



ANANGOSH
Legal Information Manual
for Shelter Workers

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National Aboriginal Circle Against Family Violence (NACAFV)

Advocates for and supports shelters by providing practical training, culturally appropriate resources and opportunities to network in a supportive environment.



Incorporated in 2002, the NACAFV is an non-governmental organization (NGO) with special consultative status with the UN's ECOSOC since July 2015.



*The Darkest Nights
Produce The Brightest Stars*



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Migwetch!

Thank you!






Foreword by International Chief Wilton Littlechild

Over a six-year period, as a Commissioner of the Truth and Reconciliation Commission of Canada (TRC), I heard testimony from approximately 7,000 Indigenous individuals about enduring terrible abuse – physical, sexual, mental, emotional and spiritual abuse – while being forced to attend residential schools. The survivors demonstrated extraordinary bravery and trust in sharing their stories with the Commission and the Canadian public. Crucially, what Indigenous people told the Commission, time and time again, was that the harm did not end when they walked out the school doors for the last time. Rather, Indigenous societies and families continued to face trauma for generations after, trauma from which we are all still struggling to heal. Unfortunately, one of the lasting legacies is an alarmingly high rate of violence against Indigenous women and girls.

In our Calls to Action, the TRC stood with Indigenous women’s organizations in urging the federal government to establish a thorough public inquiry into all the factors contributing to the disproportionately high rates of violence faced by Indigenous women and girls, something which the federal government has now committed to address. This, however, was not the only Call to Action relevant to ensuring the safety and well-being of Indigenous women and girls. Concern over violence against Indigenous women permeates many of the Calls to Action, including calls for reconciliation based on respect for human rights, calls for better education on Indigenous cultures and histories for all institutions of Canadian society, and calls for increased supports in areas such as justice, health and child welfare.





I congratulate the work of the National Aboriginal Circle Against Family Violence in protecting Indigenous women and their families, and promoting the healing that our communities need through the work they do on a day-to-day basis. They are among the many human rights champions in Canada who bring hope to our collective struggle to live healthy, happy lives where Indigenous human rights are recognized and respected. I personally welcome this manual as an important contribution to advancing the positive vision of healing and reconciliation set out in the TRC's Calls to Action. I commend the National Aboriginal Circle Against Family Violence for their efforts to ensure that shelters and transition houses and their workers understand the historic and cultural context of their vital work and the key concepts and tools such as cultural safety and human rights.

Thanks to the advocacy of Indigenous women advocates, including the author of this handbook, I was able to ensure the issue of violence against Indigenous women and girls was on the agenda of every Expert Mechanism session and seminar of which I sat as the Western Europe and Other Groups (WEOG) Member. This issue has recently been recognized at a UN High Level Panel, a Special Session of the Human Rights Council that culminated in a resolution that specifically addressed the human right of Indigenous women and girls to live free from violence.

Hai Hai (Thank you.)

Wilton Littlechild





“I Believe You”

&

*“It’s Not
Your Fault” **

**The words a Violence Survivor needs to hear.*



I. Introduction

Everyone has the right to live free from violence. This right is affirmed in Indigenous peoples' laws and traditions and protected in Canadian law and international human rights instruments that all governments in Canada are expected to uphold and implement. The right to be safe from violence and the threat of violence is protected in the national *Criminal Code of Canada* and in provincial and territorial laws, including family law legislation and policing acts. Protections against discrimination are contained in the *Canadian Charter of Rights and Freedoms* and *Canadian Human Rights Act*, and in provincial and territorial human rights acts. There is also specific national legislation on the rights of victims of crime, described below. These protections may be helpful to women and children in securing the protection and assistance they require in escaping a violent situation and ensuring their safety.

