



5 Going to Court

Family Court judges do not determine who is at fault. They are there to solve problems that parents cannot resolve on their own.

The courts encourage parents to try to make decisions for their family whenever possible outside of court. In most cases, you should only go to court when nothing else has worked.

- The advantage of using the court system is that a judge can make an order when you cannot agree. There can be legal consequences for disobeying a court order.
- The disadvantage of using the court system is that it might make the conflict worse and drag it out over a longer period of time.

Some parents go to court just to harass the other parent. Some may believe that having their “day in court” will make them look like “the good guy” (and the other parent “the bad guy”) and that they will win. In reality, courts can be unpredictable, costly, slow, and not very satisfying in the end.

Provincial Court and Supreme Court

The two levels of court that deal with separation and divorce are the Provincial and Supreme courts. Here is a summary of what each court does.

| Provincial Court | Supreme Court |
|-------------------------|---|
| Custody | Custody |
| Access | Access |
| Child support | Child support |
| Spousal Support | Spousal Support |
| Guardianship | Guardianship |
| Maintenance Enforcement | Maintenance Enforcement |
| Restraining Orders | Restraining Orders |
| | Property Division or Protection |
| | Divorce |
| | Out-of-province residence of one parent |

Lawyers known as Duty Counsel at both Provincial and Supreme Courts can help people when they go to court. If you qualify these lawyers may also be able to provide you with legal advice about your options. To find out when family Duty Counsel will be at your court, call your nearest Legal Aid office. For contact information, see “Legal Aid” in the Resources section.

Pre-Trial Conference

If you go to court you may have to start with a Pre-trial Conference.

If you do have to go to a Pre-trial Conference, everyone who is asking the court for something, or is being asked for something, must attend. If you have a lawyer, s/he must attend as well.

A judge may allow other people to attend.

What happens in a Pre-trial Conference

- A judge will lead a discussion around a table about what is best for the children.
- The judge may help you reach agreement or refer you to a mediator, counsellor, or a parenting after separation course.
- A Pre-trial Conference is a chance to deal with issues without a long trial.
- If a judge decides that a hearing is needed to settle the issues, the judge will arrange a hearing date.

If you do have to go to court, make sure you are realistic about what the court can and cannot do. The court deals only with the legal issues based on evidence. Usually the hearings are short and to the point, and you may not actually go to trial.

Here are some tips for if you do go to court:

- Do not discuss or mention the court case to your children or talk about it when they can hear.
- Do not say negative things about what the other parent said or did in court to your children.
- Remember that even if you go to court you will still have to find ways to deal with the other parent.



If the Other Parent is Violent

If your former partner is violent towards you or your children, you can ask a judge for a court order to help protect you. Ask a lawyer, Native Courtworker, Police Officer or counsellor for information on how to get a court order, such as a restraining order, peace bond or no-contact order.

Restraining Order

A Restraining Order means your partner has to stay away from you and your children. This is an order made by a judge to protect you, it is not a criminal charge.

Peace Bond

A Peace Bond means your partner has to behave well and “keep the peace”. Tell the police you want to apply for a peace bond, or go to Provincial Court to ask for one.

No-Contact Order

If your partner has been arrested for being violent towards you, a judge can make a No-Contact Order that will stop your partner from contacting you or your children until the hearing or trial.

No Charges

In some extreme cases a judge may order that children have no contact at all with a parent. This might happen if:

- It can be shown or proven that there is a risk of violence to the other parent or the children, or a possibility of abduction of the children.
- A parent has a pattern of family violence and has not shown any remorse or willingness to change.

Generally judges believe that children will benefit from a relationship with both parents and require strong evidence that the children may be harmed before they will make a no contact order.

Charges Laid

It can also be a condition of probation, parole, or bail. If the order says “no direct or indirect contact” that means that the parent must not try to contact the other parent regarding access to the children, which would be indirect contact. Getting someone else to contact the other parent or children on their behalf would also be indirect contact and would be violating the court order.

If you have a no contact order and want to see your children you need to have the court order changed first.

How the Judge Decides

The law says that the judge must decide what parenting arrangements would be in the “best interests of the child.” The judge considers the:

- Ability of each parent to care for the child;
- Quality of the relationship the child has with the person(s) wanting custody (the love, affection, and similar ties);
- Physical, social and economic needs of the child;
- Personality, character and emotional needs of the child;
- Proposed home environment;
- Plans that the person wanting custody has for the future of the child; and
- Wishes of the child, depending on the child’s age and level of maturity.

Note: Aboriginal parents living on a reserve are subject to the general application of provincial laws provided these laws do not conflict with the Indian Act.

- All legal issues about parenting focus on what is in the best interest of the child. For the most part, this applies to an Aboriginal person regardless of their status.
- A Metis or non-status Indian person comes under provincial family law.

“My mom and my dad broke up because my dad wastes money on his beer and he drinks to much.

My mom fights with my dad to much.

Most of all he always beats up my mom. My dad always goes to jail.”



Enforcing Court Orders

Child support

If you have a court order for child support but your ex-partner never pays:

- You should enroll in the Maintenance Enforcement Program as soon as possible (in Vancouver: 604 775-0796 and elsewhere in BC: 1-800-668-3637.
- This program monitors payments and takes action to collect outstanding debts.

Parenting arrangements: custody and access

What can you do if the parent who has custody won't allow the parent with access to see the kids? Or the parent who has access does not return the children after an access visit?

- You may be able to resolve these issues by contacting a Family Justice Counsellor or lawyer.
- If you cannot reach a solution, you have to go to court and get a court order. In some situations you may be able to get Legal Aid. Look in the white pages of your phone book under "Legal Aid." Or visit the Legal Services Society's website at www.lss.bc.ca.

Changing Court Orders and Agreements

If your situation changes, you may need to have the court order or agreement changed. Examples:

- If you lose your job, you may need to ask the court to reduce the child support;
- If the paying parent gets a job after being unemployed, you may want to ask the court to increase the child support;
- If there is strong evidence that the children are no longer safe while with the other parent you may need to have an access or custody order changed.

If you need to change an agreement, you and your former partner can agree to change it. You can file the new agreement with the court. If your former partner refuses to change the agreement, you will need to go to court.

If you need to change a court order, you have to go back to the court that made the order originally. You explain to the judge what circumstances have changed that require you to change the order.



Other Orders

Supervised exchange

Supervised exchange involves transferring children from one parent to the other under the supervision of a third party.

- Supervised exchanges of your children may help you avoid confrontations and arguments if there is ongoing conflict between you and the other parent.
- Supervised exchanges can also be useful if the other parent has been violent in the past and you are afraid of coming into contact with them. They do not completely ensure that there will be no violence but they minimize the risk of it happening.

The person who supervises the exchanges can be a family member, neighbour, or volunteer. It's a good idea to use a public place for the exchange, such as the parking lot of a restaurant or mall, or someplace where there are other people around.

If possible, you and the other parent may want to get counselling or find a mediator to try to end the conflict that has made the supervised exchanges necessary.

Supervised access

Time with both parents is the right of the children in most cases. But sometimes you may need supervised access to protect your children so they can spend time with each of you.

The parents can agree that visits be supervised, or a judge may order it. This means that a qualified person is present during visits. Usually the parents agree on who that person will be. There are private agencies that offer this service for a fee. Be sure to check the background and training of anyone you hire to supervise visits.

Supervised access can be helpful if:

- There are allegations of physical abuse of the children.
- There are mental health or substance abuse concerns that might affect how well someone can care for children.
- The children have not seen that parent for a long time and need time to rebuild the relationship.