



# A LEGAL INFORMATION TOOLKIT FOR SERVICE PROVIDERS



**CHSSN**  
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And Social Services Network  
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This toolkit explains the law in general. It is not meant as legal advice on a specific problem. If you need advice on a specific problem, consult a legal professional.

## **GETTING MORE COPIES OF THIS TOOLKIT**

This toolkit can be downloaded in PDF format at [www.educaloi.qc.ca/en/familyviolence](http://www.educaloi.qc.ca/en/familyviolence).

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This toolkit is part of the Family Violence Toolkit and Workshop Project, a joint effort between Éducaloi and the Community Health and Social Services Network (CHSSN).

Éducaloï is a non-profit organization that provides legal information to Quebecers in everyday language. The CHSSN is a network of community organizations, resources and public institutions working to ensure access to health and social services in English for Quebec's English-speaking communities.

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# INTRODUCTION

## WHAT THIS TOOLKIT IS ABOUT

The toolkit covers the legal aspects of family violence situations. It does not deal with the psycho-social aspects of family violence. Though extremely important, they were beyond the scope of this project. There are many excellent resources on these aspects. See the lists at the end of this toolkit.

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## WHO THIS TOOLKIT IS FOR

This toolkit is for service providers who come into contact, or work directly with, people experiencing family violence. These service providers could include social workers, staff at shelters, community organizers, school principals, teachers, guidance counsellors and clergy, among others.

This toolkit is not aimed at the general public. However, it is designed so that service providers can share portions of the toolkit with clients and others.

The information in this toolkit has been tailored to English-speaking communities in Quebec.

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## WHAT IS “FAMILY VIOLENCE”?

There are various definitions of “family violence”. But many professionals agree that it includes a wide range of behaviour and can affect all members of a family, regardless of age or gender. Also, it affects people in various kinds of intimate relationships: married, not married, same-sex, etc.

This toolkit is based on definitions used by The Family Violence Initiative of the Department of Justice Canada and Quebec’s Ministère de la Sécurité publique (public safety department), which are very similar.

Under these definitions, family violence includes any form of abuse, mistreatment or neglect that children or adults experience with other members of their families.

Some common types of family violence are:

- › physical abuse
- › sexual abuse and exploitation (being used for a sexual purpose)
- › neglect
- › psychological and emotional abuse
- › financial abuse

## **THE LEGAL SYSTEM AND FAMILY VIOLENCE**

- 1.1 > Family Violence: What Is Against the Law?
- 1.2 > Basic Concepts: Civil Law, Criminal Law and Youth Protection Law
- 1.3 > Limits of the Legal System

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**Myth: There is a crime called  
“family violence”.**







## THE LEGAL SYSTEM AND FAMILY VIOLENCE

### 1.1 > FAMILY VIOLENCE: WHAT IS AGAINST THE LAW?

There is no law that says “family violence” is illegal. Instead, there are laws that make specific behaviour a crime. Other laws provide special protections for vulnerable people.

#### Crimes

For example, a law called the *Criminal Code* lists types of behaviour that are crimes. Many forms of family violence are crimes in Canada.

#### HERE ARE SOME CRIMES RELATED TO FAMILY VIOLENCE:

- › not providing necessities of life to a child under 16 or a dependent adult, including food, clothing, shelter, medical care and personal hygiene
- › neglecting a child under 10 years of age to the point that the child’s life is endangered or health likely to be permanently affected
- › turning a blind eye to someone committing a crime
- › criminal harassment, sometimes called “stalking”: unwanted, persistent attention that causes someone to fear for her or his safety
- › threats of injury or damage to property
- › assault: using force without the other person’s consent, or threatening to use force when the victim believes the aggressor has the ability to carry out the threat
- › sexual assault: touching of a sexual nature without the consent of the other person or when the person is too young to consent
- › making indecent or harassing phone calls
- › confining someone by force for long periods, for example, in a house, room, bed or chair
- › illegally breaking into a place
- › damaging property
- › failure to respect a court order



› some kinds of financial abuse, for example, manipulating someone for financial gain, taking money without permission, withholding money for necessities such as food, shelter or medical treatment, or forging a signature

### Special Protections

Other laws provide special protection for children and the elderly. To learn more, see the chapters on children and seniors.

1.2 › **BASIC CONCEPTS:**  
CIVIL LAW, CRIMINAL LAW AND YOUTH PROTECTION LAW

These three areas of the law can come into play in family violence situations, so it is important to understand some basic distinctions between them.

#### Civil Law

This area of law covers private relationships between people. For this reason, it is sometimes also called “private law”.

Many issues regarding families fall into the civil law, including rules about the family home, separation and divorce.

If people have a civil law disagreement, and they want a court to settle it because they cannot settle it in another way, one of the people involved must take the initiative to bring the case before the court.

#### Criminal Law

Criminal law covers behaviour that society considers unacceptable. This behaviour is called a “crime”.

Crimes are considered to be a violation against society as a whole, not just a private matter between individuals. This is why the government brings cases to court against people accused of crimes, not individuals.



➤ **It is essential to combine legal system remedies with practical safety planning.**



### **Youth Protection Law**

Youth protection deals with the government’s role in protecting the welfare of children under 18 years of age. This area of the law has a mix of civil and criminal law features.

These three areas of the law are dealt with by separate courts and separate legal processes. This can be a source of confusion for people experiencing family violence. They may well see their problems – violence, the role of the police, custody of children, the end of a relationship, the criminal court process, etc. – as a whole. They may not understand why these issues are not dealt with all at once in one place.

The rest of this toolkit explains how these areas of law and the various courts interact.

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### **1.3 LIMITS OF THE LEGAL SYSTEM**

The legal system does not have unlimited resources. This means that there can be delays. This is especially true in areas where people are far from the police and the courts.

In family violence situations, it is essential to combine legal system remedies with practical safety planning. The last part of this toolkit lists some useful resources on safety planning.

## **SERVICE PROVIDERS AND FAMILY VIOLENCE**

- 2.1 › Confidential Information Revealed to Service Providers
- 2.2 › Confidential Records
- 2.3 › Duties Regarding Children at Risk
- 2.4 › Duty to Report Guns
- 2.5 › Being a Witness in a Court Case
- 2.6 › Accompanying People Involved in the Justice System

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**Myth : If a victim confides in a service provider, the service provider must keep this information secret.**



## SERVICE PROVIDERS AND FAMILY VIOLENCE

Many service providers encountering family violence situations have special legal duties toward people they work with, including people who confide in them.

### 2.1 > CONFIDENTIAL INFORMATION REVEALED TO SERVICE PROVIDERS

#### Members of Professional Orders

In Quebec, members of professional orders must keep secret confidential information revealed to them in the course of their work. This is called the duty of “professional secrecy”.

An order is like an association. There are standards to become and stay a member of an order. In Quebec, professionals such as doctors, lawyers, psychologists, nurses and auxiliary nurses, social workers, and marriage and family therapists must be members of an order.

However, there are **exceptions** to the secrecy rule. For example, these professionals can reveal information when:

- › the client gives permission
- › revealing the information is necessary to prevent an act of violence, as long as the professional has good reason to think that someone is in immediate danger
- › a court orders the information to be revealed

Professionals are sometimes called to court to answer questions about information relating to a client. In these cases, they have an obligation to say that they are covered by professional secrecy. The judge will then decide if the information should be revealed.

#### Clergy

Even if they are not members of a professional order, priests and other ministers of religion must also respect the confidentiality of information revealed to them during their work.

However, they can release this information if:

- › the person who confided in the clergy member agrees
- › law or a court says they can release it



➤ **Service providers who care for or help children must inform Youth Protection if they have good reason to think a child is at risk.**

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## 2.2 ➤ CONFIDENTIAL RECORDS

Records of users of health and social services institutions, such as CLSCs, youth and family centres, and hospitals, must be kept confidential.

There are some **exceptions**. For example, records can be released in these cases:

- › the user or someone authorized to act for the user gives permission
- › to prevent an act of violence, including suicide, when there is good reason to think that the user or someone else is in immediate danger
- › the information is held by a youth protection centre, or a rehabilitation centre, and the information is needed for the youth criminal justice system, for the rehabilitation or social integration of a young person, or for the protection of the public
- › on the order of a court (For example, courts have ordered the release of files necessary to protect the well-being of children.)

This is not a complete list of the rules on records. The rules are quite detailed. Service providers should consult the person in charge of records and ethics for their institutions to find out more.

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## 2.3 ➤ DUTIES REGARDING CHILDREN AT RISK

**Service providers who care for or help children** must inform the Director of Youth Protection (DYP) when they have good reason to think that a child's security or development is in danger and they learn about this in the course of their work.

It does not matter if the child is someone else's patient or student.

These service providers must report even when they are normally obliged by law to keep information secret.



Service providers who have this duty include:

- › health care workers
- › teachers
- › day care workers
- › police officers

**Also, all citizens**, whatever their line of work, have a legal duty to inform the DYP if they have good reason to think a child is being sexually or physically abused. Citizens can report other situations of children at risk, but are not legally obliged to.

Finally, if a child wants to report a situation to the DYP, **all adults** are legally obliged to help the child do this.

You may well have questions about when a child's "security or development is in danger", or how to contact youth protection authorities. For more information, see the chapter Children and Family Violence.

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## 2.4 › DUTY TO REPORT GUNS

In Quebec, there are special rules about reporting guns in or around daycares, nursery schools and all other educational institutions. These rules also apply to school buses.

Anyone working in one of these places who has good reason to think that someone has a gun on the premises has a legal duty to immediately contact the police.

Note that certain professionals are allowed, but are not obliged, to contact the police when someone's safety is compromised because of a gun, no matter where that gun is. They can contact the police even though they normally have a duty of secrecy. The professionals covered by this rule are:

- › doctors
- › psychologists
- › vocational guidance counsellors or psycho-educators
- › nurses
- › social workers
- › marriage and family therapists



## 2.5 > BEING A **WITNESS** **IN A COURT CASE**

Service providers who have important information about a family violence case could be called to court as witnesses, just like anyone else with information relevant to a court case.

Service providers who receive an official court document calling them to court – called a “subpoena” – must respect it.

Anyone with a serious reason for not being available should contact the person or office named on the back of the subpoena.

In court, they must answer questions put to them. However, if they think they are being asked for information covered by rules on professional secrecy or the confidentiality of records, they must tell the person asking the questions and the judge. Those rules are explained above. The judge will decide whether the information must be disclosed.

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## 2.6 > **ACCOMPANYING** **PEOPLE INVOLVED** **IN THE JUSTICE** **SYSTEM**

### **Meetings With Police**

Service providers are allowed to accompany victims to meetings with police, unless they were a witness to what happened.

### **Meetings With a Prosecutor**

Prosecutors are government lawyers who bring criminal cases to court. A service provider can accompany a victim to meetings with a prosecutor, except if the service provider was a witness to what happened.

### **Court**

#### ***Criminal Cases***

Criminal court cases are open to the public, unless the judge orders them to be closed. This means that service providers can be in the court room.

A different rule might apply if the service provider is a witness in the case. This is because judges can ask a witness to wait outside until it is his or her turn to answer questions.





### **Civil Cases**

If the civil case deals with a family matter (child custody, divorce, etc.), the case is usually closed to the public, so service providers cannot attend.

### **Accompaniment Services**

Some community organizations accompany people through the legal process. See the List of Community Resources at the end of this toolkit.

Crime Victim's Assistance Centres (CAVACs) offer some accompaniment through the court process. They also help victims and their families in other ways. There is a CAVAC office or service outlet in most regions of Quebec. For contact information, see the List of Community Resources at the end of this toolkit.

A service called Côté cour offers intensive support services for victims from the moment police intervene in a family violence situation. These services are only available in Montreal. Call 514-861-0141 or 514-868-9577.

## **SAFETY PLANNING**

- 3.1** > Various Times People Might Need Protection
- 3.2** > Importance of Practical Safety Planning
- 3.3** > Legal Documents to Take when Leaving
- 3.4** > Taking Children if Leaving in a Hurry
- 3.5** > Money
- 3.6** > Keeping a Record of Events
- 3.7** > Police Protection
- 3.8** > Protective Court Orders

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**Myth : The legal system can protect victims at all times.**



## SAFETY PLANNING

### 3.1 › VARIOUS TIMES PEOPLE MIGHT NEED PROTECTION

People who have been victimized, or fear for their safety, might need protection before the police and courts get involved, but also after they get involved.

This is because intervention by the police and the courts does not necessarily mean that an aggressor is put in jail and stays there. This is discussed in detail in the chapters Contacting the Police and The Criminal Court Process.

Also, leaving a violent or abusive relationship does not mean that the victim and the victim's dependents are safe: statistics show that during leaving and after can be a very dangerous time.

### 3.2 › IMPORTANCE OF PRACTICAL SAFETY PLANNING

As mentioned earlier, the legal system has its limits. It cannot protect everyone all the time. Protecting victims with practical safety planning is therefore crucial. This is especially true when people:

- › are physically far from the police, courts and legal advice and representation
- › cannot leave a potentially dangerous situation
- › face small-community dynamics that might put victims at greater risk than in other settings
- › have disabilities
- › are isolated by language or cultural differences

This toolkit does not go into all the non-legal aspects of safety planning. There are many excellent resources on the topic. See the lists at the end of this toolkit.

### 3.3 › LEGAL DOCUMENTS TO TAKE WHEN LEAVING

If someone has to leave a bad situation, it is a good idea to take the legal documents listed below, if it is safe to do so. Remember that children may have some of these documents too.

- › birth certificates
- › passports
- › immigration papers
- › work or student permits



- › any child custody or visiting rights papers
- › social insurance cards
- › driver's licence and registration
- › First Nations status cards
- › any court protection orders
- › insurance policies
- › marriage contract
- › apartment lease or home mortgage papers
- › bank cards and cheque books

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### 3.4 › TAKING CHILDREN IF LEAVING IN A HURRY

A parent who has to leave a bad situation in a hurry and is worried about the safety of children in the house will often take the children.

However, one parent does not automatically have more legal rights than the other to live with the children.

The parent who leaves should therefore try to ask a judge to make a decision about temporary parenting arrangements on an urgent basis. It is possible to get before a judge as quickly as a few days. These temporary orders are explained in the chapter Ending a Relationship - Family Law Issues.

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### 3.5 › MONEY

As a general rule, people sharing a joint bank account can each take out half the money.

However, the money might be taken into consideration later if there is a more permanent division of property between the couple.

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### 3.6 › KEEPING A **RECORD** OF EVENTS

It can often be important for a victim to have a good record of events. For example, the victim could later be a witness in a criminal court case and be asked questions about what happened. A record could also be important when it comes to court decisions about custody of children. "Custody" means a child's living arrangements. If safe to do so, the



➤ **Anyone who is in immediate danger can ask the police to accompany her or him to a safe place.**

victim should keep a record (time, date, etc.) of events, including the reactions of any children involved.

**3.7 > POLICE PROTECTION**

Anyone who is in immediate danger can ask the police to accompany him or her to a safe place. Note that the police cannot provide constant protection.

**3.8 > PROTECTIVE COURT ORDERS**



**Criminal Court Orders**

Anyone who has a reasonable fear of injury or property damage can apply to a court for a protective order.

These orders are also available to people who fear for the safety of their partners (married or not married) or their children.

These orders are called peace bonds or “810s”. The number refers to a section in the *Criminal Code*.

It is not necessary to show that an attack or damage has already taken place.

A peace bond orders the aggressor to stop harassing or threatening, and to obey any other conditions in the order. Other conditions could include not contacting someone or staying away from a home or workplace.

There is no charge for a peace bond and the person applying does not need a lawyer. The police can help with the request.

The person requesting the peace bond and the person against whom the order is requested will be called before a judge, who will decide whether to put an order in place.



**» IMPORTANT! There are limitations to peace bonds:**

- › They are only good for 12 months. After that, a new application must be made.
- › It can take several weeks to get a peace bond.
- › In and of themselves, they cannot guarantee safety. They are not continually monitored by the police. The police must be called if the bond is broken. Peace bonds can only be a deterrent.