This manual is designed to help Indigenous women address key aspects of violence, including client rights and service provider responsibilities and establishing a safety plan. It is also designed to help service providers understand Indigenous women's legal rights on matters related to leaving a violent relationship, including legal tools for women's safety, such as protective orders, laying charges, specific protections against stalking and cyber-bullying, and police responsibilities. The manual also provides information about relevant legal protections, such as on reserve matrimonial real property; family law; non-discrimination and provincial, territorial and federal human rights; employment rights; navigating the child welfare system; navigating the income assistance system; and housing rights. The manual starts with an explanation of the rights-based framework to addressing violence against Indigenous women and of the historical and social context that impacts Indigenous women in Canada.

This legal information manual does not constitute legal advice and it does not enable shelter workers and service providers to give legal advice to their clients. Rather, it provides basic legal information that can be shared with clients and help service providers in their interactions with clients. **Legal advice from a lawyer will be required for clients seeking information about their legal rights.**

A list of useful resources for shelter workers providing services to First Nations ¹ women is provided. It includes legal aid offices (which provide free legal services to low income people), law society offices (which provide a directory of lawyers in that province or territory) and legal advocacy organizations.



II. The Right to Live Free from Violence

Indigenous women and children have the right to live free from violence and discrimination, as set out in article 22 of the UN *Declaration on the Rights of Indigenous Peoples* and other international human rights instruments.² For Indigenous women and children to live free from violence, other related rights also have to be respected and fulfilled. For example, when a woman flees an abusive relationship, her ability to find a safe place to live will be affected by the actions that government have taken – or have failed to take – to fulfill the right to affordable, quality housing.

Human rights are often described as indivisible, interdependent and inter-related. This means that advancing one right can help create the conditions that enable other rights to be protected and enjoyed, while the denial of one right can undermine the enjoyment of others. As the Quebec Native Women's Association has stated, "...the dignity of a human being cannot be adequately protected if all these types [of rights] are not protected for everyone on a non-discriminatory basis."³ Over history, violations to the collective rights of Indigenous peoples as Nations – such as the forced removal of Indigenous children to attend residential schools -- have negatively affected the rights of Indigenous women and children, far too often leaving them more vulnerable to abuse and marginalization.⁴

In international law, the right to live free from violence has been linked to the right to the highest attainable standard of health. The right to health requires that services necessary for the health of women and their children – including women's shelters and transition houses and the counselling and support they provide -- be available, accessible, and acceptable.

Availability means that services should be available to Indigenous women throughout Canada, including in remote and northern areas. Accessibility includes physical accessibility and economic accessibility. Accessibility also requires that no one should be denied services because of his or her race or gender, or made to feel uncomfortable or unsafe by how they are treated. Inequality in provision of healthcare on the basis of gender, or race or both is not permitted. Acceptability includes cultural appropriateness in the delivery of services, meaning that services must be provided in a culturally safe, sensitive and relevant way.

The human rights obligations described here require governments to act to prevent violence, to bring the perpetrators to justice, and to support the survivors of violence in their healing. Individuals and organizations that provide services to support Indigenous women who experience violence, including police, healthcare professionals, and shelter service providers, also have an obligation to treat Indigenous women without discrimination.





III. Historical and Social Context

Traditional Values of Indigenous Peoples

Traditionally, in Indigenous societies, women were treated as equal members of society, holding central roles in families, government structures and spiritual ceremonies. Indigenous spirituality honours women for the sacred life-giving gifts that are given to them by the Creator. Prior to colonization, Indigenous men and women were expected to respect and honour one another and to care for one another with honesty and kindness. The differing roles of Indigenous women and men were equally valued.

Furthermore, traditional values placed an important value on the contributions of women, from participation as equals in the economy, through gathering activities, as well as acting as guides and interpreters in the fur trade, to curing hides for trade. The roles of men, as hunters, fishers, traders and protectors, were valued on an equal basis to those of women. Likewise, children and Elders were valued as equal members of society. Traditional teachings from Healer Mike Standup of the Mohawk Nation state that “Elders are returning and children are arriving from the Spirit World” and, as such, are closest to the Creator.

