



## You Can Know How the Law Helps People Living With Abuse or Violence in Their Lives

By encouraging a victim of family violence to know more about legal solutions, YOU just might help them to take the first step to ending the violence in their lives.

### My friend's partner slaps her around. Are there laws to help people living with abuse in their lives?

The first thing you should know is that physical violence (assault) is against the law - meaning it's a crime. The law can deal with many different kinds of criminal offences that may happen in relationships such as uttering threats, criminal harassment (sometimes called 'stalking'), threats with firearms, and sexual assault (sometimes called 'rape'). The police may arrest and charge a person who does any of these things. Victims of crime can get information and assistance throughout the criminal justice process from Public Safety Victim Services – [www.gnb.ca/publicsafety](http://www.gnb.ca/publicsafety).



### Do police and courts get involved in violence in the family?

Yes they do. Many people are afraid to contact the police or service providers who can help them deal with the abuse. They may think that no one will believe them or take it seriously. Tell your friend that the police, courts and everyone in the legal system take family violence very seriously. In New Brunswick, all government employees serving people living with abuse must follow guidelines called "**Abuse Protocols**". There are three sets of protocols - Woman Abuse, Adult Victims of Abuse and Child Victims of Abuse and Neglect - which set out specific ways that service providers should respond to and assist victims of abuse.

### But, isn't the law too complicated for an ordinary person to understand?

While laws can certainly be complex, it is possible to become familiar with general information about the legal rights and responsibilities of people living in an abusive relationship. By encouraging a family member, neighbour, co-worker or friend who is experiencing abuse to know more about legal solutions, YOU just might be helping them to take the first step to ending the violence in their lives.

#### Here's a Tip

Separating parents should consider taking the free parent information course called **For the Sake of the Children**.

For more information call 1-888-236-2444.

### So, what information can I offer to someone I know who is being abused?

Tell your friend that if someone is hurting or threatening her, the children, property or pets, that it is **against the law**. Encourage your friend to call the police and if it's an emergency call 911. If your friend is fearful for future safety, encourage her to tell the police and ask about getting a **peace bond** or other **protection orders**.

Often victims of abuse need help with family law matters – but they act on misinformation. For example, they might think if they just leave, the abuser will have no rights to visit the children. Myths about the law can mislead victims into thinking they have no rights. People need to know that family law is very complex and it is important for a parent, spouse or partner to find out their legal rights to custody, support and division of property. You can help your friend access an extensive range of law information available on the Public Legal Education and Information Service website at [www.legal-info-legale.nb.ca](http://www.legal-info-legale.nb.ca).

When you explain the law to someone, remember to only share general information about the law. **Only lawyers can give legal advice**, so it is important that you do not tell a victim what he or she should or shouldn't do. For specific legal advice on a particular situation, be sure to tell your friend to talk to a lawyer, go to a legal advice clinic, or apply for domestic legal aid. Remember, anything you read in this fact sheet is general information about family and criminal law and is not intended as legal advice.

#### Did you know?

**Protection orders** do not guarantee that a violent person will obey them, but they are better than nothing. Encourage her to talk to **Victim Services** and to get help making a **safety plan**.





## What if the person leaving an abusive relationship can't afford a lawyer?

In a criminal matter, the victim usually does not need to have a lawyer. The Crown Prosecutor can help her get protection orders, such as a peace bond or no contact order. However, the Crown Prosecutor is not the victim's lawyer; the Crown represents the public.

When dealing with family law matters, the victim may need to have a lawyer. Separating couples may be able to use the free mediation service that operates out of the Court of Queen's Bench - Family Division office. It is offered by family court social workers to resolve custody, support, division of marital property, and enforcement of orders. Although, mediation is not appropriate in family violence cases, the family court social workers can screen victims of partner abuse into the **Domestic Legal Aid Program** where they may be eligible for free legal assistance for family law problems.