### **Family Court Orders**

Family court judges can make orders to protect children when a couple is breaking up. Indirectly, these orders can also protect a parent. To learn more, see the section “Getting an Urgent Court Decision on Parenting Arrangements” in the chapter *Ending a Relationship: Family Law Issues*.

## CONTACTING THE POLICE

- 4.1 › Who Can Contact the Police?
- 4.2 › How to Contact the Police
- 4.3 › When to Contact the Police and What if the Victim Waits
- 4.4 › What to Expect if the Police Are Called
- 4.5 › Arrest and Consequences of an Arrest
- 4.6 › Decision Whether to Release a Person Arrested
- 4.7 › The In-Depth Police Investigation
- 4.8 › Getting Information About a Police Investigation

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**Myth : When the police are called, they will always arrest the person suspected of violence.**



## CONTACTING THE POLICE

Note that there can be variations in some police practices due to distances and available resources. Also, special rules apply to young people 12-17 suspected of crimes. See the chapter Children and Family Violence.

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### 4.1 > WHO CAN CONTACT THE POLICE

- > people who fear for their safety
  - > anyone who fears for someone else's safety
  - > anyone who has been a victim of a crime
  - > anyone else who thinks that a crime has been committed
- » **IMPORTANT! The police might therefore intervene even if a victim does not want them to intervene. For example, a neighbour might call the police.**

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### 4.2 > HOW TO CONTACT THE POLICE

This might depend on the circumstances and where a person lives.

The police can be contacted through the local emergency number (911, for example) or by calling or going to a police station, if there is one nearby.

Anyone who is afraid to speak to the police on the phone can call the emergency number and hang up without saying anything. This will be treated as an emergency call and the police will respond.

The police will also meet people at home or another location.

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### 4.3 > WHEN TO CONTACT THE POLICE AND WHAT IF THE VICTIM WAITS

The police can be contacted when someone fears an incident is going to happen, during an emergency, or after something has happened.

Sometimes victims delay contacting the police after an incident. This can be especially true in family violence cases, when some victims wait months and even years.

This delay can have an important impact: for certain crimes, charges can only be brought for up to 6 months after the event occurred. "Charges" means the formal accusation that a crime was committed. Service providers might therefore



want to tell clients that waiting too long might mean no charges can be brought.

**4.4 > WHAT TO EXPECT  
 IF THE POLICE  
 ARE CALLED**



Most police forces in Quebec must follow a set of basic procedures in family violence cases.

But beyond this, there are variations between regions of Quebec due to geographic isolation, available resources, agreements police forces have with community organizations, and other factors.

The steps explained below are based on the basic procedures.

**1. Police are Contacted after an Incident**

The police will:

- › Try to take a detailed written statement from the victim about what happened.
- › Give the victim a card with the name and contact information of a police officer.
- › Inform the victim of any community resources that can support the victim.
- › Arrest the person suspected of the crime if they have reasonable grounds to believe a crime was committed. An arrest does not mean the person will remain in jail. This is explained below.
- › Continue their investigation to see if there seems to be enough evidence to bring criminal “charges” against the suspect. Charges are explained below.



➤ **If necessary, the police will notify the Director of Youth Protection (DYP).**

## **2. Police Are Contacted During an Emergency**

In family violence cases, the police are often called in a situation of crisis.

If the police are not let in when they arrive at the scene, they will still ask questions to find out what happened. If they think someone is in danger, they can enter a home or other place by using reasonable force.

### **The police will then usually take these steps:**

- › Stop any violence.
- › Separate the people involved.
- › Ensure medical help for anyone injured.
- › Ask anyone injured to sign a consent form to release a copy of any medical report. The victim is not legally obliged to sign this, but a medical report is important for the police to do their work.
- › Meet with the victim to ask about any prior incidents and assess whether the victim is at risk for further violence.
- › Meet with other people to try to get their versions of events, including the suspected aggressor. The suspect is not legally obliged to reply to questions.
- › Take a statement from the victim and witnesses. Sometimes this is done later at the police station, and sometimes by videotape instead of in writing. The victim is not legally obliged to give a statement, but a statement is important for the police to do their work.
- › Collect evidence of injuries or damage to property, such as photos.
- › Tell the victim about helpful community resources.
- › Inform the suspected aggressor of helpful community resources.

➤ **An arrest does not happen automatically just because the police are called.**



- › Give the victim a card with a reference number for the incident and the phone number of the police station.
- › In some regions, the police can transport the victim to a shelter or other suitable place.
- › If a child under 18 was a victim, or they think that the safety or development of a child has been compromised, the police will notify youth protection authorities. Notification sets in motion protection mechanisms for the child. This does not necessarily mean that children will be removed from the family. To learn more, see in the chapter Children and Family Violence.
- › Write an “incident” report based on what the police learned about the event.
- › Decide whether to arrest anyone (see below).

4.5 ➤ **ARREST AND CONSEQUENCES OF AN ARREST**

➤ **IMPORTANT! An arrest does not happen automatically just because the police are called. The police will arrest if they have “reasonable grounds” to believe a crime was committed or is on the verge of being committed.**

The police will decide if there are “reasonable grounds” based on what they learn at the scene. For example, they will consider injuries, what the victim and other people say and their observations of the scene.

The suspected aggressor can be arrested even if the victim does not want this.

The police must inform the person arrested of the right not to answer any further questions, and the right to consult a lawyer as soon as possible. This includes the right to consult a Legal Aid lawyer free of charge.

Usually the person arrested is brought to the police station. In rare cases, the person is released at the scene with an order to appear in court at a later date.



An arrested person taken to the police station might be released from the station instead of being kept in jail. This is explained in the next section.

Also, a person arrested might not be charged with a crime. Arrest is different from charges. This is explained at the start of Chapter 5.

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**4.6 > DECISION WHETHER TO  
RELEASE A PERSON  
ARRESTED**

» If the person arrested is being held by the police, they must decide whether to keep the person in a jail cell or let the person go until his or her first appearance in court.

**IMPORTANT! This means that a person arrested and taken to the police station could be released in the hours following an arrest.**

The police have some discretion about whether to release. Statistics show that a large percentage of people arrested are released.

Factors the police consider in release decisions include:

- › safety of victims or witnesses
- › whether the victim has previously gone to a shelter
- › attitude of the suspect
- › drug or alcohol problems of the suspect
- › previous similar incidents
- › risk the suspect will commit another crime



If the suspect is released, the police will give that person a paper saying when to appear in court.

The police might also impose conditions on the person released. Conditions are usually imposed if they are necessary to protect the victim. Conditions can include an order:

- › to report to the police at set times
- › not to speak to the victim or go to the victim's home or work
- › not to consume alcohol
- › to surrender any guns

Usually, the police inform the victim if the suspect is released and whether any conditions are imposed.

The police can help someone return home safely to collect essential belongings, but only if the other adult involved agrees, or if the police have a court order asking them to do this.

The police then hand over their report on the incident to an "investigating" police officer.

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#### 4.7 > THE IN-DEPTH POLICE INVESTIGATION

The investigating police officer continues to look into what happened.

This officer contacts the victim and witnesses and completes any statements about what happened.

The investigation can last anywhere from a few days to much longer.

The investigating officer then gives a report to a government lawyer called a "criminal and penal prosecuting attorney". These lawyers are more commonly known as "Crown prosecutors" or just "prosecutors".

It is the prosecutor who will decide whether to bring criminal charges against the suspected aggressor. To learn more about charges, see chapter The Criminal Court Process.



#### 4.8 > **GETTING INFORMATION ABOUT A POLICE INVESTIGATION**

##### **Immediately after an Arrest**

Before the police leave the scene of an incident, they give the victim a card with a number for the incident and the police station phone number.

A victim who has questions at this point can call the police station.

##### **During the In-Depth Police Investigation**

The officer in charge of the investigation will contact the victim. The victim should get this officer's name and number in case the victim has any questions.

## THE CRIMINAL COURT PROCESS

- 5.1 › Bringing Criminal Charges: Who Decides?
- 5.2 › Dropping Criminal Charges: Who Decides?
- 5.3 › Role and Rights of the Victim
- 5.4 › Role and Rights of the Accused
- 5.5 › Role of the Government Lawyer
- 5.6 › Whether the People Involved Need Lawyers
- 5.7 › Choice of Language by the Accused
- 5.8 › First Appearance in Court of the Accused
- 5.9 › If the Accused Pleads Guilty
- 5.10 › If the Accused Pleads Not Guilty
- 5.11 › Possible Release of Accused during the Process
- 5.12 › If the Charges Are Serious: a “Preliminary Inquiry”
- 5.13 › Trial
- 5.14 › Possibility of Negotiations About the Case
- 5.15 › Decision
- 5.16 › Finding of Not Guilty: Why it Might Happen and What Happens Next
- 5.17 › Finding of Guilty > Sentencing
- 5.18 › Challenging the Decision
- 5.19 › Being a Witness in a Criminal Court Case
- 5.20 › Language Issues for Victims and Other Witnesses
- 5.21 › Special Measures for Vulnerable Victims and Other Witnesses
- 5.22 › Getting Information about a Criminal Court Case, including Release from Prison
- 5.23 › The Criminal Courts in Remote Regions

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**Myth: Victims can decide whether to bring and drop criminal charges against an aggressor.**



## THE **CRIMINAL COURT** PROCESS

This chapter only applies to adults 18 and older. For 12 to 17-year-olds, see the section “The Criminal System for Youth” in the chapter Children and Family Violence. Children under 12 cannot be charged with crimes.

Also, for Aboriginal people, the criminal justice process has been adapted to make sure they receive a culturally-sensitive treatment. See the chapter Aboriginals and Family Violence.

You should also know that the criminal court process works differently in more remote areas served by a travelling court. See the section “The Criminal Courts in Remote Regions” at the end of this chapter.

Finally, for a visual summary of the steps in the criminal process for adults, see the diagram at the end of this chapter.

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### 5.1 › **BRINGING CRIMINAL CHARGES:** WHO DECIDES?

Prosecutors decide whether to bring criminal charges against people suspected of crimes. Prosecutors are government lawyers who bring criminal cases to court.

It is not the decision of the police or the victim.

In theory, a victim can bring charges if the prosecutor decides not to, but this is extremely rare.

#### › **IMPORTANT! The consent of the victim is not required to bring charges.**

When deciding whether to bring charges, prosecutors consider several factors, including:

- › whether there is enough evidence
- › whether the accused has a criminal record
- › whether charges could help prevent future similar acts

If the victim is a child under 18, prosecutors also consider:

- › the impact of a court case on the child and the family
- › the risk of the child being re-victimized by the suspected aggressor
- › the risk of other children becoming victims
- › the age and maturity of the child





**➤ Reluctance of a victim to get involved in the legal process does not automatically mean the prosecutor will not bring charges.**

You can see that there are several reasons a prosecutor might not bring charges, even against someone who was arrested.

If there are no charges, this does not necessarily mean that the stories of the victim and other witnesses were not believed.

Reluctance of a victim to get involved in the legal process does not automatically mean the prosecutor will not bring charges. If there is enough evidence to prove the case without the victim, the prosecutor might go ahead. But if there is no other evidence without the victim, often charges will not be brought.

**» IMPORTANT ! If there is not enough evidence to bring charges, the prosecutor can still ask for a protection order for the victim.**

If the prosecutor does not go ahead with charges, the victim is informed.

If the prosecutor does bring charges, the person suspected of the crime - now called the "accused" - will be ordered to come to court.

Timing: if the person accused of the crime was being held by the police until now, the process of getting charges approved takes place very quickly. In other cases, it can take longer.

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**5.2 ➤ DROPPING CRIMINAL CHARGES:  
WHO DECIDES?**

Only the prosecutor can decide to drop them. The victim cannot decide this.

Charges could be dropped if the victim is too reluctant or too fragile to go through the court process. This often happens in family violence cases.



**Victims have a right to tell the court about the impact of the crime.**

But even if charges are dropped, the prosecutor can still ask for a protection order for the victim, or request that the accused follow a treatment program, for example, for violent behaviour or substance abuse. The accused must agree to follow a program.

### **5.3 > ROLE AND RIGHTS OF THE VICTIM**

From a legal point of view, a victim is a witness in a criminal court case. This means the victim is there to give information about what happened.

Sometimes victims are frustrated that they don't have a more active role in how the case proceeds.

However, victims do have a right to tell the court about the impact of the crime. This happens at the "sentencing" stage. See Section 5.17.

Victims also have a right to information about when a person in jail is going to be released.

The victim can be called on as a witness at various times in a criminal court case. The various times are explained below and in the diagram at the end of this chapter.

At other times, the victim can attend the case, but is not required to.

Victims are called to court by legal documents called "subpoenas". These are usually delivered by mail, but sometimes by other methods, such as delivery by a police detective.

There is no special seating in court rooms for victims, but some courthouses have special waiting rooms.

### **5.4 > ROLE AND RIGHTS OF THE ACCUSED**

The person accused of a crime is not obliged to prove his or her innocence. It is the other side, represented by the prosecutor, who must prove that the accused is guilty.

Because of this, the accused is not obliged to talk in court about what happened.



➤ **The prosecutor is a government lawyer acting for the public interest in bringing a criminal case to court.**

**5.5) ROLE OF THE GOVERNMENT LAWYER**

This person is called a "prosecutor". The prosecutor is a government lawyer acting for the public interest in bringing a criminal case to court.

The prosecutor is not the victim's lawyer. But the prosecutor does have an obligation to explain the court process to the victim.

The prosecutor must prove that the accused is guilty of the crime "beyond a reasonable doubt". This means the proof must be strong enough that there is no doubt that the accused was guilty of the crime. This can be a hard standard to meet.

The prosecutor must treat everyone involved fairly and according to certain rules.

The same prosecutor may or may not handle the whole case from start to finish. This depends on the region of Quebec and the type of case.

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**5.6) WHETHER THE PEOPLE INVOLVED NEED LAWYERS**

**Victim**

It is not necessary for victims to hire a lawyer, except in rare situations where special legal issues arise.

**Accused**

The accused can go through the court process without a lawyer. But since the process is complicated and the consequences of criminal charges can be serious, it is highly advisable to have a lawyer.

Depending level of income and the type of case, the accused might be eligible for Legal Aid, a government program that provides lawyers for people who cannot afford them. To learn more, see "Getting Legal Help" in Chapter 11.

**Witnesses**

They usually do not need a lawyer.



**5.7** > CHOICE OF  
**LANGUAGE**  
BY THE ACCUSED

An accused has the right to choose English or French as the language for a criminal court case.

At the accused's first appearance in court (see below), the judge must inform the accused of this right.

An accused who cannot communicate in English or French or understand either language has a right to an interpreter free of charge.

Witnesses do not have to answer questions in the language chosen by the accused. But if a witness answers questions in another language, the accused has a right to an interpreter.

For questions about interpreters, the accused or the accused's lawyer can contact the person in charge of legal interpreters at the courthouse in the region.

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**5.8** > FIRST APPEARANCE  
**IN COURT OF  
THE ACCUSED**

An accused who was arrested and is being held by the police must be brought to court within 24 hours of the arrest, or as soon as possible.

An accused not being held by the police usually appears in court several months after the charges are authorized.

In some remote regions, the accused "appears" in court by phone.

At the first appearance, the accused or the accused's lawyer learns what the charges are.

The accused then gives an answer of guilty or not guilty to the charges. This is called the "plea". When the charges are for a very serious crime, the plea happens later.

The accused can change a not guilty plea to guilty up until there is a decision in the case.



**5.9 > IF THE ACCUSED PLEADS GUILTY**

The victim and other witnesses will not have to come to court to talk about what happened.

The judge will either decide right away about the consequences for the accused of being found guilty, or set a date for this to happen. These consequences are called “sentences”.

When the sentence is being decided, the victim has a right to make a statement about the emotional, physical and financial impact of the crime. These are called “victim impact statements”.

To learn more, see the section below on sentencing.