The violence that Indigenous women and their children now experience at alarmingly high rates represents a disruption and loss of the balance valued and protected in traditional Indigenous societies. As noted by Indigenous activist, Ellen Gabriel:

“Violence is not part of our cultural values but is instead an effect of colonial self-hatred stemming from the Indian Residential School system (IRSS) and colonialism.”⁵


Murdered and Missing Indigenous women remains a major human rights issue and requires all of society to become educated on how to resolve this violation through education, love, respect and compassion.”⁵

Traditionally, whether matrilineal or patrilineal, extended families were protective of their family members, preventing violence against Indigenous women and children.

Violence against Indigenous Women

First Nations, Métis and Inuit women face much higher rates of violence throughout their lifetimes than all other women in Canada. In a 2014 survey by Statistics Canada, the reported rate of sexual





assaults against Indigenous women 15 and older in the 10 Canadian provinces was more than three times higher than the national average. The same survey revealed Indigenous women in the provinces were more than twice as likely as non-Indigenous women to report having experienced spousal violence.⁷ Rates of violence against Indigenous women are consistently higher in all contexts, whether the reported perpetrator was a spouse, a family member, acquaintance or stranger.⁸

Reported rates of violence in Nunavut, the Northwest Territories and the Yukon are even higher. In 2009, Indigenous women in the territories were more than three times as likely as non-Indigenous women to report being victimized by a spouse in the past 5 years.⁹ One study found that the rate of sexual assault in Nunavut was more than 12 times higher than the national average.¹⁰

Indigenous women in Canada not only face higher rates of violence, the forms of violence are more severe. Almost 60 percent of Indigenous women who reported spousal violence in between 2004 and 2009 said they had been injured, compared to 41 percent of non-Indigenous survivors of violence.¹¹ Statistics Canada has concluded that the homicide rate for Indigenous women and girls was at least 6 times higher than for non-Indigenous women and girls.¹²

Historical Discrimination and Trauma

It is widely recognized that the higher levels and more severe forms of violence experienced by Indigenous women and children is grounded in the oppressive and discriminatory treatment of Indigenous individuals and societies throughout Canadian history. The following dimensions of this historical trauma are particularly important to acknowledge because of their profound lasting impacts:


- **The wholesale dispossession of lands and natural resources** has severely eroded the self-sufficiency of Indigenous communities. The erosion of traditional livelihoods, such as hunting, fishing and gathering plant medicines and berries has also affected the roles of Indigenous women and men in their own communities and the sense of self-worth that comes from being knowledgeable and skilled in such culturally-valued occupations.
- Between 1951 and 1985, the federal government **arbitrarily and unilaterally took Indian status away from First Nations** women who married outside their community. The result was to deny tens of thousands of women and their descendants the right to live in their own communities and to be part of the life of those communities. Through amendments to the *Indian Act*, the federal government has since restored status to many but not yet all of those descendants.



- 
- Beginning with the 1885 *Indian Act*, the federal government **outlawed many of First Nations' key institutions and traditions** such as the potlatch that maintained social cohesion in First Nations communities. This was accompanied by the imposition of a foreign system of elected band governments in place of the diversity of family, clan and community decision-making forums through which Indigenous peoples had previously governed themselves.
 - In an effort to forcibly break Indigenous children's ties to their cultures and communities, the federal government carried a policy of **mass removal of children from their homes to attend residential schools** often located far from their communities. The children were severely punished for speaking their languages, including, horrifically, electrocution in some schools. Staff (often clergy) often abused students without consequence. These traumatic experiences deprived many Indigenous peoples of positive parenting models in the care of their own children. Approximately 3000 children died during the residential school era.
 - One of the most profound lasting effects of the Residential School system was to deny generations of Indigenous women and men positive examples of how children should be treated. A provincial justice inquiry in Manitoba concluded that treatment of children in residential schools "began a cycle of abuse in Aboriginal communities, with women and children being the primary victims."¹³
 - The term Sixties Scoop describes the widespread forced removal of Indigenous children at the hands of social service agencies that began in the 1960s just as the residential schools started to be phased out. Rather than recognizing that the crises being experienced by many Indigenous families and communities was a consequence of government policies like the residential school system, and a sign that support was needed to help these communities heal, social services decided that Indigenous people were simply unfit to be parents and that it was in the best interest of children that they be raised in non-Indigenous families. An estimated 20,000 Indigenous children were taken from their families and their cultures because of these discriminatory practices. Furthermore, institutionalization of children often leads to institutionalization in adulthood, particularly through involvement in the criminal justice system.

