

# BC FAMILIES IN TRANSITION

formerly Separation and Divorce Resource Centre

## THE 'EX' FILES

**\*\*This is for information purposes only. It does not constitute legal advice.\*\***

### Rights on Leaving an Abusive Partner

#### Q. IF I LEAVE, AM I GIVING UP ALL OF MY PROPERTY?

A. No. The issue of dividing up the property can be complicated, but neither person gives up their right to their property simply by leaving. The family home (also known as the "matrimonial home") is dealt with separately from other property by the law. The family home is defined to mean anywhere the family has lived - a house owned by the family, a rented apartment or house, a mobile home, even a tent if that is where the family has lived are all considered "matrimonial homes." Particularly where there has been violence in the relationship, the victim of that abuse (almost always the woman) is likely to be allowed to remain in the home, regardless of whose name is on the deed or lease. The issue of dividing up its value will be dealt with separately.

The written law about division of property refers specifically to married couples. However, case law now "imputes" (or assigns) the same rights of property division to couples, both heterosexual or same sex, who have an established common law relationship.

At its most basic, the law says couples who cohabit have entered into a partnership and all property accumulated by the couple over the years of cohabitation is to be divided equally between them, regardless of who paid for it or whose name it is registered in (as in the case of a home, cottage, boat, car, etc.). The intent of this approach is to respect the contributions made by both members of the couple, even if one of those contributions has been largely non-financial.

Property brought into the relationship by either party continues to belong to that person unless they turn it into joint property. An example of this might be where one person has some money saved up that is used to buy the family home.

There are some time limits to when a person can begin a claim for a division of property, but a considerable amount of time is allowed for the two people to separate and sort out any immediate issues such as custody and support before they must deal with the issue of property.

#### Q. IF I LEAVE, WILL I BE CHARGED WITH ABANDONMENT?

A. No. First of all, there is no criminal charge of abandonment in this sense. Of course, if you were to leave your children without proper care, you could face criminal charges but if,

for instance, you flee to a shelter because of concern for your safety and you do not take your children because you know they are safe for the time being, you will not be "charged" for doing this.

However, there are other risks to leaving children behind. If you leave without them, your partner may attempt to get custody of them on the basis that you left them behind. You may have a really good reason for not taking them with you (you may need a bit of time to figure out what you are going to do, you may not want to disrupt their lives by moving them to a shelter or other temporary, housing, etc.) and there is nothing wrong with leaving them, as long as you know they are safe and well cared for.

You should make arrangements to see them regularly and frequently and you should remain involved in their day to day lives if this is at all possible. You should also speak with someone (a counsellor or lawyer) and tell that person why you left the children and discuss what short and long term plans you want to make for them. You may be advised to begin custody proceedings quickly so as to assure that you do not lose your legal rights and responsibilities to parent your children. If you feel that you need a break from the responsibilities of parenting for awhile, you should still speak with a professional so that you understand what risks are involved and what you can do to minimize them.

#### Q. IF I LEAVE WILL THE COURT AUTOMATICALLY GIVE THE CHILDREN TO MY EX?

A. No. See the previous question for a detailed answer to this. Especially if you leave because of fear for your own safety and if you maintain contact with the children and make arrangements to have them with you as soon as possible, this will not be a major factor in deciding who should have custody of the children. The court will consider what is best for the children by looking at who has been their main caregiver before the date of separation, who is best able to offer them stability and security and, if the children are old enough, what it is that the children want. If you do leave without your children, it is very important that you ensure that they are being appropriately cared for, whether that is by their parent, another family member or a friend, and that they know how to get in touch with you.

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## Q. WHY SHOULD I HAVE TO LEAVE THE HOME IF I HAVE NOT DONE ANYTHING WRONG?

A. You may not have to leave the home. At the present time, if you fear for your safety, it is important to get yourself and your children to a safe place: a shelter, or to the home of a friend or family member.

Once your immediate safety has been taken care of, you can proceed directly to court if that is your wish, and one of the things you can ask the court for is what is called "exclusive possession of the matrimonial home." This simply means that you are asking for an order that you be permitted to live in the home without your partner. The issues of whether or not to sell the home, and how much of its value each of you gets will be dealt with later. If you are successful in obtaining this order, you and the children will be able to return to the home and continue with some of the stability of your old life.

## Q. DO I HAVE TO TELL ANYONE WHERE THE CHILDREN AND I ARE?

A. The general rule is that you do not have to tell your partner where you are, but if the children live with you and there is no restriction on your partner having access to them, then they have a right to have contact with each other. In a situation where there were no abuse issues, for example, your partner would be entitled to know where the children were living and going to school, the right to know their telephone number and to call them from time to time, in addition to having visits with them. If your safety is an issue because your partner abused you, you may be able to get a restraining order preventing your partner from having some of this information. An access order from court may state that you will ensure that the children will call at specified times, so that your ex is not calling your home and harassing you.

## Q. WHAT CAN I TAKE WITH ME WHEN I LEAVE?

A. If you leave without having come to an agreement about who is getting what, you should take only what belongs to you

personally. This means things like your clothes, jewellery, toiletries, items you brought into the relationship, etc. If you are taking the children with you, you can take their personal belongings, too.

If it is possible, take items such as all your personal identification, bank statements, copies of both of your most recent tax returns, the children's identification and health cards, passports, a copy of the deed or lease and other such documents.

If you anticipate that you may have to leave in a hurry, it is very helpful to have made copies of these documents and stored them somewhere else, as well as to have a packed bag of emergency supplies such as clothing.

If you are planning a possible separation, it is a good idea to prepare a complete inventory of everything in the home or take photographs of the contents of your home. This could be helpful if you suspect that items might be destroyed or go missing.

## Q. IF I DECIDE TO DISAPPEAR SO MY PARTNER WILL NEVER FIND ME, WILL I BE CHARGED?

A. You are free to disappear on your own (unless, of course, you have other outstanding issues like debts, criminal charges, etc.). However, if you have children and are planning to have them disappear with you, you may have problems. If your ex has access rights to the children and you make it impossible for your partner to exercise access, your partner could go to court and obtain an order that the children be returned.

In cases of extreme violence and danger, there is a federal government program that can assist parents and their children with relocation and new identities. For more information about this program, you should contact your local women's shelter or police department.

\*\*The preceding was for information purposes only. It may be necessary to seek legal advice for your situation.\*\*

Researched and written for Separation and Divorce Resource Centre (now BC Families in Transition) by Kelsey O'Bray, Pro Bono Students Canada, Faculty of Law, University of Victoria, March 2007

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