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**5.10 > IF THE ACCUSED PLEADS NOT GUILTY**

The court sets dates for the next steps in the case. These steps are explained below.

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**5.11 > POSSIBLE RELEASE OF ACCUSED DURING THE PROCESS**

If the accused was held by the police until the first court appearance, the judge must decide whether to keep the accused in jail until the case is finished, or release the accused while the case is going on.

This decision on release is commonly called a “bail hearing”.

The law says the accused must be released unless the prosecutor can show good reasons why the accused should be held. Reasons to hold the accused include:

- > a risk the accused will not show up when called to court later
- > the crime was serious
- > a risk to the safety of the victim and witnesses

Usually, the victim does not have to speak at the bail hearing. The police will talk about what happened based on their investigation and the written statement of the victim, if there is one. However, the victim can attend the bail hearing.

➤ **The victim is informed if the accused is released and of any conditions that go with the release.**



If the judge decides to release the accused, the judge can still attach conditions. These conditions can include an order to:

- › live at a certain address
- › not contact the victim or those close to the victim
- › stay a certain distance from the victim
- › report to the police at certain times
- › follow a treatment program, for example, for an addiction or violent behaviour (The accused must agree to participate in these kinds of programs.)

The victim is informed if the accused is released and of any conditions that go with the release.

If the conditions are not respected, anyone benefitting from the conditions (the victim, for example) can call the police. An accused who does not respect conditions can be arrested.

5.12 ➤ **IF THE CHARGES ARE SERIOUS: A “PRELIMINARY INQUIRY”**

When the charges are serious, there might be a “preliminary inquiry”.

The purpose of this step is to find out whether there is enough evidence to have a full trial. The purpose is not to see if the accused is guilty.

If the accused has been in jail since the first court appearance, the inquiry will be soon after this appearance. If the accused was never in jail or was released, the inquiry could be up to a year after the first court appearance.

The victim and other witnesses may have to answer questions at the inquiry about what happened. The accused will usually not answer questions at the inquiry.

If there is not enough evidence to go to trial, some or all of the charges will be dropped.



### 5.13 > TRIAL

A trial is a court hearing to decide if a person accused of a crime is guilty of the crime.

Timing: there can be a long delay between when charges are brought and a trial. This happens for various reasons, including the length of police investigations, the time needed for a preliminary inquiry, the heavy workload of the courts, or because there is no permanent court in the area.

At a trial, both sides present can evidence and arguments to support their positions. Evidence includes what the witnesses tell the court, written reports, etc.

It is important to know that the accused is not obliged to speak as a witness at the trial.

Each side can question the witnesses. This means that the version of events of a witness may well be challenged by the opposite side.

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### 5.14 > POSSIBILITY OF NEGOTIATIONS ABOUT THE CASE

From the start of the court process and until a decision is made, the prosecutor and the accused or accused's lawyer can negotiate about:

- › whether the accused will plead guilty
- › a sentence (the consequences for the accused of being found guilty)

This process is called "plea bargaining".

For example, the accused could plead guilty in exchange for a reduction in the charges or a lighter sentence.

- » **IMPORTANT! A plea bargain does not mean the crime was not serious, or that the prosecutor does not believe the victim or other witnesses. The prosecutor often has a good idea of what the sentence would be if a court finds the accused guilty, so plea bargains are used to save time and money and spare victims and other witnesses the ordeal of testifying.**



A large percentage of cases are settled by plea bargains before a trial takes place.

The prosecutor does not need the victim's permission for a plea bargain.

Judges are not obliged to accept plea bargains, but in practice they usually accept them.

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### 5.15 > **DECISION**

When the trial is over the judge (or the jury if there is one), makes a decision on whether the accused is guilty or not guilty. This decision is called the "verdict".

The victim gets a letter explaining the verdict.

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### 5.16 > FINDING OF **NOT GUILTY:** WHY IT MIGHT HAPPEN AND WHAT HAPPENS NEXT

A decision of not guilty does not necessarily mean that the court did not believe the victim and other witnesses.

This is because the law sets a high standard for the prosecutor to meet to show that the accused is guilty.

An accused held in jail is freed immediately.

If the accused was not in jail, but had some conditions to respect, the conditions are lifted.

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### 5.17 > FINDING OF **GUILTY:** **SENTENCING**

If the accused is found guilty, the judge must decide on the consequences for the accused. These consequences are called "sentences".

Sometimes both sides reach an agreement on a sentence to suggest to the judge.

Before choosing a sentence, the judge must consider any "victim impact statement". All victims can file these statements, in which they can describe the emotional, physical and financial impact of the crime. The form for the statement is mailed to victims at the start of the court case. Victims can get help to complete the form.

For some crimes, there are minimum sentences. But for most crimes, judges have some discretion about the sentence.





Factors judges can consider include:

- › any prior criminal record of the accused
- › accused’s personal history
- › impact of crime on the victim
- › abuse of a married or unmarried partner > harsher sentence
- › abuse of a person under 18 > harsher sentence

Some possible sentences:

- › prison: Only for the most serious cases. A small minority of those found guilty go to prison.
- › probation: The person is released into the community, but must follow some conditions, such as good behaviour, not contacting the victim, reporting to a court officer, etc.
- › conditional sentence: The person can live in the community, but at a designated location under very strict conditions.
- › participation in a treatment program: The person must agree to participate.

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## 5.18 › CHALLENGING THE DECISION

In some cases, the finding of guilty or not guilty, or the sentence, can be challenged. This challenge is called an “appeal”.

Either the prosecutor or the accused can ask for an appeal.

A decision cannot be appealed just because one of the people involved doesn’t like the decision. Appeals exist to make sure courts don’t make mistakes in applying the law.

The appeal is heard by a court higher up in the court hierarchy than the one that heard the original case.

In some cases, the higher court can order that there be a completely new trial. In that case, the victim and other witnesses could be asked to come to court again to answer questions.



## 5.19 > BEING A WITNESS

### IN A CRIMINAL COURT CASE

For more information on being a witness, Justice Quebec's guides in the list of Useful Websites and Publications.

#### What Is a “witness”?

Witnesses are people who come to court to answer questions about something they saw, heard or experienced.

Some “expert” witnesses, such as doctors, can give opinions based on their specialized knowledge.

When a witness answers questions in court, this is called “testifying”.

Remember that the law considers victims to be witnesses.

#### Can Children Be Witnesses?

Even young children can be witnesses in a criminal case. However, children under 14 can testify only if they are able to understand and reply to questions.

#### How Witnesses Are Called to Court

Witnesses are called to court through legal papers called subpoenas. The paper will say when the witness must go to court and where to go. It might also ask a witness to bring certain documents.

Subpoenas are delivered either by mail, a court officer called a bailiff, or sometimes by a police detective.

Either side can request a subpoena for a witness: the prosecutor or the person accused of the crime.

Anyone who gets a subpoena must respect it. A witness with a serious reason for not being available should call the contact person of office mentioned on the back of the subpoena as soon as possible.



## Who Prepares the Victim and Other Witnesses?

If the victim or another witness is called to court by the prosecutor, the prosecutor will usually meet with that person the day before or the same day the witness must testify.

When they receive a subpoena, victims and other witnesses also receive information on the role of witnesses, what to expect in court and monetary compensation for their time.

## Waiting Time

It is usually impossible to know how long a witness will have to wait to testify since many cases might be scheduled for the same day.

Usually the judge will ask the victim and other witnesses to wait outside the courtroom until it is their turn. This is so that they will not be influenced by what other witnesses say.

The judge might let a witness to leave before testifying. This could happen if the case is postponed, or for various other reasons.

## Who Asks the Questions?

Both sides of the case – the prosecutor and the accused – can ask questions.

In rare cases where there accused does not have a lawyer, the accused can ask the questions, unless the judge decides otherwise. For more on this, see the section below “Special Measures for Vulnerable Victims and Other Witnesses”.

Witnesses should know that their versions of events can be challenged by the other side. For example, if the witness was called by the prosecutor, the accused can try to challenge the version of events of that witness.



**> Victims and other witnesses should know that their versions of events can be challenged by the other side.**

## **Kinds of Questions**

Witnesses can be asked about what they saw, heard or experienced about an event, but only if they have personal knowledge of what happened.

Some witnesses qualified as experts can also give opinions (doctors, for example).

Witnesses cannot refuse to answer questions, except in rare cases, such as when confidential information is involved.

Some service providers are required to keep client information confidential. If they are asked questions that they believe involve this kind of information, they should tell this to the judge before answering. The judge will then make a decision on whether they must reveal the information. To learn more about confidential information, see the chapter Service Providers and Family Violence.

## **Is the Case Public?**

Criminal cases are usually open to the public. However, the judge can sometimes order that they be held in private, such as when a witness is under 18 or in sexual assault cases.

Note that the rules are different in civil cases dealing with family matters, such as child custody or divorce. Those cases are usually closed to the public.

## **Missing Work and Compensation**

Employers must allow employees to take time off work to go to court as witnesses, but they do not have to pay employees for the lost time.

However, witnesses are entitled to some money for their time and expenses, such as travel and meals. To learn more, see the Justice Québec online guides for victims and witnesses at: [www.justice.gouv.qc.ca/english/publications/generale/public-gen-a.htm#witnesses](http://www.justice.gouv.qc.ca/english/publications/generale/public-gen-a.htm#witnesses).



➤ **Witnesses can testify in English, French or another language.**

**5.20 > LANGUAGE ISSUES FOR VICTIMS AND OTHER WITNESSES**

Witnesses can testify in English, French or another language. Also, witnesses who do not understand or speak the language of the court case have a right to an interpreter. People who have a hearing impairment have a right to an interpreter. Witnesses who think they need an interpreter should speak ahead of time to whoever has called them to court. These measures can be particularly important in family violence cases.

**5.21 > SPECIAL MEASURES FOR VULNERABLE VICTIMS AND OTHER WITNESSES**

**Special Waiting Rooms**

Many courthouses in Quebec have special rooms where victims and other witnesses can wait before they have to testify.

**Preventing Abusive Questioning**

The judge can stop questioning that is abusive, too repetitive or otherwise inappropriate.

Also, when a prosecutor asks a witness to come to court, it is the prosecutor’s duty to make sure the witness is protected against intimidation.

**Excluding the Public and Journalists**

The general rule is that the public and journalists can attend criminal court cases. However, judges can sometimes order that they leave the courtroom for all or part of a case.

The judge will likely make this kind of order when there is a witness under 18, and in sexual assault cases.



### **No Revealing Identities**

The judge can order the general public and journalists not to reveal information that could identify the victim or other witnesses.

When this kind of order is made, it does not necessarily mean the public and journalists are excluded from the courtroom, only that they can't reveal the identity of the people covered by the judge's order.

### **Closed-Circuit Television or Screen**

The judge can allow a witness to testify outside the courtroom by closed-circuit television or inside the courtroom but behind a screen so the witness does not see the accused.

The judge must allow this for witnesses under 18 and witnesses with physical or mental disabilities that make it hard to communicate.

### **People with Difficulty Communicating Due to a Disability**

The judge can allow someone whose physical or mental disability makes it difficult to communicate to give evidence in any way that allows the evidence to be understood.

### **Support Person**

The judge can allow victims and other witnesses to choose a support person to be close by during their testimony.

This judge must grant a request for a support person for witnesses under 18 or witnesses with physical or mental disabilities.

This support person could be a service provider.

➤ **The judge can allow victims and other witnesses to have a support person close by when they testify.**



### **Witness or Victim under 18 Years Old – Videotaped Testimony**

A child’s statement made to a police officer during a police investigation can be done by videotape. This videotape can then be played in court and the child can just confirm it is true. This way a child does not have to testify in court.

### **When the Accused Does Not Have a Lawyer**

Although rare, it can happen that the accused will not have a lawyer in court. In these cases, the accused would normally have the right to ask the victim and other witnesses questions.

However, the judge can order that a lawyer be appointed do this questioning instead of the accused.

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## **5.22 ➤ GETTING INFORMATION ABOUT A CRIMINAL COURT CASE, INCLUDING RELEASE FROM PRISON**

### **The Victim**

#### ***Prosecutor Meets with Victim at Start of Case***

The prosecutor first assigned to the case will meet the victim shortly after an incident to explain the court process and discuss what happened. Prosecutors are government lawyers who bring criminal cases to court against people accused of crimes.

A victim who has questions for the prosecutor after this meeting can call the customer service line of the prosecutors’ office at the courthouse.

Note that, except in special cases, there could be several prosecutors who handle a file.

**Crime Victims Assistance Centres (CAVACs) help victims and their families deal with post-traumatic stress, navigate the legal process and find specialized services.**

### ***Victim Gets a Letter***

The victim will also receive a letter with the following:

- › a description of the charges
- › an explanation of the victim's eventual role in a court case
- › a change of address form in case the victim moves
- › a form called a "victim impact statement", which the victim can use to tell the court about the financial, emotional and physical impact of the crime
- › a pamphlet describing the services of the Crime Victims Assistance Centres (CAVACs). CAVACs help victims of crimes and their families deal with post-traumatic stress, navigate the legal process and find specialized services. There is a CAVAC office or point of service in most regions of Quebec. For contact information, see the Chapter 11.

### ***In Montreal: Service Côté cour***

In Montreal, a service called Côté cour intervenes to support victims of family violence and provide information very soon after a police intervention. For more information, call 514-861-0141 or 514-868-9577.

### ***After the End of a Court Case***

The victim gets a letter explaining the court's decision and any sentence. The letter will also explain the system that allows people sent to prison to be released temporarily or permanently before the end of their sentences.

Before release decisions are made, victims have the right to present statements about their safety concerns and the impact of the crime.





See Éducaloi's website article "Conditional Release" for more information.

When the prison sentence is less than two years, the provincial correctional services department and the Commission québécoise des libérations conditionnelles (Quebec parole board) makes release decisions. Victims of some crimes are automatically informed about releases, but other victims must register. To learn more, see this online guide: [www.securitepublique.gouv.qc.ca/fileadmin/Documents/services\\_correctionnels/depliants/depliant\\_victims\\_en.pdf](http://www.securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/depliants/depliant_victims_en.pdf).

When the prison sentence is two years or more, release decisions are made by the Correctional Service of Canada and the Parole Board of Canada. Victims must register in writing to get information about when a person might be released. For more information, consult the "Victim Services" section of the Correctional Service of Canada website.

### **Witnesses**

Witnesses called to court receive a pamphlet explaining their responsibilities as witnesses, court procedure and financial compensation to which they are entitled.

For more information, witnesses can call the person or office listed on the back of the subpoena (the document requesting them to come to court).

### 5.23 » THE CRIMINAL COURTS IN **REMOTE REGIONS**

For more information on areas served by itinerant courts, see the website of Justice Quebec: [www.justice.gouv.qc.ca/english/joindre/palais/itinerant/itinerant-a.htm](http://www.justice.gouv.qc.ca/english/joindre/palais/itinerant/itinerant-a.htm).