The severity of the combined impact of these and other colonial policies are reflected in the findings of the Truth and Reconciliation Commission (TRC), which was established to create a public account of the residential school system and its legacy. The TRC concluded:





For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide."¹⁴

The lasting impacts of these policies have been to create and perpetuate distinctive patterns of violence, discrimination and marginalization for Indigenous women and their families, including continued racism and inter-generational violence.

Continued Racism, particularly Gendered Racism within Canadian Society

The residential schools and other colonial policies were fuelled and justified by claims about the inferiority of Indigenous societies and communities. Although Canada's formal apology for the residential school program stated that "there is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again," First Nations, Inuit and Métis people must contend with such attitudes on a daily basis still today. One particularly dangerous form of racism is the stereotypes about Indigenous women's promiscuity or sexual availability that has fuelled violent assaults against them, as documented in numerous reports.¹⁵ There are also specific forms of discrimination facing elderly Indigenous women, members of the Lesbian, Gay, Bisexual, Transgendered, Queer or Intersex Indigenous Community (LGTBQI), and Indigenous women with disabilities (including those with mental disabilities).

Relationship with Police

Historically, the police have played a role in imposing foreign systems and rules meant to oppress Indigenous peoples, creating and maintaining socio-economic inequalities, which can be characterized as structural violence.¹⁶ It has been noted that in the language of the Carrier Sekanie people in northern British Columbia, the term for RCMP can be translated as "those who take us away."¹⁷ The term reflects the role of the RCMP in enforcing the residential school policy. Because of the role that police, social workers and government officials have placed in enforcing oppressive and discriminatory laws and policies, many Indigenous people in Canada are understandably apprehensive about their interactions with authority figures, whom at times have abused their power.



Having noted these patterns of ongoing harms described above, the continued strength and resilience of First Nations, Métis and Inuit cultures and societies must be acknowledged. The government's concerted efforts to eradicate Indigenous peoples with distinct cultures and societies failed. Many Indigenous people are actively engaged in a process of cultural revitalization, turning to their ceremonies and the knowledge of Elders as a source of healing and wellness. Related to this revitalization is the right to cultural safety.

Right to Cultural Safety

The term “cultural safety” was coined by service providers in New Zealand as the equivalent of an Indigenous Maori term, “kawa whakaruruhau.”¹⁸ “Cultural safety” describes the desired outcome of people having access to services “that take into account all that makes them unique.”¹⁹ Cultural safety is measured by whether the client or patient feels respect or empowered. Culturally unsafe practices would be “any action which diminishes, demeans or disempowers the cultural identity and well-being of an individual.”²⁰ The term “cultural safety” has found resonance among some practitioners working with Indigenous women in Canada because it encapsulates the needs to establish respectful, culturally and historically informed relations so that people who have experienced historical and inter-generational trauma can receive appropriate supports.

The core concept is that every person is a carrier of culture, defined as the complex interaction of factors such as ethnicity and religion, age, gender, sexual orientation, disability, occupation and income, the impacts of colonization, and many other factors. Cultural safety requires the practitioner to be aware of and respectful of differences in cultures, but more than that, to be aware both of their own “culture” in all its dimensions and how it can affect their interactions with others. Conscious awareness of one's own biases and the power imbalances that can exist in dealing with others is sometimes referred to as **cultural sensitivity**, or awareness of privilege, an **anti-oppression** perspective.

Cultural sensitivity is a necessary foundation for **cultural competency**²¹, described as the capacity to engage with members of a particular group on their own terms. Cultural competency may include knowledge of specific histories, cultural norms and protocols, and languages.

