but it really depends on the options that are available.

(3) How to ask a lawyer

The best way is to call the law firm and ask to speak directly with the lawyer. Lawyers often receive long E-mails that contain many irrelevant information. Speaking directly will ensure that the communication is most efficient and to the point. It is also unwise to send an E-mail outlining personal information and details to the lawyer without first confirming whether the lawyer is willing to act. In minority communities, there may only be a few lawyers servicing that ethnic community. It is very likely that the abuser has already contacted and retained the lawyer. So giving personal details to such a lawyer could be disadvantageous.

(4) General information about lawyer fee

Family law files are usually charged on an hourly basis unless there is a clear objective. The hourly fees might range between \$150 to \$600, the average being about \$300 to \$400. Some family law lawyers set a flat fee for predictable work such as obtaining an uncontested divorce. Family law lawyers usually do not give caps to the legal fees because many unexpected events could occur in family law. Lawyers cannot accept contingency fees for work involving child custody and visitation, so that may limit payment options in some domestic violence cases.

Legal aid

Legal aid in BC can assist clients with a low household income and minimal assets for “serious family problems”. “Serious family problems” includes dealing with abuse and unauthorized relocation of a child. As for household income, the net monthly income for a household size of 2 people must be under

\$2,160 and for a household size of 3 people must be under \$2,780. Further rates are listed in the Household Income Table at https://www.lss.bc.ca/legal_aid/doIQualifyRepresentation.php. An intake staff has discretion whether or not to take the client by considering the value of the person's assets.

There are also duty counsel lawyers stationed at various courthouses who can give legal advice. From my experience, these duty counsel lawyers give very basic advice. For more complicated matters, the client is often asked to "find a lawyer".

It is often very difficult for a person of lower middle class status to seek legal services.

(5) Useful information for victims who are immigrants/foreigners

Legal aid is available to anybody residing in BC, whether or not he or she has citizenship or permanent residence in Canada.

(6) Any other useful information related to retaining a lawyer

The general comments outlined above in IV(1)(7) of this survey response should be considered in the real possibility that the victim cannot afford to hire a lawyer.

9 Any other useful information related to legal process regarding domestic violence

Lawyers walk a fine line between advising their clients to obey the law and advising their clients as to what is best for the safety of themselves and their children. Victims should not expect a lawyer to assist in the committing of a crime. So a lawyer will not advise a victim to take the child to another country without the abuser's consent, but a lawyer can advise regarding the consequences of doing so. If the victim sees no other option than to take the child to another country (perhaps because there is no adequate means of living in Canada), it is the client's responsibility to choose what is best for them and their children. Any communication made between the client and the lawyer is protected by client solicitor privilege up to reasonable extents such as whether the client's conduct will likely cause serious harm to another person.

V. Information for domestic violence victims preparing to return to your country based on the 1980 Hague Convention

※ A typical case is supposed where a domestic violence victim, who removed children without consent of the abuser, is preparing to return to the country of habitual residence with children after relevant proceedings in accordance with the 1980 Hague Convention.

1 How to know whether an arrest warrant is out against the victim before he/she returns to the country of habitual residence

※ Including measures to obtain official or reliable information about the arrest warrant other than asking the abuser

The Royal Canadian Mounted Police has a searchable database for outstanding Canada-wide arrest warrants at <http://www.rcmp-grc.gc.ca/en/wanted>. There are usually many parental child abduction profiles listed. Additional confirmation can be sought by calling a police department in Canada and asking if there is an

outstanding Canada-wide arrest warrant.

2 Measures to terminate criminal proceedings against the domestic violence victim before he/she returns to the country of habitual residence

※ Including registering or enforcing orders which may be made by the foreign court when it made return order, any other legal or administrative measures, etc.

There is not a lot of options for terminating a criminal proceeding without appearing in court. One option is for the victim to call the Crown prosecutor office and discuss the possibility of withdrawing the criminal charge, in which case the associated arrest warrant is also withdrawn. The Crown prosecutor has the discretion to withdraw a charge for various reasons, such as if there is no reasonable likelihood of conviction, or it is not in the public interest to continue the prosecution. A victim of domestic violence should ask for withdrawal on the basis that it would not be in the public interest to prosecute against a domestic violence victim. Alternatively or additionally, the victim may claim that the intent was not to abduct the child but to protect the child from family violence, in which case the Crown prosecutor might consider that a conviction might not be likely given the lack of criminal intent. Whether or not to withdraw a charge is wholly in the discretion of the Crown prosecutor on a case-by-case basis and there is no set formula to follow.

3 Measures to secure accommodation, financial support, etc., for a domestic violence victim before he/she returns to the country of habitual residence

※ Including registering or enforcing orders which may be made by the foreign court when it made return order, any other legal or administrative measures, etc.

The applications for spousal support and child support explained above can be sought in a BC court without the personal appearance of the domestic violence victim. Applications are supported by written affidavit evidence, which can be sworn in a foreign country by a foreign notary and delivered to the BC lawyer acting for the victim. If any judicial case conferences are required, these can be conducted over the phone.

As for orders made by a foreign court, s. 75(1) of the Family Law Act provides as follows:

“75(1) A court must recognize an extraprovincial order if all of the following apply:

(a) the extraprovincial tribunal would have had jurisdiction to make the order under the rules that are applicable in British Columbia;

(b) each party to a proceeding in which the extraprovincial order was made had

(i) reasonable notice that the order would be made, and

(ii) a reasonable opportunity to be heard respecting the order;

(c) the extraprovincial tribunal was required by law to consider the best interests of the child;

(d) it would not be contrary to public policy in British Columbia to recognize the order.”

To summarize these rules, the foreign order will be recognized in BC if the foreign proceeding followed similar principles of procedural fairness and consideration of the best interests of the child. An application must be made in court to have the foreign order recognized in BC.

4 Any other useful information for a domestic violence victim preparing to return to your country based on the 1980 Hague Convention

If the Crown prosecutor will not withdraw the criminal charge prior to the victim re-entering Canada and the arrest warrant remains outstanding, the victim should re-enter Canada being prepared to go through the criminal law process, including being detained for a day until the matter can be brought before a judge. For this reason, arrival in Canada should be scheduled on a weekday early in the week (e.g. Monday). As long as the departure from Canada with the child was due to family violence, there should not be too much worry about the consequences even if the entire process might be very inconvenient. As long as the victim cooperates, the Crown prosecutor can seek an outcome that does not result in a criminal conviction.