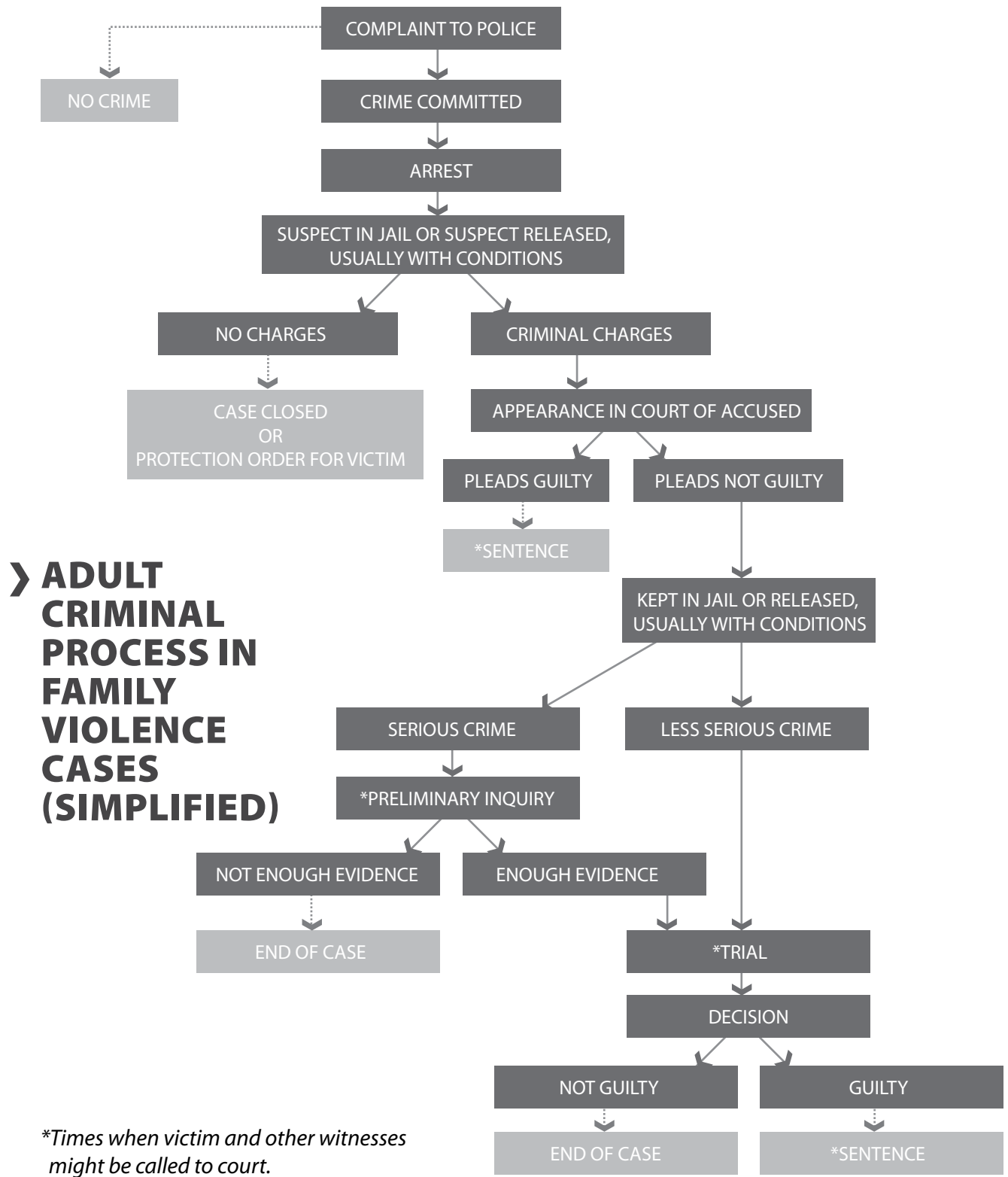
Many remote communities, especially in northern Quebec and the North Shore and Lower North Shore areas along the St. Lawrence River, are served by travelling courts, called “itinerant” courts.

Judges and staff for these courts travel periodically to hear cases according to a schedule fixed well ahead of time.

Except in the few communities with permanent court facilities, cases are heard in public buildings, such as schools and community centres.

» **IMPORTANT! Since the court only comes to these communities at certain times, delays can be longer than in more populated areas. These delays can increase the burden on people involved in a family violence court cases. Also, procedures for travelling courts sometimes differ from permanent courts. Some of the steps explained earlier in this chapter might therefore not apply.**

CRIMINAL HELP SHAME ISOLATION SAFE CHILDREN HELP HARASS SAFE HARASS SAFE CRIMINAL CRIMINAL CRISIS ISOLATION HANAJJ ISOLATION CHILDREN  
 SAFE HEALING SHAME HELP COURT HELP NEGLECT ISOLATION ISOLATION CHILDREN CRIMINAL AS  
 CHILDREN HELP ISOLATION CRISIS CHILDREN HARASS HELP ALONE HELP SAFE COURT HEALING EMPLOYERED VII



➤ **ADULT CRIMINAL PROCESS IN FAMILY VIOLENCE CASES (SIMPLIFIED)**

*\*Times when victim and other witnesses might be called to court.*

## **ENDING A RELATIONSHIP: FAMILY LAW ISSUES**

- 6.1 › Voluntary Agreements versus Going to Court
- 6.2 › Different Rules for Married Couples versus Other Couples
- 6.3 › Children: Parenting and Financial Issues
- 6.4 › The Family Home
- 6.5 › Financial Support for an Adult in the Short Term
- 6.6 › Settling Issues on a Permanent Basis
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- 6.8 › Importance of Having a Record of Events

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**Myth : Parents who are violent or abusive automatically lose the right to live with and visit their children.**



## ENDING A RELATIONSHIP **FAMILY LAW ISSUES**

The end of a relationship can raise many legal issues: who children will live with, who will stay in the family home, etc.

This chapter explains issues that arise immediately after a breakup. On its website, Educaloi has more complete information about these topics, and about settling issues on a permanent basis.

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### 6.1 » **VOLUNTARY AGREEMENTS** VERSUS GOING TO COURT

A couple can reach a voluntary agreement about family law issues, and then have the court recognize it. This can avoid a lengthy legal battle.

However, it is not always possible to reach an agreement, especially in family violence situations.

Also, it is possible that a victim could end up accepting an unfair agreement out of intimidation, or a desire to move on.

For people who want to try to negotiate an agreement, it is highly recommended to at least get legal advice at the outset of the process.

» **IMPORTANT! The rest of this chapter deals with people who are not able to reach a voluntary agreement.**

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### 6.2 » DIFFERENT RULES FOR MARRIED COUPLES **AND OTHER COUPLES**

For more information, see  
Éducaloi's website articles  
about married, de facto and  
civil union couples.

Couples live in different kinds of relationships. Some are married. Others do not marry: they live in “de facto” relationships. De facto couples are often called common-law couples.

The legal rules for people leaving a relationship are sometimes different for married and de facto couples. These differences are explained below.

This chapter does not deal with couples in civil unions, a kind of marriage recognized in Quebec. This is because a relatively small number of couples are in civil unions.



### 6.3 > **CHILDREN:** PARENTING AND FINANCIAL ISSUES

#### 6.3.1 > **PARENTING ARRANGEMENTS IN THE SHORT TERM**

Immediately after a breakup, the law says that both parents are equal when it comes to the custody of their children and access to them. “Custody” refers to a child’s living arrangements.

This means that, in normal situations, one parent cannot leave with the children without the agreement of the other parent. Also, one parent cannot prevent the other parent from visiting the children. This is true whether the parents are married or in a de facto relationship.

However, in family violence situations, there can be exceptions to these general rules.

#### **Scenario 1: A parent fears for his or her own safety or the children’s safety and leaves with the children without the other parent’s agreement.**

A parent might be able to justify removing children from the other parent for safety reasons. Before leaving the family home, it is a good idea for that parent to consult a lawyer.

The lawyer can:

- › evaluate the situation and discuss alternatives to leaving the family home, if appropriate
- › help come up with a safety plan
- › prepare legal documents requesting an urgent decision from a judge on child custody and explaining why the children were removed without the other parent’s agreement (These urgent decisions are explained below.)

#### **Scenario 2 - A parent might leave in a hurry without the children, but want to ask for custody afterwards.**

This parent will probably have to justify the decision to leave without the children. It can be difficult to claim that the

➤ **A parent who leaves and waits to long to ask a judge for temporary custody of the children can face an uphill battle.**



children are unsafe when the parent who left the home left the children behind.

A parent who leaves and waits too long to ask a judge for temporary custody of the children can face an uphill battle: the more time passes, the less likely it is that a judge will change a parenting arrangement in place since that parent left. This is because the courts put a lot of emphasis on stability of the children when making these decisions.

See the section below on asking a judge for temporary custody.

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**6.3.2** ➤ **GETTING AN URGENT COURT DECISION ON PARENTING ARRANGEMENTS**

An urgent decision can be obtained as quickly as a few days. These decisions are initially valid for 30 days, but can be renewed.

If there is a risk of further abuse and violence, the judge can include safeguards in the decision. For example, the judge can:

- › order that any exchange of children take place in a public place, or through an intermediary
- › order that visiting rights be exercised under the supervision of a third person

It is possible to ask for an urgent decision without hiring a lawyer. There are people who do it themselves. The procedure is explained step by step in Éducaloi's website articles "Breaking Up When You Are Not Married: the Court Process" (de facto couples) and "Divorce: Getting an Urgent and Temporary Ruling before the Divorce Trial" (married couples).

However, in family violence situations it can be a good idea to get help from a lawyer. This is because abuse and violence can escalate after separation. Also, the court process can be complicated and overwhelming, especially for a vulnerable person.



### 6.3.3 › PARENTING ARRANGEMENTS IN THE LONG TERM

#### Married Couples

Either parent can ask a judge for what are called “provisional measures”. These measures will apply until a final court decision on a divorce.

It is possible to combine a request for an urgent decision – discussed above – with a request for provisional measures. It is also possible to ask only for provisional measures if an urgent decision is not necessary.

It usually takes several months to get a provisional measures decision.

Provisional measures are explained in detail in Éducaloi’s website article “Divorce: Getting an Urgent and Temporary Ruling before a Divorce”.

#### De Facto Couples

These couples follow a different process in court. Provisional measures do not apply to them. They go directly to a request for a permanent decision about child custody and visiting rights. This decision can take several months to get.

The procedure for requesting a permanent decision is explained in Éducaloi’s website article “Breaking Up When You Are Not Married: the Court Process”.

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### 6.3.4 › HOW FAMILY VIOLENCE AFFECTS THE RIGHTS OF PARENTS

The judge will base a decision on custody and visiting rights on what is best for the children.

A parent who is violent or abusive toward the other parent will not automatically lose custody or visiting rights.

A judge will take family violence into account by looking at these factors, among others:

- › the type of violent or abusive acts and how often they occurred
- › who was the victim (or victims)
- › whether the children were present when the acts took place
- › the impact on the children





If the judge decides that a parent is a risk to the safety, stability or development of the children, the other parent will probably be given sole custody. Also, the visiting rights of the violent or abusive parent might be restricted.

But if the judge believes that the violence or abuse was an isolated incident, that it was not directed towards the children, and that it did not have an impact on them, the judge might not give the incident much weight when deciding on custody and visiting rights.

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**6.3.5 > IF YOUTH PROTECTION AUTHORITIES ARE INVOLVED**

If youth protection authorities are investigating the situation of a child at risk due to family violence, this can complicate custody and visiting rights decisions made by courts.

This is because family matters (custody, child support, financial support for spouses, etc.) and youth protection matters are usually dealt with by separate courts.

In practice, the court deciding family matters will postpone its decision until youth protection authorities have investigated and protective measures are in place. This can create delays.

Some family lawyers advise a parent whose child is being victimized by the other parent to contact youth protection authorities. A parent who does nothing, but later claims the other parent is unfit to have custody, could have difficulty defending the lack of action to the judge.

To learn more about youth protection, see the chapter Children and Family Violence.

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**6.3.6 > CHILDREN'S INPUT ABOUT LIVING ARRANGEMENTS**

Judges making decisions about custody and visiting rights will usually consider the child's preferences.

The older and more mature the child, the more these preferences will be taken into account.



There is an **exception**: when one parent has deliberately tried to turn a child against the other parent, the judge will not give much weight to the child’s preferences.

The judge can take the child’s point of view into account in various ways: having the child testify in court or in another place the judge finds more appropriate, asking for the opinion of a professional about the child’s best interests, and appointing a lawyer to represent the child.

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### 6.3.7 > AUTHORITY OVER CHILDREN **WHEN PARENTS BREAK UP**

For more information, see Éducaloi’s website article “Parental Authority”.

When parents break up, no matter the custody arrangement, both parents keep “parental authority” over the children.

Parental authority refers to all the duties and rights parents have toward their children.

The duties include supervising, educating, feeding, housing and maintaining a safe and healthy environment for the children.

The rights include, for example, making decisions about medical care and schooling.

Another person who acts as the parent of a child, such as a boyfriend or girlfriend of a parent, is not a “parent” under the law and does not have parental authority.

Of course, the parent with custody can exercise parental authority on a daily basis, while the other parent can only do so from a distance. But for all important decisions, the parent without custody must be consulted.

What is an “important” decision? Here are some examples:

- › choosing a school
- › religious practices
- › care necessary for a child’s health
- › long-term activities and pastimes

In some cases, parental authority can be taken away from a parent. This means a parent loses rights toward the child, but not the duties. This only happens in extreme cases.



For example, it might happen in cases of violence towards a child, sexual abuse, or abandonment of a child over a long period. Only a judge can take away parental authority.

What happens more often in practice is that a parent will ask a judge for permission to make certain decisions without the consent of the other parent. This kind of request can be made at the same time as a request on child custody.

### 6.3.8 » FAMILY MEDIATION FOR COUPLES WITH DEPENDENT CHILDREN

Couples with dependent children who are breaking up and must settle issues around child custody, financial support, and dividing up property are entitled to free family mediation sessions paid for by the government. In mediation, an impartial person helps the couple reach a fair agreement.

In fact, attending an information session about mediation is required before a court will hear any applications about these issues, unless the couple has serious reasons for not attending. Family violence can be one of these serious reasons.

**» IMPORTANT! Mediation may well not be appropriate in family violence situations because of conflict, intimidation or an imbalance of power between the people involved.**

To learn more, see Éducaloi's website article "Free Family Mediation".

### 6.3.9 » FINANCIAL SUPPORT FOR CHILDREN ("CHILD SUPPORT")

For more information, see Éducaloi's website article "Frequently Asked Questions About Child Support".

Even after they break up, parents have a legal obligation to contribute to the needs of their children according to their income and other financial resources. This rule applies to both married and de facto couples.

It is the parent who is with the child less than 40% of the time who must pay support to the other parent.

If both parents share time with the children, it is the parent with the highest income who must pay child support to the other parent.

The amount to be paid is calculated according to government forms.

If the parents cannot reach an agreement on child support, they can:

- › Make a request to a judge for a temporary decision on an urgent basis. The procedure is explained step by step in Éducaloi's website articles "Divorce: Getting an Urgent and Temporary Ruling before the Divorce Trial" (married couples) and "Breaking Up When You Are Not Married: the Court Process" (de facto couples).
- › Go to mediation. As mentioned earlier, couples with dependent children are entitled to free family mediation sessions paid for by the government. However, mediation may not be appropriate for people experiencing family violence. To learn more, see Éducaloi's website article "Free Family Mediation".

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## 6.4 › THE FAMILY HOME

In legal terms, the family home is the place where two people in a couple live together and raise their children, if they have any. It can come in various forms: a house, an apartment, a condo, a trailer, etc.

### 6.4.1 › RIGHT TO LIVE IN THE FAMILY HOME

#### Married Couples

Even if only one person is the owner, or the tenant named on a lease, both people have a right to stay in the home. This is the rule unless:

- › one spouse voluntarily agreed to give the other exclusive use of the home
- › an order in a criminal case prevents one of the spouses from being in or near the home

But in family violence situations, living together can become impossible. In these cases, either person can ask a family court judge for the exclusive right to live in the family home



until issues between the couple are settled permanently. Even the person who is not the owner or the tenant on the lease can ask for this.

To decide who will stay and who will have to leave, the judge will consider:

- › the inconvenience to each member of the family
- › the interests of the children
- › who can most readily find another place to live, practically and financially

If one person has voluntarily left the home and later wants exclusive use, he or she may have to explain to the judge the reasons for leaving.

This kind of order can be obtained from a judge on very short notice. The request can be made without a lawyer, but again, the court process is complicated and having a lawyer can be a good idea. The procedure is explained in detail in Éducaloi's website article "Divorce: Getting an Urgent and Temporary Ruling before the Divorce Trial".

## De Facto Couples

The legal situation here is less clear.

If the people involved are not co-owners of the home, or both named on the lease, it is the owner or person on the lease who has the right to stay and can ask the other person to leave.