Cultural safety, in contrast to cultural sensitivity and cultural competency, includes the additional concept of respect for the agency of the patient or client in defining when they feel culturally safe. “Cultural safety is an outcome. It is determined by the recipient of a service, or the participant in a program or project.”²² Cultural safety is reflected in “respectful relationships” and “equitable partnerships.” Lack of cultural safety may be indicated by “low utilization of available services,” “reticence in interactions with practitioners,” “non-compliance with referrals or prescribed interventions” and “anger.”²³



Vicarious Trauma

Working with individuals experiencing trauma and grief inevitably affects service providers. Therapists Laurie Pearlman and Karen Saakvitne, who were among the first to use the term “vicarious trauma,” have written, “When we open our hearts to hear someone’s story of devastation or betrayal, our cherished beliefs are challenged and we are changed.”²⁴ Vicarious trauma means that the caregiver comes to share some of the same emotional harm as their clients or patients as a result of repeatedly engaging with people who have endured trauma. These harms can include emotional withdrawal and irrational anger. This has been described as follows: “Vicarious trauma is the high cost of caring for and empathizing with another person’s traumatic experience over a long term of time. When undiagnosed, the worker is often left feeling confused, full of self-doubt and afraid.”²⁵

The high degree of trauma experienced by Indigenous women may strongly affect service providers, particularly if the service carries feelings of guilt for the role that Canadian society played in inflicting harm on Indigenous peoples. Thus, practitioners need to be vigilant for the possibility of vicarious trauma influencing their interactions with patients and clients, or affecting their own health and wellness.²⁶

Systemic Discrimination in Government Funding of Services in First Nations Communities

In most communities in Canada, social services are funded through the provincial or territorial governments. However, in First Nations reserves, these services are funded through the federal government. This unique arrangement is the basis of misleading claims about the federal government spending a lot of “extra” money on First Nations. The NACAFV reports that currently there are in actual fact 37 operational INAC funded women shelters in Canada. In February 2017, the federal government announced plans to build an additional 5 for the 634 First Nations communities. Moreover, there exists funding disparity as all other women’s shelters in Canada receive more funding than First Nations women shelters that are INAC-funded. Therefore, the NACAFV denounces this case of systemic discrimination and continues to demand funding parity for all First Nations women shelters in Canada.²⁷ In fact, services on reserve often receive significantly less money per person from the federal government when compared to what the provincial and territorial governments spend in other communities. This is despite the fact that the historic harms discussed above may mean that the needs of First Nations communities are greater. Furthermore, the costs of providing social services in small communities are often much higher, particularly if these communities are relatively isolated. The result is that many services available in other communities are simply not available in First Nations communities, or are provided on a more limited and less effective basis. As a result, First Nations women seeking to escape an abusive relationship may have to travel great distances and may not have access to services tailored to their specific needs. This could be argued to create a substantive inequality in service provision of shelters and transition houses.



In 2016, the Canadian Human Rights Tribunal concluded that the federal government had discriminated against First Nations children by systematically under-funding child and family services on First Nations reserves, both in comparison to the funding available in predominantly non-Indigenous communities and relative to the real needs of First Nations families.²⁸ The Tribunal's ruling has important implications for the provision of services to First Nations women and their families, including shelter services.

The child welfare case before the Canadian Human Rights Tribunal was the result of a complaint initiated by the First Nations Child and Family Caring Society and the Assembly of First Nations, in response to a gap between federal and provincial funding for child and family services of at least 22 per cent per child. The Tribunal concluded that inadequate funding of on reserve child and family services has meant that basic supports to help families in crisis were often unavailable, forcing agencies to place children in state care over issues of neglect that should be addressed through less drastic interventions. The Tribunal concluded that underfunding of intervention programs creates “incentives to remove children from their homes and communities,” thus continuing the cycle of trauma and loss, rather than addressing the harms created by policies like the residential school system.

Of relevance to the provision of other services, the Tribunal concluded that protections against discrimination in Canadian law mean that the government has an obligation to ensure “substantive equality” in the delivery of services to Indigenous and non-Indigenous people, regardless of what level of government funds those services. Substantive equality doesn't mean identical services. It means providing services that meet the particular needs of the communities being served.