## Know the Myths...Know the Law

Myth	Fact
Married women cannot be sexually assaulted by their partner because men have a right to the services of their spouse.	Sexual assault is a crime that can happen even in a marriage. The relationship between partners does not matter – both must consent, or agree, to have sexual relations. If one person does not want to have sex and the other forces them, it is a sexual assault. A sexual assault includes all forms of sexual contact that happen without consent, not just sexual intercourse.
When a woman leaves an abusive situation, it is a good idea not to "set him off" by asking for custody or child support. Best to just leave.	While it is true that many abused women are willing to walk away without child support, a share of property or any formal agreement about parenting arrangements, this should only be a temporary solution. Many people think that if the mother doesn't ask for child support, it will end the partner's right to be in the children's lives. But, child support is the entitlement of the child and courts will want to be sure that the access parent is contributing.
If a parent leaves an abusive partner, the Court will never give the abuser custody or access to the children because of the past behaviour in the relationship.	Generally, courts only consider spousal abuse relevant if it can be shown to impact on the parenting ability of the parent applying for custody or access. Courts have been slow to recognize research which shows the harmful effects to children exposed to family violence. Courts are reluctant to deny a parent access because of spousal abuse. However, when spousal abuse is present, they may decide that "joint custody" is not appropriate.
When a spouse deserts their partner and leaves the home, they lose all rights to a share of the property and if they flee leaving the children behind they cannot ask for custody.	The Court does not expect a person to stay in an abusive relationship. A legally married woman can leave, for whatever reason, and it does not impact on the equal division of the marital property. However, once divorced, there are only 60 days to ask the court to divide the property. As well, leaving the home without the children does not interfere with the right to apply for custody.
If one spouse seeks help for mental health problems, like depression, it proves that she is 'unstable' and the court would never let her have custody of the children.	When deciding who should have access or custody of a child, the court will always look at the best interests of the child. Just because a person may have mental health problems does not automatically mean they are an "unfit parent" or that it would not be in the best interests of the child for that parent to have custody or visits with the child.
The best way for an abused woman with children to end the violence is to take the children and run away where he can't find her.	Because separation is often a dangerous time, it may be best to leave without telling the partner ahead of time. Seeking temporary shelter to explore options is often necessary. But running away and hiding forever may cause other legal problems. She will need to deal with all her family law issues as soon as possible by getting legal advice and possibly going to court.
If a parent stops visiting with the children, that would end his obligation to pay child support.	Support is a separate legal issue from custody and access. When making decisions about custody and access, Courts only consider the best interests of the child. Whether a parent visits with the child will not influence the Court's decisions on child support and vice versa.
An abuser can stop the other spouse from getting a divorce.	Either spouse can get a divorce even if one does not want it. The most common way is to live separate and apart for one year. However, a judge may not permit the divorce until formal custody and child support orders are in place. If one partner contests the divorce, then both spouses will need separate legal advice.
Married couples who separate are 'legally divorced' after living apart for a certain period of time.	A couple is not divorced until they go through legal divorce proceedings.
If a parent breaks a condition of their parenting order or agreement, such as not bringing the children back on time, the other parent can call the police to go get them.	Family court orders/agreements are between two people, two private citizens – this area of law is called civil law. Police enforce criminal law, not civil law. If one parent is consistently breaking the conditions of their order, the other parent would have to ask their lawyer to apply to family court to deal with the problem.
Couples living in a common-law relationship are legally married after three years and have all the rights of a married couple.	No amount of time together changes a common-law relationship into a marriage. Although certain laws apply to common-law couples such as income tax, insurance, pension or support, common-law couples do not have a right to marital property when they split up (an equal division) no matter how long they lived together.
When someone's partner is convicted of a crime the judge will settle family law issues at sentencing.	Criminal courts hear criminal cases. Family law issues are heard at a different court so the judge sentencing someone convicted of an offence – even one that was of a domestic nature - will not handle family law issues. The victim will have to take steps to deal with things like custody and support in family court.
Some abusers hurt the family dog or cat as a means of controlling other family members because the law can't touch them if it's just an animal.	While it is true that animals don't have the same rights that people do and are considered property, it is a crime under the <i>Criminal Code</i> to abuse, neglect or mistreat an animal. The <i>Society for the Prevention of Cruelty to Animals Act</i> also gives animal welfare officers the right to investigate and seize animals that are being abused.
<b>Note:</b> Although all abuse is wrong, the <i>Criminal Code</i> may not be able to address some kinds of abuse such as emotional and psychological abuse. If you are not sure how the law deals with a particular behaviour, seek legal advice. Also, encourage your friend to get help from other services for victims who are struggling with abuse in their lives such as transition houses, family violence outreach, social workers, healthcare providers, mental health workers and so on.	

An unknown right, is no right at all. Help victims of abuse to know the law.



### This Safer Families...Safer Communities Fact Sheet is published by:



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To learn more on this topic, you can contact the following local organization(s):