However, the right to ask someone to leave cannot be done abusively. Kicking someone out at 3:00 a.m., for example, might be considered abusive, depending on the circumstances.

Also, when children are involved, some judges will give use of the family home to the parent who is not an owner or tenant on the lease if this is in the best interests of the



children. This is a temporary right to use the home until issues are settled permanently between the couple. Not all judges grant this kind of request. To find out how to make this kind of request, see Éducaloi's website article [Breaking Up When You Are Not Married: the Court Process](#).

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#### 6.4.2 › **RIGHT TO VISIT THE FAMILY HOME**

##### **Married Couples**

Even if only one person is the owner or the tenant on a lease, either person has a right to enter the home, unless:

- › one person voluntarily agreed to give the other exclusive use of the home
- › an order in a criminal case prevents one person from being in or near the home
- › a judge has given one person exclusive use of the family home

##### **De Facto Couples**

If only one person is the owner or tenant, that person can decide who can enter the home.

If both people are co-owners or co-tenants, both people are allowed access unless:

- › one person agreed to give the other exclusive use of the home
- › an order in a criminal case prevents one of the partners from being in or near the home

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#### 6.4.3 › **CHANGING THE LOCKS**

Normally, only a judge can exclude someone from the family home.

However, in practice it happens that people change the locks because of legitimate safety concerns. If these fears are well founded, normally a judge will accept this decision and will not punish the person who had the locks changed.



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#### 6.4.4 » FURNITURE AND DECOR

##### Married Couples

No one can sell or remove from the family home furniture or decor items used by the family. This includes chairs, tables, appliances, paintings and similar items.

##### De Facto Couples

The protection for family furniture and decor does not apply.

The rule is that each person in the couple owns whatever he or she bought or received as a gift, even if these items were for family use. This means these items can be removed from the family home by whoever owns them.

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#### 6.4.5 » PROTECTION AGAINST SALE OR RENTAL

These rules apply regardless of the type of home (house, condo, apartment, etc).

##### Married Couples

The family home enjoys special protection even if one person is the sole owner or tenant on a lease.

If the home is owned, the owner cannot sell it or rent it out without the written agreement of the non-owner.

If the home is rented, the person named on the lease cannot end the lease or rent the home to someone else without the written agreement of the person not named on the lease.

» **IMPORTANT! To benefit fully from this protection, the person who is not the owner or the person on the lease should take some steps:**

For homes that are owned: the non-owner must register a “Declaration of Family Residence”. The form can be downloaded from the website of Services Québec. From the home page, go to “Citizens > When a couple separates > Declaration of family residence”. There is a fee to pay. The non-owner can register a declaration confidentially and without the owner’s agreement.



For rented homes: the person not on the lease must notify the landlord that the home is being used as the family residence. This can be done in the lease itself, or by sending the landlord a letter, ideally by registered mail. Again, this can be done without the knowledge of the person on the lease.

**Someone who does not follow these steps might still have some legal remedies. It is best to consult a lawyer.**

### **De Facto Couples**

The family home does not benefit from these protections. If someone is the only owner or only tenant on a lease, that person can sell or rent out the home without the agreement of the other person.

However, the person who is not a co-owner or co-tenant can get protection by signing an agreement called a “cohabitation contract” with the other person. These contracts say in advance what will happen in the event of a breakup. To learn more, see Éducaloi’s website article “Cohabitation Contracts”.

If both people are co-owners or co-tenants, they must agree on what to do about the home or ask a court to make a decision on this.

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## **6.5 > FINANCIAL SUPPORT FOR AN ADULT IN THE SHORT TERM (“SPOUSAL SUPPORT”)**

Note that this is different from child support, which is explained above.

### **Married Couples**

If there is no agreement on how to deal with financial support for one person in the couple who might need it, either person can ask a court for a temporary decision on an urgent basis. The judge can also be asked to decide who will pay bills on a temporary basis. To find out more, see



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Éducaloi’s website article “Divorce: Getting an Urgent and Temporary Ruling before a Divorce Trial”.

The judge’s decision will be based on the income and other resources of both people, their life situations and needs.

Bad conduct will be taken into account if it has an impact on the financial situation and independence of the other person.

**De Facto Couples**

Neither person is entitled to financial support from the other after a breakup. However, this rule is currently being challenged in the courts and could change.

Also, de facto couples are free to agree ahead of time to pay support by signing a “cohabitation contract”. To learn more, see Éducaloi’s website article “Cohabitation Contracts”.

**6.6 > SETTLING ISSUES ON A PERMANENT BASIS**

For more information, see Éducaloi’s website articles on married and de facto couples.

**Married Couples**

Leaving a marriage without taking steps to formalize the end of the relationship can leave people vulnerable and without a way to enforce decisions about child custody and visiting rights, child support, spousal support, the division of property, etc.

This is particularly true regarding child and spousal support: if there is a court decision awarding support, or an agreement confirmed by a court, the Quebec government can make sure it is paid under its Support Payment Collection Program. To learn more, see “Support Payments” in the “Citizens” section of Revenu Québec’s website.

**De Facto Couples**

These couples may have issues to settle, such as child custody and visiting rights, child support, and what to do about a home they co-own.

If a couple has signed a cohabitation contract about what will happen if they break up, they must respect that agreement.



If there is no cohabitation contract, or they have a dispute about the contract, they may have to ask a court to decide some issues.

If a court makes a decision about child support, or confirms an agreement about child support, the Quebec government can make sure it is paid under a program called the Support Payment Collection Program.

To learn more about the steps to end a de facto relationship, see the De Facto Spouses section of Éducaloi's website.

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### 6.7 > INTERACTION BETWEEN **FAMILY COURTS AND CRIMINAL COURTS**

In a family violence situation, it is possible for a family to be before a criminal court and family court at the same time.

Let's say that an aggressor is charged with a crime and is ordered to stay away from the victim and the family home.

At the same time, a family law court is making a decision about custody, visiting rights and use of the family home.

Which court has the last say? Usually the criminal court will respect what the family court decides. You should know that, except for extreme cases, such as a parent in jail, Quebec courts favour giving both parents access to their children.

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### 6.8 > IMPORTANCE OF HAVING A **RECORD OF EVENTS**

Courts deciding family law issues base their decisions on evidence. Evidence includes what people experience, say, and do, but also documents.

If a victim of family violence does not contact the police, but later wants to use violence as an argument in a family law case, the victim might have a difficult time. There will be no police report and no medical report on injuries to back up what the victim has to say. It could be harder for the victim to convince the court to accept her or his point of view.



### **CHILDREN AND FAMILY VIOLENCE**

- 7.1 > Legal Duty of Parents to Protect Children
- 7.2 > The Youth Protection System
- 7.3 > The Criminal System for Youth
- 7.4 > Authority of Parents over Children
- 7.5 > Children's Input into Living Arrangements
- 7.6 > Use of Force Against Children
- 7.7 > Children as Witnesses in Court

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**Myth : If a victim with children calls the police, the police will call Youth Protection and the children will be taken away.**



# CHILDREN AND FAMILY VIOLENCE

In this chapter, "children" refers to children under 18 years old.

## 7.1 > LEGAL DUTY OF PARENTS TO PROTECT CHILDREN

Parents have a duty to provide the necessities of life (food, shelter, clothing, medical care, etc.) to their children. They must also educate and properly supervise them, and make sure they are safe.

These duties also apply to anyone else in charge of a child, either legally or more informally.

The duty of parents to protect children also means they cannot turn a blind eye when someone else is harming their children. Turning a blind eye is considered a crime in some cases.

## 7.2 > THE YOUTH PROTECTION SYSTEM (CHILD WELFARE)

When parents or other people in charge of children don't care for and protect them, or when a child has very serious behavioural problems, the government has a mechanism to intervene. This mechanism is the youth protection system.

In each region of Quebec, the person who oversees this system is the Director of Youth Protection (DYP). In Montreal there are two DYPs, one for services in French and one for services in English.

Of course, DYPs do not work alone: they manage and collaborate with teams of social workers, psychologists, doctors, lawyers, the police, schools and health and social service agencies.

Note that, under special agreements, some Aboriginal communities in Quebec have assumed all or some of the responsibilities a DYP would normally carry out in these communities.

### How the DYP Gets Involved: Reports About a Child at Risk

The DYP's work begins as soon as someone makes a report that a child is at risk.

The DYP briefly analyzes what has been reported. If this analysis shows that the concerns are justified, the DYP must do a more complete evaluation and decide whether



to intervene.

It is possible for parents to report their own child. This could be the case if one parent is abusing a child, or a child has out-of-control behaviour issues.

In practice, most reports come from:

- › CLSCs, CSSSs, hospitals, youth centres, shelters & similar institutions - 20%
- › schools - 20%
- › police - 20%
- › family, including extended family - 20%
- › neighbours - 10%

### **More Complete Evaluation: Is the Child's Safety or Development in Danger?**

At this stage, the DYP must determine whether the child's safety or development is in danger.

If this is the case, the DYP must take charge of the situation.

A child's safety and development is considered to be in danger in these situations:

- › abandonment
- › neglect
- › psychological ill-treatment, including exposure to family violence
- › sexual abuse or serious risk of sexual abuse
- › physical abuse or serious risk of physical abuse
- › serious behavioural problems
- › a child who doesn't attend school, combined with other factors, such as behavioural problems

➤ **If the situation is an emergency, the DYP can intervene quickly with short-term measures.**



## » **What the DYP Might Do**

**IMPORTANT! When the DYP takes charge, the child is not automatically placed in another family or in a youth institution. On the contrary, placement is a last resort used only when there are no other options.**

The first option is to have the parents and child voluntarily take constructive measures and to keep the child in the family home. Examples of voluntary measures include:

- › a support group for a parent with a drug addiction
- › house rules for a child with behavioural problems
- › a therapy program for a child or parent with anger management issues
- › having a child live in a foster or group home for a few days as a “cooling off” period

However, if the parents don’t admit their child is at risk, or the child, parents and DYP cannot agree on voluntary measures, the DYP can ask a youth court judge to impose measures. These can be the same as the voluntary measures mentioned above, or could be placement in a youth institution or foster family.

The youth court judge is independent, and must hear from all sides, including the child, parents, DYP, and any other interested person (e.g., teachers, extended family, neighbours, CLSC/CSSS workers).

If the situation is an emergency, the DYP can intervene quickly with short-term measures, such as removing the child from the situation, or limiting or completely stopping contact with a parent.



➤ **Health care workers, teachers, day care workers, police officers and some other professionals have a duty to report situations of children at risk.**

### **How to Know if a Case Is Serious Enough to Report**

Some people might hesitate to contact the DYP, worried they might be wrong about a situation or about what might happen if the DYP gets involved.

Anyone who is hesitant can contact the reporting department of the youth centre in the region and ask to speak to the intake worker. After hours, the emergency department can be contacted. The caller can say "I'd like a consultation." The call will be treated as confidential and not a report, only a consultation. Also, the caller will not be obliged to give the name of the child involved. After the consultation, the caller can decide whether to report.

Numbers for youth centres are in the blue pages of the phone book under "Youth Protection", or on the website of the Association of Youth Centres of Quebec.

» **IMPORTANT! No one acting with good intentions can be sued for reporting a situation that turns out not be serious enough for the DYP to be involved.**

### **Some People Have a Legal Duty to Report**

#### **Professionals**

People whose work involves teaching, caring for or helping children have a higher duty to report than the general public.

These people include health care workers, teachers, day care workers and police officers.

They must report if they have reasonable grounds to think that a child's security or development is in danger and they learn about this during their work.

"Reasonable grounds" generally means there is enough information that the average person using honest judgement would make a decision to report.

➤ **The identity of the person reporting is confidential.**



Examples of when a child's security or development might be in danger are given on page 69.

**All Citizens**

In cases of sexual or physical abuse, **all citizens** have a legal obligation to report.

Outside these cases, anyone can report if there are reasonable grounds to think a child is at risk.

**Legal Duty to Help a Child Who Wants to Report**

Adults have a legal obligation to help a child who wants to report a situation to the DYP, even if the child is not the victim.

**Who to Call to Report a Case**

Call the DYP. The number is in the blue pages of the phone book under "Youth Protection", and on the website of the Association of Youth Centres of Quebec.

If immediate action is necessary to prevent a crime or serious injury, contact the police.

**Confidentiality**

The identity of the person reporting is confidential. Only the DYP and the DYP's team will know who made the report.

Even if the courts become involved, this information stays confidential.

The DYP is also prevented from revealing the identity of a child or parents, except in certain circumstances.





## **Whether People Reporting Must Go to Court**

Not necessarily. First, most DYP files do not end up in court.

Also, even if the case ends up in court, nobody is allowed to know who initially reported the case to the DYP.

However, anyone who has seen or heard anything important might be called to court by a lawyer acting for the DYP, the parent or the child, and asked to tell what they saw or heard about the child's situation, just as in any other court case. This is true even if the lawyer does not know who made the initial report to the DYP.

## **Reporting Back to the Person Who Contacted the DYP**

The DYP must inform the person who reported a situation whether or not the DYP has decided to do an in-depth evaluation.

The DYP must also inform that person if the DYP has done an in-depth evaluation, but decided the child is not in danger.

If the DYP decides a child is in danger after the in-depth evaluation, the DYP must report this conclusion to any professional (teacher, police officer, etc.) who reported a situation.

Privacy laws prevent the DYP from revealing any other information about a reported situation. This means the DYP cannot reveal, for example, the progress of an assessment of a child's situation.

## **Interaction Between a Youth Protection Court Case and a Family Law Case**

As mentioned, youth protection court cases are heard by special youth court judges.

Family law cases on issues such as child custody, financial support for children, etc., are heard by different courts.

Normally, other courts will wait until the DYP has finished investigating and put voluntary measures into place, or a youth court judge has made a decision. The family law court must then make a decision consistent with what the youth court has decided. In some cases, the DYP will join the family law case to provide input.

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### 7.3 > THE CRIMINAL SYSTEM FOR YOUTH

For more information, see the Parents and Youth sections of Éducaloi's website.



When a person between the ages of 12 and 17 commits a crime, the rules are different than for adults, and a special youth court deals with the case.

There are distinct rules because the law recognizes that the characters of young people are still in the formative stages.

The youth criminal justice system tries to hold young people accountable for their actions, but also get them back on track as responsible members of society.

Note that no one under 12 can be charged with a crime. These cases are dealt with under youth protection laws. See the earlier section on the youth protection system.

The youth criminal justice system gives latitude to the police and youth courts to impose penalties that are alternatives to the formal court process and traditional sentences. These alternatives can include:

- › a warning
- › referring the young person to a program that can help change his or her behaviour
- › doing volunteer work for the victim or the community
- › making a donation to a community group

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### 7.4 > AUTHORITY OF PARENTS OVER CHILDREN

Parents have a collection of rights and duties regarding their children. The law refers to this collection as “parental authority”.

The duties include supervising, educating, feeding, housing and maintaining a safe and healthy environment for children.

The rights include choosing a school, deciding where the child will live, agreeing to medical care and sharing religious beliefs.

Another person who acts as the parent of a child, such as a boyfriend or girlfriend of a parent, is not a “parent” under the law and does not have parental authority.



Even when parents break up, both of them keep parental authority. If only one parent gets custody of the children, the other parent only loses that one part of parental authority - the right to custody - but keeps the rest.

Of course, the parent with custody can exercise parental authority on a daily basis. The other parent can only do so from a distance. But the parent without custody must still be consulted about important decisions regarding the children.

By law, parental authority ends when a child turns 18. It can also end when one parent or both parents so neglect their duties that parental authority is taken away.

When parents break up and cannot make important decisions by agreement, a court could be called on to make these decisions.

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## 7.5 > CHILDREN'S INPUT INTO LIVING ARRANGEMENTS

Until they turn 18, children are normally under the authority of their parents. This means that parents can decide where a child will live.

But when parents break up and cannot agree on a child's living arrangements, a court might be called on to decide this. The court must consider a child's preferences about where the child will live if the child is mature enough to express these preferences.