The precedence setting decision of the Tribunal in the child welfare case can be used in a number of ways to help advocate for greater equality in access to services for Indigenous women, including the funding of shelters and transition houses.





IV. Key Aspects of Addressing Violence against Indigenous Women

Client Rights and Service Provider Responsibilities

There are many rights clients hold in relation to services provided. These include ensuring that their rights to informed consent, privacy, confidentiality and non-discrimination are protected.

Conflict of Interest

A conflict is created when a shelter employee or volunteer is in a position to make decisions or take actions where their own interests, financial or otherwise, or those of her family, could be affected whether positively or negatively. Conflicts of interest can take many forms. For example, a conflict of interest would be created if a staff member is making a decision about a major expense such as a renovation of the shelter and a family member was bidding on the contract. A conflict of interest would also be created if a woman seeking support from the shelter wanted to bring a complaint or legal action against a relative of the shelter worker.

Conflicts of interest and the appearance of conflicts of interest interfere with the impartial operation of a shelter and foster mistrust. They are to be strictly avoided. This may require the staff or volunteer to leave certain duties or decisions in the hands of others. Some provisions to avoid conflicts of interests will be set out in the federal, provincial or territorial laws under which the shelter is incorporated. These provisions will not cover all the shelter's needs. Shelters and transition houses should adopt additional policies on conflict of interest and provide appropriate training to staff.

Informed Consent

Indigenous women who access services provided at shelters and transition houses have a right to informed consent. In all aspects of services provided to Indigenous women, shelter service providers must ensure that they have received permission from the woman to act on her behalf, and that the woman understands the possible consequences of these services being provided. This includes actions that shelters and transition houses take on a woman's behalf in their interactions with third parties, such as health care practitioners, the police, and community members. Service providers are often in this position in respect to the women who seek their services. This creates greater responsibility to ensure informed consent.





Informed consent is never implicit – the service provider must take the time to discuss their intended actions and to obtain explicit permission from the client. The ability of a woman to provide such consent may be affected by a range of factors, including the effects of trauma and any anxiety or apprehension about dealing with people perceived to be in positions of power and authority. Clear communication and cultural competency are key requirements when seeking a woman’s informed consent, along with taking the time to double-check that there has been no miscommunication.

Intoxication and other factors need to be considered in determining whether a woman has granted consent to the service provider. Canadian law is still evolving in respect to the ability to grant consent under the influence of drugs and alcohol. In broad terms, the law distinguishes between being intoxicated and being sufficiently intoxicated to be effectively incapacitated. Important considerations include:


- Is the woman capable of understanding the information that has been provided?
- Is she likely to have sound judgment about her best interests?
- Is she likely to remember the decision that she has made?

Another consideration is for Indigenous women who may not speak English or French as their first language, or do not read or write. Accommodation should be made whenever possible to provide interpretation services to ensure the woman understands the process.

Confidentiality and Disclosure

Everyone has the right to privacy. All information disclosed by a woman receiving services should be treated as confidential. Consent is therefore required before such information is disclosed to third parties. For example, the woman has a right to expect that other residents in the shelter, or members of the public, will not have access to information she shares with her counsellor. In small communities, this can be particularly important when “everyone knows each other.” A lack of confidentiality can be a barrier to women seeking out the protection of a shelter. Thus, it is important that confidentiality be a paramount part of the services provided by a shelter.

However, there are instances when service providers are required by law to report information because of public safety reasons or of self-harm concerns, or because records are ordered to be produced in a court of law. Women should be given a clear explanation about the privacy policies of the service provider and the limits of confidentiality. It should be explained to the client that she has a right to decide what personal information to share with shelter workers and when this information is shared, how it will be recorded, stored, and eventually, destroyed. It is also important to explain



to the client that she has a right to receive service even if she chooses not to disclose all details of the abuse she has suffered.