There is an exception to this: when one parent has deliberately tried to turn a child against the other parent, the court will not give much weight to the child's preferences.

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## 7.6 > **USE OF FORCE AGAINST CHILDREN**

Parents and others have the right to discipline children who misbehave, but the law sets limits on the use of force.

Here are the general limits:

- › Parents and people taking the place of parents are only allowed to use the force that is “reasonable” under the circumstances. For example, spanking or slapping a child so hard it leaves a mark would not be considered reasonable.
- › Reasonable force can only be used to protect a child or others, or to help a child learn.
- › Force cannot be used in anger.
- › The person using force cannot use an object, such as a belt, and cannot strike the child’s head.
- › Force cannot be used on a child under two years old.
- › Force cannot be used on a child over 12. The reasoning is that there are better ways to respond to a teenager’s behaviour.

**Anyone who does not respect these limits could be charged with the crime of assault.**

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## 7.7 > **CHILDREN AS WITNESSES IN COURT**

### **Criminal Cases**

There is no minimum age for a child to be a witness in a criminal case. However, children under 14 can only be witnesses if they are able to understand and reply to questions

### **Civil Cases**

A civil case could include a case about custody arrangements for a child. The law does not set a minimum age for children to be witnesses in these cases. But in practice, judges make sure children proposed as witnesses are able to tell the facts and understand the duty to tell the truth.

### **Youth Protection Cases**

There is no minimum age for a child to be a witness. But if someone argues that a child is not mature enough, the judge must make a decision about this.

## SENIORS AND FAMILY VIOLENCE

- 8.1 › Special Legal Protections
- 8.2 › The Criminal Law and Seniors
- 8.3 › Seniors Living Outside Home
- 8.4 › Misuse of Powers of Attorney and Other Legal Documents

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**Myth : Seniors living outside home have fewer legal protections than seniors living in their own homes.**

8

SENIORS AND FAMILY VIOLENCE

## SENIORS AND FAMILY VIOLENCE

### 8.1 > SPECIAL LEGAL PROTECTIONS

For more information, see Éducaloi's website articles "Seniors and Protection from Exploitation and Abuse" and "Seniors and Financial Fraud"



Seniors can be affected by family violence situations, just like any other family member, But the law provides some special protections for seniors.

Quebec's Charter of Human Rights and Freedoms is a law that says elderly people have a right to be protected against all forms of "exploitation".

Generally speaking, exploitation means taking advantage of a vulnerable or dependent elderly person in a way that harms that person. Exploitation can be financial, physical or emotional.

Here are some examples of situations that might be considered exploitation:

- › getting money from someone using force or threats
- › preventing someone from receiving visitors, communicating with relatives and friends, or receiving mail
- › selling or taking belongings without permission
- › pressuring someone into changing legal documents, such as a will
- › neglecting basic needs, such as proper housing, clothing, nutrition, medical care, etc.
- › verbal attacks and threats
- › imposing medical care without the agreement of the elderly person
- › misusing a mandate, commonly called a power of attorney. (A power of attorney is a legal document giving someone the right to do certain things on your behalf, such as pay bills. To learn more, see Éducaloi's website article "Mandates".)

A senior or anyone worried about the welfare of a senior can contact the Commission des droits de la personne et des droits de la jeunesse (Human Rights Commission) at 1-800-361-6477. The Commission is an organization that helps enforce the protections in the Charter of Human Rights and Freedoms. The services of the Commission are free.



➤ **Some forms of neglect and financial abuse are crimes in Canada.**

The Commission has a special team dealing with exploitation of the elderly, so ask to speak to a member of this team.

» **IMPORTANT! The consent of the person at risk is not necessary to alert the Commission.**

8.2 ➤ **THE CRIMINAL LAW AND SENIORS**

For some seniors, physical and financial dependence on others can increase their vulnerability. In fact, seniors are targeted for financial fraud more often than the general public.

Remember that some forms of neglect and financial abuse are crimes in Canada. Here are some examples:

- › denying or failing to provide necessities of life for a dependent adult (food, clothing, shelter, medical care, etc.)
- › manipulating or exploiting someone for financial gain
- › negligence that results in injury

8.3 ➤ **SENIORS LIVING OUTSIDE HOME**

This issue goes beyond the scope of this toolkit. For more information, see Éducaloi's website article "Housing Issues for Seniors".

8.4 ➤ **MISUSE OF POWERS OF ATTORNEY AND OTHER LEGAL DOCUMENTS**

Some seniors rely on others to manage all or part of their affairs. They can do this by giving someone a power of attorney, which means permission to do certain things. For example, a senior might give someone permission to pay bills. In Quebec, the legal term for a power of attorney is "mandate".



Another kind of mandate gives someone permission to make important decisions about health care and property on behalf of a senior if the senior is incapable of making these decisions. This could happen due to illness or accident, for example. These mandates are called "mandates in anticipation of incapacity".

Unfortunately, mandates are sometimes abused by the people entrusted with making decisions for a senior. This is why it is important to carefully choose who is given a mandate, and to make the terms of the mandate clear.

To learn more, see the articles "Mandates" and "Mandates in Anticipation of Incapacity" in the Seniors section of Éducaloi's website. You can also find information and tips on preventing misuse of mandates in the Consumers section of the website of the Autorité des marchés financiers. The Autorité is a government agency.



**ABORIGINALS AND FAMILY VIOLENCE**

- 9.1 > The Family Home on Reserves: a Special Situation
  - 9.2 > Adapted Youth Protection System
  - 9.3 > Adapted Delivery of Health and Social Services
  - 9.4 > Policing
  - 9.5 > First Nations Courts
  - 9.6 > Travelling Courts
  - 9.7 > Rules about Community Life
  - 9.8 > Collecting Child and Spousal Support
  - 9.9 > Adapted Criminal Justice System
-



## **ABORIGINALS AND FAMILY VIOLENCE**

Sometimes the law that applies to Aboriginal people, or the way the law is applied, is different than what has been explained elsewhere in this toolkit.

This chapter points out some important differences, but is not exhaustive.

By Aboriginal, we are referring to Inuit, Indian and Métis people. Most Indian people refer to themselves as First Nations peoples, and the term First Nations is used here.

We point out when a legal situation is particular to one of the three groups.

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### **9.1 > THE FAMILY HOME ON RESERVES: A SPECIAL SITUATION**

“Reserves” are lands set apart for the use and benefit of First Nations communities.

Reserve lands and housing on these lands are managed in various ways. For example, some First Nations have a system of “band-owned” lands and others have a mix of “individually-owned” parcels of land and “band-owned” parcels.

#### **Band-Owned Lands**

These lands are administered by the government of the community, in most cases, the band council. For homes built on these lands, community governments develop policies and written rules that reflect the needs and customs of their people.

#### **Individually-Owned Parcels**

These lands are often held via “certificates of possession”. Certificates can be issued in the name of one or several people. The certificate is evidence of the right to occupy the parcel of land and the housing on it, or to build housing on it.

Some bands do not use certificates of possession, but rely on assignments based on traditional practices.

#### **Regular Rules on Family Home May Not Apply**

The family law chapter explained that judges can sometimes give one person in a couple exclusive use of the family home on a temporary basis.



On First Nations reserves, the situation is different. The courts cannot give one person temporary exclusive use unless that person is the only one named on the certificate of possession, or the band council has a policy or written rule that allows for this.

If there is no court order, it is the certificate of possession or the band's policies or written rules that will decide who can stay in the home temporarily.

Another difference is that the normal protections against sale or rental of the family home that were discussed in the family law chapter do not apply to family homes on reserves.

This situation came about because the law that applies to many reserves is silent on the question of the family home.

There have been proposals for a new law to change this situation, including proposals that take into account elders who live in the family home. At this time, no new law is in place.

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## 9.2 » ADAPTED **YOUTH PROTECTION** SYSTEM

In some areas, Aboriginal communities have taken on some or all of the youth protection duties normally carried out by provincial authorities.

How the youth protection system works in practice therefore varies depending on the community.

To learn more, see the document "Delivery and Funding of Health Services and Social Services for Aboriginal People", available on the website of the Ministère de la Santé et des Services sociaux du Québec ([www.msss.gouv.qc.ca](http://www.msss.gouv.qc.ca)). Go to "Documentation" > "Publications".

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## 9.3 » ADAPTED DELIVERY OF **HEALTH AND SOCIAL SERVICES**

In many cases, the delivery of these services has been adapted to meet needs of Aboriginals, and some communities have taken charge of delivery of services, especially front-line services.

For more on this, see the document mentioned in the section above.



➤ **Many Aboriginal communities in Quebec have their own local or regional police forces.**

#### 9.4 ➤ **POLICING**

Many Aboriginal communities in Quebec have their own local or regional police forces.

Some communities also have “constables”, either instead of, or in addition to, their own police forces. Constables are appointed either by the band council or the province. Their powers are defined when they are appointed, but they all have the power to arrest people for breaking the law.

Even when a community has its own force and/or constables, the provincial police force – the Sûreté du Québec (SQ) – sometimes plays a back-up role or provides technical expertise.

When Aboriginal forces intervene in family violence situations, they may have different procedures than the ones described in the chapter Contacting the Police.

Some communities have their own mechanisms for citizens to file complaints about the actions or inaction of Aboriginal police officers or constables.

But whether or not this mechanism exists, an Aboriginal person may also be able to file a complaint with the provincial Police Ethics Commissioner.

For more information, see the Commissioner’s website: [www.deontologie-policiere.gouv.qc.ca](http://www.deontologie-policiere.gouv.qc.ca).

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#### 9.5 ➤ **FIRST NATIONS COURTS**

Two communities – Akwesasne and Kahnawake - operate their own courts with judges who are Mohawk.

These courts deal with local by-laws adopted by band councils, and some *Criminal Code* crimes, such as assault.

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#### 9.6 ➤ **TRAVELLING COURTS**

Many remote Aboriginal communities, especially in northern Quebec and the North Shore and Lower North Shore areas along the St. Lawrence River, are served by “itinerant” or travelling courts.

➤ **Aboriginal-language speakers involved in court cases have a right to an interpreter.**



Judges and staff for these courts travel periodically to hear cases on a pre-determined schedule.

Except in the few communities with permanent court facilities, cases are heard in public buildings, such as schools and community centres.

Aboriginal-language speakers involved in court cases have a right to an interpreter.

The pre-determined court schedule can result in more delays than might be the case in more populated areas. Also, there are different procedures and practices than in other regions. For example, lawyers might only meet with clients the day of a court hearing, and not before.

The steps explained in the chapter The Criminal Court Process may therefore not reflect what happens in communities served by these courts.

The delays between court hearings and lack of justice system infrastructure in these communities can sometimes add to the burden on people dealing with family violence.

For more information on areas served by itinerant courts, see this page on the website of Justice Quebec: [www.justice.gouv.qc.ca/english/joindre/palais/itinerant/itinerant-a.htm](http://www.justice.gouv.qc.ca/english/joindre/palais/itinerant/itinerant-a.htm).

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9.7 ➤ **RULES ABOUT COMMUNITY LIFE**

In many communities, Aboriginal traditions govern the community or at least greatly influence community governments.

**First Nations Band Councils**

The governing body of some First Nations communities is the band council. Like other government bodies, these councils have the right to create policies and written rules governing the community. These rules can cover, among other things:



- › disorderly conduct
- › keeping the peace
- › who can live on reserve
- › the rights of married or unmarried partners and children who live with members of the First Nations band

### **Other Aboriginal Communities**

Other communities have governing bodies with rule-making powers that are a bit different from First Nations band councils. It is beyond the scope of this toolkit to describe all of these powers.

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### **9.8 > COLLECTING CHILD AND SPOUSAL SUPPORT**

As explained in the family law chapter, the Quebec government has a program to collect child and spousal support from people who owe it. The government can deduct amounts owed off wages and even seize bank accounts and property.

However, the property of people with “Indian” status that is located on First Nations reserves cannot be seized by non-Indians. Property includes wages earned on-reserve.

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### **9.9 > ADAPTED CRIMINAL JUSTICE SYSTEM**

The criminal justice system has been adapted for aboriginals in various ways to ensure they receive a culturally-sensitive treatment. These adaptations are explained below.

#### **Courtworker Program**

This is a program delivered by a group called Native Para-Judicial Services of Quebec.

The courtworkers give information and guidance to Aboriginal people charged with crimes and make sure they receive a fair and culturally-sensitive treatment in the criminal justice system.



Courtworkers work with both adults and young people covered by the youth criminal justice system (12 to 17-year-olds).

They give information on how the justice system works, help clients find a lawyer if necessary, interpret court documents and orders, and help connect people with appropriate community resources, such as counselling and alcohol and drug treatment.

They also provide information to lawyers and judges to help them understand Aboriginal culture and customs.

Courtworkers do not give legal advice.

Native Para-Judicial Services of Quebec has service points across Quebec. For contact information, see the list of community resources at the end of this toolkit.

Note that in Inuit communities in northern Quebec, justice committees described in the next section are currently filling the role of courtworkers.

## Community Criminal Justice Programs

Funded by both the provincial and federal governments, these programs aim to:

- › provide alternatives to mainstream criminal justice processes that better reflect Aboriginal values
- › reduce rates of victimization, crime and the numbers of Aboriginal people in prison
- › allow Aboriginal people to assume more responsibility for how the justice system works in their communities

Aboriginal communities play a significant role in putting these programs into practice.



The programs take different forms in different communities. They include:

- › resolving disputes through mediation or traditional methods
- › helping people found guilty of crimes reintegrate into the community
- › giving advice to courts on ways to deal with people who commit crimes
- › redirecting people who commit crimes away from the traditional court process to community “justice committees”
- › creating circles to bring together victims, offenders and community members, especially elders, to find out sources of conflict and promote healing
- › encouraging youth to get involved in the community in a positive way
- › family counselling to address child-protection issues
- › accompanying people through the court system

» **IMPORTANT! At this time, not many family violence crimes are eligible to be diverted away from the traditional criminal courts.**

For more information, see the website of the Department of Justice Canada under “Aboriginal Justice Strategy >Community-Based Justice Programs”.

## Reintegration Services

The law requires the government to provide services specially adapted to Aboriginal adults (18 years and up) sentenced to two or more years in prison, and people released from these prisons.





**› Judges must consider the Aboriginal background of the person that may have played a role in bringing that person to court.**

These services can include:

- › making available services of an Aboriginal spiritual leader or elder
- › considering the input of an elder during decisions regarding a person in prison
- › including the community in making a plan for reintegration
- › healing lodges

For more information, consult the website of Correctional Services Canada under the “Aboriginal Corrections” section.

### **Judges and Parole Boards Must Consider Aboriginal Background**

When an Aboriginal person is found guilty of a crime, the judge must consider alternatives to prison. This rule applies to both adults and youth (12 to 17-year-olds).

This does not mean that the sentences of Aboriginal people will always be less severe than non-Aboriginals.

It means that judges must consider the Aboriginal background of the person that may have played a part in bringing that person to court. Judges must also consider the priority given in some Aboriginal cultures of alternative ways of dealing with offenders.

The sentence could therefore include some of the alternative justice programs described in the earlier sections.

The duty to consider Aboriginal background also applies to anyone making a decision about parole. Parole is the release of someone from prison to serve the rest of a sentence in the community.

## **IMMIGRATION STATUS AND FAMILY VIOLENCE**

- 10.1** > Everyone Entitled to Protection
- 10.2** > Leaving a Bad Situation: Impact on Immigration Status
- 10.3** > People Involved in the Criminal Justice System and Immigration Status
- 10.4** > Right to Privacy when Dealing with Immigration Officials
- 10.5** > Taking Children Out of the Country
- 10.6** > Right to Government Financial Assistance
- 10.7** > Help with Immigration Issues

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**Myth : “Sponsored” immigrants can be forced to leave Canada if they leave their sponsors.**



## **IMMIGRATION STATUS AND FAMILY VIOLENCE**

Immigration rules tend to be complex. The information below sets out general rules. For particular questions, it is a good idea to get advice from a qualified professional.

### **10.1 > EVERYONE ENTITLED TO PROTECTION**

In Canada, everyone is equal in the eyes of the law, and deserves equal protection. This protection applies despite differences such as age, sex, race, national or ethnic origins, colour or disabilities.

This means, for example, that the police must intervene if someone is the victim of violence, regardless of the victim's immigration status in Canada.

However, this right to protection is different than the right to stay in Canada. This is explained in the next section.

### **10.2 > LEAVING A BAD FAMILY SITUATION: IMPACT ON IMMIGRATION STATUS**

#### **Citizens and Permanent Residents**

Canadian citizens and permanent residents cannot be forced to leave the country just because they leave a bad family situation.

Permanent residents are people who can live and work in Canada and receive many benefits here, but who remain citizens of their home countries during the permanent residency period. They are sometimes called "landed immigrants". They can apply to become Canadian citizens.

#### **Permanent Residents Who Were Sponsored**

Sponsoring means helping a family member come to or stay in Canada by making a legal promise to be financially responsible for the basic needs of that family member (housing, clothes, food, etc.).

Family members are usually sponsored while they are living outside Canada. When they arrive here, they already have permanent resident status. This means that they cannot be forced to leave the country just because they leave an abusive or violent sponsor.

But sometimes the person being sponsored is already in Canada when the application to sponsor is made. If this application is withdrawn before the person being sponsored get permanent resident status, that person could lose the right to stay in Canada. People in these situations can try



to stay on humanitarian grounds. See the section below "Applying to Stay on Humanitarian Grounds".

### **Refugees and Refugee Claimants**

People who have been granted refugee status in Canada cannot be forced to leave the country just because they leave an abusive or violent partner.

However, the situation can be different for people whose applications for refugee status are still being decided. If the application is based on the applicant's own fears of persecution in the home country, the application will not be affected by leaving a partner. But if the application is based on a partner's fear of persecution, an applicant who leaves this partner could have difficulty with the refugee claim. It is important to get legal advice in these situations.

### **People in Canada with Temporary Study or Work Permits**

For people who have their own student permits or temporary work permits, their right to stay will not be affected by leaving a bad family situation.

### **People in Canada as Partners of People with Temporary Study or Work Permits**

Their situation is different than people with their own permits to study or work. They are considered visitors, and their right to stay is linked to their partners.

To find out what these people can do if they flee a bad family situation but want to stay in Canada, see the next section on applying to stay on humanitarian grounds.

### **People in Canada Temporarily as Visitors**

They can include people on vacation and people accompanying someone who has a work or study permit.

If they need to leave a bad family situation in Canada and want to stay in the country, they must take steps to try to get legal status in Canada.

One option is to apply for permanent residence on humanitarian grounds. This is discussed in the next section.



➤ **Applications to stay on humanitarian grounds are only granted in rare cases.**

### **Applying to Stay on Humanitarian Grounds**

Anyone without the legal right to stay in Canada can try to stay on humanitarian grounds. This includes refugee claimants whose applications were turned down.

In family violence situations, immigration officials take into account the abusive relationship, the best interests of any children involved, whether the applicant has put down roots in Canada, and hardship that would result if the applicant had to leave, among other factors.

The burden is on people applying to justify why they should be able to stay in Canada. Requests are only accepted in exceptional cases.

Applications must be made to Citizenship and Immigration Canada. Applicants must also get a “certificate of selection” from the department of Immigration and Cultural Communities of Quebec.

To learn more, consult the websites of these two government departments.

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## **10.3 PEOPLE INVOLVED IN THE CRIMINAL JUSTICE SYSTEM AND IMMIGRATION STATUS**

### **Canadian Citizens**

Citizens arrested or charged with a crime cannot be removed from Canada, unless they lied about something important in their applications for citizenship or permanent residency.

This is true even if someone is charged with a crime.

### **Non-Citizens**

They can be removed for committing certain crimes, but this is not automatic. A government official looks at each case to see whether the person should be allowed to stay in Canada.

If a decision is made to remove the person, this process can take a long time.

Note that refugee claimants found guilty of certain crimes can lose the right to have a decision on their claims.



#### 10.4 > **RIGHT TO PRIVACY** WHEN DEALING WITH IMMIGRATION OFFICIALS

Immigration officials are obliged to keep confidential information given to them in the course of their work.

#### 10.5 > **TAKING CHILDREN OUT OF THE COUNTRY**

The Canadian and foreign governments have procedures to try to prevent parents from illegally taking children out of their home countries. For example, in Canada both parents must sign passport applications for their children.

But a parent who is worried that someone will take children out of the country without her or his agreement, or against a court order, can take some steps:

- If the children are Canadian citizens, call a Passport Canada office (1-800-567-6868) and ask to be have the children's names on the Passport Control List. The office will contact the parent if someone applies for passports for the children.
- Ask the diplomatic or consular office of the other country in question not to issue a visa for the children for travel to that country, if a visa is necessary. The Consular Services Bureau of Canada may be able to help with this request (1-800-387-3124).
- If the children are citizens of another country, the parent can contact that country's embassy or consulate in Canada to ask them to refuse passports for the children. The Consular Services Bureau may be able to help with this request.

If one parent succeeds in leaving with the children without permission, the police can be notified.

For more information, see the guide *International Child Abductions: A Manual for Parents* on the website of Foreign Affairs and International Trade Canada ([www.voyage.gc.ca/publications/child-abductions\\_enlevements-enfants-eng.asp](http://www.voyage.gc.ca/publications/child-abductions_enlevements-enfants-eng.asp)).



**10.6** > RIGHT TO GOVERNMENT  
**FINANCIAL  
ASSISTANCE**

To find out about the various programs, contact Service Canada (1-800-622-6232) and Services Québec (1-877-644-4545) or check the websites of these government departments.

**Citizens, Permanent Residents and People Accepted as Refugees**

They are eligible to apply for welfare and other government financial assistance.

Also, their assistance cannot be cancelled because they leave an abusive situation.

**Sponsored Immigrants with Permanent Resident Status**

When someone's entry to Quebec has been sponsored by a family member, the law says that the sponsored person's first source of financial support must be the sponsor.

But if this sponsorship relationship breaks down, the sponsored person is eligible for government financial assistance.

Note that the sponsor is legally required to pay back any government assistance given to the sponsored person. This is true even if the two people involved are a couple who have separated or divorced.

**People in Canada Temporarily as Visitors, Students and Workers or Partners of Visitors, Students and Workers**

They are not normally eligible for government assistance.



### **People Applying for Refugee Status or the Right to Stay in Canada on Humanitarian Grounds**

They might be eligible for “last resort” assistance. It depends on the situation.

If they are already receiving assistance, it cannot be cancelled because they leave an abusive situation.

### **People Not Sure About Immigration Status**

They can call Citizenship and Immigration Canada at 1-888-242-2100, or Immigration and Cultural Communities (Quebec) at 514-864-9191 or 1-877-864-9191.

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## **10.7 > HELP WITH IMMIGRATION ISSUES**

There are many community organizations that help immigrants deal with government departments, find housing and work, understand the school system, etc. They can also refer people to legal advisors if necessary.

One place to start is the website of the Table de concertation des organismes au service des personnes réfugiées et immigrantes ([www.tcri.qc.ca](http://www.tcri.qc.ca)). The site lists by region community groups that help immigrants and refugees, including groups that serve people in English and other languages.



## **USEFUL RESOURCES FOR SERVICE PROVIDERS AND CLIENTS**

- 11.1** > Getting Legal Help
  - 11.2** > Financial Compensation for Victims
  - 11.3** > Identifying Legal Issues: Questions Service Providers Can Ask
  - 11.4** > Myths About Family Violence and the Law
  - 11.5** > Helpful Websites and Publications
  - 11.6** > List of Community Resources by Region and Clientele
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## **USEFUL RESOURCES** FOR SERVICE PROVIDERS AND CLIENTS

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### **11.1 > GETTING LEGAL HELP**

#### **Information versus Advice**

Legal information is explaining how the law works generally. Advice means advising someone on a particular legal problem. Only lawyers and notaries can give legal advice.

#### **Where to Get Legal Information and Advice**

##### **Community Organizations**

There are some organizations that offer free legal information and/or advice. See the lists at the end of this toolkit.

##### **Legal Aid**

Some adults and minors (people under 18) are eligible for Legal Aid, a government program that provides lawyers to those who cannot afford them. The lawyer is provided free of charge or with a contribution from the client. For most cases, eligibility is based on income and related factors. Only the local Legal Aid office closest to where someone lives can decide whether that person is eligible.

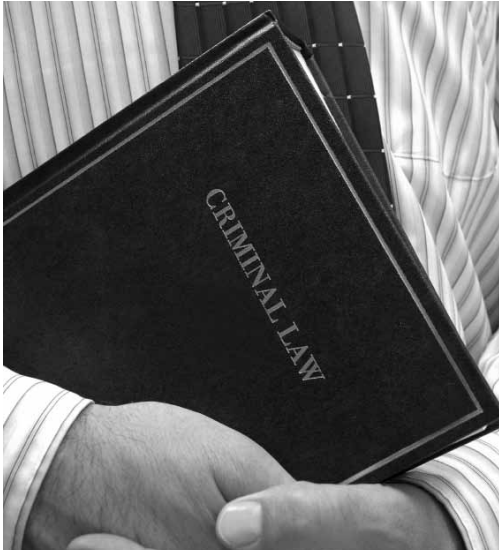
In certain kinds of criminal cases, a lawyer is provided free of charge even if the accused would not normally be eligible.

Also, people arrested or detained by the police have a right to a free call to a Legal Aid lawyer at any time of day or night regardless of whether they are eligible for Legal Aid.

For the list of Legal Aid offices and more information, check the website: [www.csj.qc.ca](http://www.csj.qc.ca).

##### **Family Mediation for Couples With Dependent Children**

When a couple with dependent children is breaking up and must settle issues such as who children will live with, financial support, and dividing up property, they are entitled to a certain number of free family mediation sessions paid for by the government.



In mediation, an impartial mediator helps couples reach a fair agreement.

However, mediation may well not be appropriate in family violence situations.

To learn more, see the article on Éducaloi's website "Free Family Mediation".

### **Lawyers in Private Practice**

Various kinds of arrangements are possible with lawyers in private practice. Some allow their customers to pay by monthly instalments. Others accept payment at the end of the process.

Also, the client can determine the exact assignment to give a lawyer. For example, a client can consult a lawyer just to find out about his or her rights and obligations, or how to complete court paperwork.

To find a lawyer, see the section for the general public on the website of the Barreau du Québec.

## **11.2 > FINANCIAL COMPENSATION FOR VICTIMS**

### **IVAC Program (Indemnisation des victimes d'actes criminels)**

IVAC is a government program to compensate victims of crimes and their close relatives for physical and psychological injuries. Compensation for damage to property is only given in rare cases.

Some items the IVAC program might cover include:

- › hospital care, medication, psychotherapy
- › travel expenses for receiving care or attending court
- › childcare expenses and personal home care for victims unable to care for themselves and do daily tasks
- › security expenses (new locks, alarm systems, self-defence courses)
- › compensation for breaking an apartment lease and moving



- › lost work income
- › one-time payments for permanent injuries

To claim compensation, it is not necessary for the aggressor to have been found guilty in court of a crime. It is enough that the IVAC has strong evidence that the applicant was the victim of a criminal act.

For more information, call 1-800-561-4822 (in Montreal 514-906-3019) or check the IVAC website: [www.ivac.qc.ca](http://www.ivac.qc.ca).

### **Criminal “Restitution” Orders**

When sentencing someone in a criminal case, a judge can order the guilty person to pay money to the victim for certain losses and expenses, such as:

- › damage or destruction of the victim’s belongings and home
- › loss of income due to physical injuries or psychological harm
- › expenses of the victim and other members of the household who had to move out of the home

These orders are relatively rare in family violence cases.

Anyone interested in this kind of order should speak to the prosecutor (government lawyer) in charge of the criminal case.

### **Civil Court Actions**

Victims of crimes and their relatives can take civil actions in the courts to claim money for injuries, suffering, damage to property, and other financial losses.

For an explanation of “civil”, see the chapter The Legal System and Family Violence.

Civil actions can be costly and time consuming. Also, while people can act for themselves without lawyers, it can be very



difficult. To find out how to get legal advice, see the section Getting Legal Help.

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**11.3 > IDENTIFYING LEGAL ISSUES: QUESTIONS SERVICE PROVIDERS CAN ASK**

**Is there an immediate threat to the safety of a client or others?**

See the chapter Contacting the Police

**Are children at risk?**

See the chapter Children and Family Violence > The Youth Protection System

**Is a senior at risk?**

See the chapter Seniors and Family Violence > Special Protections

**Are there any court orders in effect to protect the client or others?**

See the chapter Contacting the Police > Decision Whether to Release Person Arrested

See the chapter The Criminal Court Process > Possible Release of Accused During the Process

**Does the situation affect a child’s living arrangements?**

See the chapter Safety Planning > Taking the Children if Leaving in a Hurry

See the chapter Ending a Relationship - Family Law Issues > Children

**Are adults struggling with a child who is out of control?**

See the chapter Children and Family Violence > The Youth Protection System



### **Has there been a breakdown in a couple’s relationship?**

See the chapter Ending a Relationship - Family Law Issues

### **Is the client involved in a police investigation or court process?**

See the chapter Service Providers > Accompanying People Involved in the Justice System

### **Is the client’s financial situation affected?**

See the chapter Ending a Relationship - Family Law Issues > Financial Support for Children and Financial Support for an Adult

### **Is there a dispute over who will stay in the family home?**

See the chapter Ending a Relationship - Family Law Issues > The Family Home

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## **11.4 > MYTHS ABOUT FAMILY VIOLENCE AND THE LAW**

### **Myth # 1: There is a crime called “family violence”.**

*No. In Canada, there is no crime of family violence. However, many forms of family violence are crimes under a law called the Criminal Code.*

*To learn more, see the chapter Family Violence: What is Against the Law?*



**Myth # 2: If a victim confides in a service provider, the service provider must always keep this information secret.**

*No. It is true that some service providers have a duty to keep client information confidential. For example, psychologists, nurses, social workers, and marriage and family therapists have this duty. But there are exceptions to secrecy rule. For example, the information can be disclosed if:*

- *disclosure is necessary to prevent an act of violence*
- *a court orders the information to be disclosed*

*To learn more, see the chapter Service Providers and Family Violence.*

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**Myth # 3: If someone calls the police, they will automatically arrest the suspected aggressor.**

*No. To arrest someone, the police must have reasonable grounds to believe that a crime has been committed. The police will decide if there are “reasonable grounds” based on what they learn at the scene of an incident.*

*To learn more, see the chapter Contacting the Police.*

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**Myth 4: A suspected aggressor who is arrested will be kept in jail.**

*Not necessarily. The police can decide to keep a person arrested in a jail cell or let the person go until he or she appears in court later on. The police have some discretion about this. When making this decision, the police consider the safety of victims and witnesses.*

*To learn more, see the chapter Contacting the Police.*

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**Myth # 5: Victims can decide whether to bring and drop criminal charges against an aggressor.**

*No. Only the prosecutor (government lawyer) can make these decisions. The victim’s permission is not necessary.*

*To learn more, see the chapter The Criminal Court Process.*



**Myth # 6: Parents who are violent or abusive automatically lose the right to live with and visit their children.**

*No. Sometimes it depends on who the victim was. A parent who is violent or abusive toward the other parent is sometimes allowed to share custody and have visiting rights.*

*To learn more, see the chapter Ending a Relationship – Family Law Issues.*

**Myth # 7: If a victim with children calls the police, the police will call Youth Protection and the children will be taken away.**

*Not necessarily. If the police have reasonable grounds to believe that a child’s wellbeing is at risk, they are legally obliged to notify youth protection authorities. However, this does not mean that the children will automatically be removed. Removal is a last resort.*

*To learn more, see the chapter Children and Family Violence.*

**Myth # 8: A parent who leaves the family home because of family violence and leaves the children behind will lose parental rights.**

*No, but this parent will probably have to justify the decision to leave without the children. Also, if this parent waits too long to ask a judge for temporary custody of the children, he or she can face an uphill battle.*

*To learn more, see the chapter Ending a Relationship - Family Law Issues.*







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## 11.5 > HELPFUL WEBSITES AND PUBLICATIONS

### Family Violence Generally

**Department of Justice Canada, Family Violence Initiative:  
various publications**

[www.justice.gc.ca/eng/pi/fv-vf/index.html](http://www.justice.gc.ca/eng/pi/fv-vf/index.html)

**Department of Justice Canada, Family Violence Youth  
Site: website for children and teenagers**

[www.justice.gc.ca/eng/pi/fv-vf/fvy-vfj/index.html](http://www.justice.gc.ca/eng/pi/fv-vf/fvy-vfj/index.html)

**Public Health Agency of Canada, National Clearinghouse  
on Family Violence: information for professionals on  
prevention, protection, treatment and services**

[www.phac-aspc.gc.ca/ncfv-cnivf/index-eng.php](http://www.phac-aspc.gc.ca/ncfv-cnivf/index-eng.php)

### Legal System

**Éducaloi: website with information and videos on all  
areas of the law**

[www.educaloi.qc.ca/en](http://www.educaloi.qc.ca/en)

**Justice Québec: English glossary of legal terms**

[www.justice.gouv.qc.ca/francais/publications/generale/  
termes/index-ang.htm](http://www.justice.gouv.qc.ca/francais/publications/generale/termes/index-ang.htm)

**Justice Québec: information for victims and witnesses on  
the court process**

[www.justice.gouv.qc.ca/english/publications/generale/  
public-gen-a.htm#witnesses](http://www.justice.gouv.qc.ca/english/publications/generale/public-gen-a.htm#witnesses)

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**Québec Ministère de la Santé et des Services sociaux:  
guide on the youth criminal justice system**

<http://publications.msss.gouv.qc.ca/acrobat/f/documentation/2003/03-820-02A.pdf>

**Ministère de la Sécurité publique: guide on the provincial  
prison and parole system (sentences of less than two  
years) and rights of victims**

[www.securitepublique.gouv.qc.ca/fileadmin/Documents/services\\_correctionnels/depliants/depliant\\_victims\\_en.pdf](http://www.securitepublique.gouv.qc.ca/fileadmin/Documents/services_correctionnels/depliants/depliant_victims_en.pdf)

**Correctional Service Canada, Victim Services:  
information about the federal prison and parole system  
(sentences of two years or more) and rights of victims**

[www.csc-scc.gc.ca/victims-victimes/index-eng.shtml](http://www.csc-scc.gc.ca/victims-victimes/index-eng.shtml)

## Directories of Services

**Québec Ministère de la Santé et des Services sociaux:  
directories of community organizations and services**

[www.msss.gouv.qc.ca/en/repertoires/index.php](http://www.msss.gouv.qc.ca/en/repertoires/index.php)

**Community Health and Social Services Network (CHSSN):  
list by region of health and social service institutions and  
community organizations providing services in English**

[www.chssn.org/Scripts/Recherche/CategoryAll.asp](http://www.chssn.org/Scripts/Recherche/CategoryAll.asp)

**Department of Justice Canada, Policy Centre for Victim  
Issues: “Victim Services Directory” that can be searched  
by postal code**

[www.justice.gc.ca/eng/pi/pcvi-cpcv/index.html](http://www.justice.gc.ca/eng/pi/pcvi-cpcv/index.html)



**Government of Quebec, Services Québec:  
services for seniors**

[www.55ans.info.gouv.qc.ca/en](http://www.55ans.info.gouv.qc.ca/en)

**Government of Québec, Sexual Assault Website: list of  
community resources by region for victims and offenders**

[www.agressionssexuelles.gouv.qc.ca/en/index.php](http://www.agressionssexuelles.gouv.qc.ca/en/index.php)

**Government of Quebec Domestic Violence Website:  
services for victims, witnesses, aggressors and service  
providers**

[www.domesticviolence.gouv.qc.ca](http://www.domesticviolence.gouv.qc.ca)

**Québec Bar: list of free or low cost legal services**

[www.barreau.qc.ca/public/acces-justice/services/index.html?Langue=en](http://www.barreau.qc.ca/public/acces-justice/services/index.html?Langue=en)

**Shelternet: a list of shelters that can be searched with a  
clickable map**

[www.shelternet.ca/en/women/find-a-shelter/clickable-map](http://www.shelternet.ca/en/women/find-a-shelter/clickable-map)

## **Children**

**Canadian Child Welfare Research Portal: research on  
Canadian child welfare programs and policies**

[www.cecw-cepb.ca](http://www.cecw-cepb.ca)

**Association des centres jeunesse du Québec: list of youth  
protection centres and contact information**

[www.acjq.qc.ca](http://www.acjq.qc.ca)



**Association des centres jeunesse du Québec: list of youth protection centres and contact information**

[www.acjq.qc.ca](http://www.acjq.qc.ca)

## **Seniors**

**Government of Quebec Elder Abuse Website: information about various kinds and signs of elder abuse**

<http://maltraitanceaines.gouv.qc.ca/en/>

**Curateur public du Québec: government agency responsible for protecting people who cannot make decisions for themselves**

[www.curateur.gouv.qc.ca](http://www.curateur.gouv.qc.ca)

## **Aboriginals**

**Government of Canada, Aboriginal**

**Canada Portal**

[www.aboriginalcanada.gc.ca/acp/site.nsf/en-frames/index.html](http://www.aboriginalcanada.gc.ca/acp/site.nsf/en-frames/index.html)

**National Aboriginal Circle Against Family Violence: reports on family violence and lists of Aboriginal shelters**

[http://nacafv.ca/en/family\\_violence](http://nacafv.ca/en/family_violence)

**Correctional Service Canada, Aboriginal People: information on Aboriginal issues and the federal criminal justice system**

[www.csc-scc.gc.ca/victims-victimes/abp-pae-eng.shtml](http://www.csc-scc.gc.ca/victims-victimes/abp-pae-eng.shtml)

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**Justice Canada, Aboriginal Justice Strategy: alternatives to mainstream justice processes for Aboriginal peoples**

[www.justice.gc.ca/eng/pi/ajs-sja/index.html](http://www.justice.gc.ca/eng/pi/ajs-sja/index.html)

**Quebec Native Women Inc (Femmes Autochtones du Québec Inc): organization representing First Nations women**

[www.faq-qnw.org](http://www.faq-qnw.org)

**Safety Planning**

**Shelternet: practical advice on safety plans for adults and children in several languages.**

[www.shelternet.ca](http://www.shelternet.ca)

**Advocacy for Victims**

**Canadian Resource Centre for Victims of Crime: advocacy organization for victims**

<http://crcvc.ca/en>

**Victims of Violence: research and advocacy for victims**

[www.victimsofviolence.on.ca](http://www.victimsofviolence.on.ca)

**Association québécoise plaidoyer-victimes**

[www.aqpv.ca](http://www.aqpv.ca) (Website in French only.)



## **Police Ethics**

**Quebec Police Ethics Commissioner**

[www.deontologie-policiere.gouv.qc.ca](http://www.deontologie-policiere.gouv.qc.ca)

## **Guide to Working with Crime Victims**

**Association québécoise Plaidoyer-Victimes: Introduction to Intervention with Crime Victims, 2011: a guide in English for professionals working with victims (To order, see the “Publications” tab on the website.)**

[www.aqpv.ca](http://www.aqpv.ca)

11.6 > **LIST OF COMMUNITY RESOURCES BY REGION AND CLIENTELE**



**CANADA-WIDE AND QUEBEC-WIDE SERVICES**

**Services for Victims - General**

**Crime Victims Assistance Centres (CAVACs): free services for victims of crime, their immediate families and witnesses: post-trauma counselling, information on rights of crime victims, accompaniment and referrals to specialized services.**

[www.cavac.qc.ca](http://www.cavac.qc.ca)

Tel: 1-866-532-2822

**Federal Ombudsman for Victims of Crime-Government of Canada: information for victims about their rights and services available to them.**

[www.victimfirst.gc.ca](http://www.victimfirst.gc.ca)

Tel: 1-866-481-8429

**Children and Youth**

**Kids Help Phone: bilingual, professional counselling for children and teens 24-hours-a-day. Counsellors have access to a database of community and social service agencies.**

[www.kidshelpphone.ca](http://www.kidshelpphone.ca)

Tel: 1-800-668-6868





**Tel-jeunes: bilingual, confidential helpline for young people.**

[www.tel-jeunes.com](http://www.tel-jeunes.com)

Tel: 514-288-2266 or 1-800-263-2266

**Association des centres jeunesse du Québec: umbrella organization for youth protection centres.**

[www.acjq.qc.ca](http://www.acjq.qc.ca) (Website in French only.)

Tel: 514-842-5181

Email: [info.acjq@ssss.gouv.qc.ca](mailto:info.acjq@ssss.gouv.qc.ca)

**LOVE: Leave Out Violence: violence prevention programs for youth.**

[www.leaveoutviolence.com](http://www.leaveoutviolence.com)

Tel: Québec Branch Office: 514-938-0006

Email: [info@leaveoutviolence.org](mailto:info@leaveoutviolence.org)

**PASSAJ and STOP Programs: educational programs for youth on abuse in dating relationships, sexual harassment and prevention of dating violence. English website has information for teachers and facilitators.**

<http://viraj.psy.ulaval.ca/english/index2.html>

**Centre d'expertise Marie-Vincent: services for child victims of sexual abuse (12 years old and under) and their parents**

[www.ceasmv.ca](http://www.ceasmv.ca)

## Seniors

**Ligne Aide Abus Aînés: bilingual elder abuse helpline for victims, family members, service providers and others. Social workers provide confidential information, assessments and referrals.**

Tel: 514-489-2287 or 1-888-489-2287



**Senior-Aware Project: workshops on elder abuse for seniors across Quebec. Presented by the police, professionals and volunteers.**

[www.fadoq.ca/aineavise/en/Home/](http://www.fadoq.ca/aineavise/en/Home/)

Tel: 514-252-3017 or 1-800-544-9058

**Commission des droits de la personne et des droits de la jeunesse: the Commission has a special team dealing with exploitation of the elderly.**

[www.cdpdj.qc.ca](http://www.cdpdj.qc.ca)

Tel: 514-873-5146 or 1-800-361-6477

## **Women**

**Shelternet: online resource and support network for abused women and their children. Multiple languages.**

[www.shelternet.ca](http://www.shelternet.ca)

**Women Aware Telephone Support Line: support services for women experiencing domestic violence.**

[www.womenaware.ca](http://www.womenaware.ca)

Tel: 514-489-1110 or 1-866-489-1110

**Fédération de ressources d'hébergement pour femmes violentées et en difficulté du Québec (FRHFVDQ) : umbrella group for 37 women's shelters across Quebec. List of shelters by region.**

[www.fede.qc.ca](http://www.fede.qc.ca)

Tel: 514-878-9757



**Le regroupement des maisons pour femmes victimes de violence conjugale: umbrella organization for women's shelters. List of shelters by region.**

<http://maisons-femmes.qc.ca> (Website in French only.)

Tel: 514-878-9134

Email: [info@maisons-femmes.qc.ca](mailto:info@maisons-femmes.qc.ca)

**L'R des centres de femmes du Québec: umbrella organization of Quebec women's centres. Website in French, but lists centres with services in several languages.**

[www.rcentres.qc.ca](http://www.rcentres.qc.ca)

Tel: 514-876-9965

**Elizabeth Fry Society of Québec: services for women involved in the criminal justice system, including legal advice.**

[www.elizabethfry.qc.ca](http://www.elizabethfry.qc.ca)

Tel: 514-489-2116

## **Men**

**À cœur d'homme: Réseau d'aide aux hommes pour une société sans violence: network of 25 independent community organizations working with men having problems with violent behaviour. Some offer services in English.**

[www.aceurdhomme.com](http://www.aceurdhomme.com)



## **Gay, Lesbian, Bisexual and Transgendered**

**CAEO Quebec: services for the English-speaking lesbian, gay, bisexual and transgendered communities.**

[www.caeoquebec.org](http://www.caeoquebec.org)

Email: [info@caeqquebec.org](mailto:info@caeqquebec.org)

## **Parents**

**Ligne Parents: bilingual helpline for parents of children up to 20-years-old. Staffed by professional counsellors.**

[www.ligneparents.com](http://www.ligneparents.com)

Tel: 1-800-361-5085

## **Aboriginals**

**Quebec Native Women Inc (Femmes Autochtones du Québec Inc): organization representing First Nations women.**

[www.faq-qnw.org](http://www.faq-qnw.org)

Tel: 450-632-0088

**National Aboriginal Circle Against Family Violence: reports on family violence and links to Aboriginal shelters**

[http://nacafv.ca/en/family\\_violence](http://nacafv.ca/en/family_violence)

Tel: 450-638-2968

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**Native Para-Judicial Services of Quebec: support of  
Aboriginals involved in the criminal justice system.**

[www.spaq.qc.ca](http://www.spaq.qc.ca)

Tel: 418-847-2094

**Nations Actions: information on community justice  
committees in Quebec Inuit communities and links to  
committee contact information.**

<http://nation-action.com/en/>

## **Immigrants and Refugees**

**Table de concertation des organismes au service des  
personnes réfugiées et immigrantes: umbrella group for  
organizations helping immigrants and refugees. Website  
in French only, but it has links to organizations across  
Quebec with services in other languages.**

[www.tcri.qc.ca](http://www.tcri.qc.ca)

Tel: 514-272-6060

## **Violence between Couples**

**Domestic Violence Website - Government of Quebec:  
website with links to services for victims, witnesses,  
aggressors and service providers.**

[www.domesticviolence.gouv.qc.ca](http://www.domesticviolence.gouv.qc.ca)



## **Sexual Assault**

### **Centres d'aide et de lutte contre les agressions à caractère sexuel (CALACs): support centres and support lines for women**

<http://rqcalacs.qc.ca> (Website in French only but some CALACs offer services in English.)

Tel: 514-529-5252 or 1-877-717-5252

### **Sexual Assault Help Line - Government of Quebec: for victims, families of victims, and service providers. Bilingual, confidential support and referral services.**

Tel: 514-933-9007 or 1-888-933-9007

## **Legal**

### **Québec Bar: list of free or low cost legal services**

[www.barreau.qc.ca/public/acces-justice/services/index.html?Langue=en](http://www.barreau.qc.ca/public/acces-justice/services/index.html?Langue=en)

### **Legal Aid: commission des services juridiques**

[www.csj.qc.ca](http://www.csj.qc.ca)

Tel: 514-873-3562 or 1-800-842-2213

Note that Legal Aid offices in each region are run by Community Legal Centres: [http://www.csj.qc.ca/SiteComm/W2007English/Main\\_En\\_v3.asp](http://www.csj.qc.ca/SiteComm/W2007English/Main_En_v3.asp)



## **Various**

**Tel-Aide: bilingual telephone service for people experiencing stress, anxiety, addiction, violence and relationship difficulties**

[www.telaide.org](http://www.telaide.org)

Tel: 514-935-1101

Email: [info@telaide.org](mailto:info@telaide.org)

**Public Curator - Government of Quebec: agency that protects citizens who are unable to care for themselves and their affairs due to incapacity.**

[www.curateur.gouv.qc.ca/cura/en](http://www.curateur.gouv.qc.ca/cura/en)

Tel: 514-873-4074 or 1 800 363-9020

This toolkit is available online in PDF format at  
[www.educaloi.qc.ca/en/familyviolence](http://www.educaloi.qc.ca/en/familyviolence).

For paper copies, contact Éducaloi at [info@educaloi.qc.ca](mailto:info@educaloi.qc.ca)  
or 514-954-3408 / 1-800-361-8495 ext. 3235.