There are federal, provincial, territorial and municipal privacy acts that set out specific requirements for how information can be recorded and the conditions under which it can be disclosed that should be reflected in the policies and procedures of each shelter, and in the confidentiality form that the client signs upon entering the shelter.

The right to confidentiality extends to any mail delivered to a shelter on behalf of a woman staying there. It is important that mail addressed to a shelter resident not be opened before being delivered to them. Such mail should also be delivered as promptly as possible. Under Canadian law, including both the *Customs Act* and the *Canada Post Corporation Act*, it is a criminal offense to open, keep or delay delivery of someone else's mail.

Recording Information

It is important that shelter workers record information in a way that provides enough information to serve the client well, while being mindful of the legal obligations to disclose the records in certain situations (discussed above). Basic records must be kept of all contacts with individuals receiving help or advice, however informally. This includes at minimum the name and contact information for the individual, the dates and times for each contact, and the purpose of the contact. More thorough records should be kept for any women accessing multiple supports or making scheduled appointments. The record should clearly identify the basic information of events in an objective manner that is detailed enough to provide a record of abuse, or of the progress of healing of a client.

A manual prepared in conjunction with Eagle Women's Emergency Shelter, Awo Taan Native Women's Shelter and other service providers in Calgary, suggested that records should include the following components:

Contact Record

- Contact information
- Date and location of visits
- Any cancelled visits
- Telephone calls to client
- Attempted telephone calls





Relevant background and observations

- Presentation of situation/issues
- Reason for referral
- History of abuse

Critical incidents

- Current relationship with offender
- Strengths and challenges
- Concerns expressed by client

Service planning and implementation

- Goals
- Progress on goals
- Action taken – what was done and why

Referrals

- Telephone calls you are making on the client's behalf.²⁹

All workers should receive training on the particular way that information is recorded and on how records are kept, updated and destroyed. They should also receive training on how courts may use the records that they keep. Information should be recorded in a standardized way, as set out in the policies and procedures of the shelter.³⁰


Health-Related Rights

In relation to the right to live free from violence, Indigenous women can be informed that they have a right to information from sexual partners about HIV status. There is a legal duty to disclose HIV status to sexual partners, and failure to do so may, in certain circumstances, result in criminal prosecution.³²

Policies and Procedures

The human rights of clients and service provider responsibilities should be clearly set out in a policies and procedures manual of each shelter. Employees and managers should receive training on these policies and procedures on a regular basis in order to ensure that they can meet their responsibilities.





The NACAFV's *Policies and Procedures Guidelines for Shelters* provides detailed guidance on many aspects of policies and procedures. Provincial, territorial and federal human rights commissions can also be consulted for information on how to meet human rights laws throughout Canada.

Discrimination, Harassment and the Shelter Environment

Legal protections against discrimination and harassment apply to the work environment created by shelters and transition houses and to Indigenous women's interactions with their service providers, both on and off site.


Discrimination occurs when a person or group is denied an opportunity, benefit or advantage (such as a job, promotion, service or housing) because of race, age, gender, disability or other similar grounds. Harassment is unwanted physical or verbal behaviour that offends, harms or intimidates. Harassment can include insults and unwelcome "jokes" about race, gender or sexual orientation, unwanted physical contact like touching or pinching or threats.³²

Shelters and transition houses have an obligation to prevent discrimination and harassment and address it when it occurs. This obligation applies to all interactions among staff or between staff and the women and children accessing the services of the shelter. This is both within shelters and transition houses and when staff members accompany women to access services off site. The staff and those accessing services have equal rights to a safe environment and non-discriminatory treatment.

If a shelter is located on reserve, it will be subject to the *Canadian Human Rights Act*, which is overseen by the Canadian Human Rights Commission. Or, a First Nations government may exercise jurisdiction to regulate human rights, if a Self-Government Agreement is in place that provides for this arrangement. If the shelter is located off reserve, it will be subject to the relevant provincial or territorial human rights act.³³ It is important that shelter workers have an understanding of the meaning of human rights law in their jurisdiction, including discrimination, harassment and accommodation. Human Rights Commissions can be consulted for information on how to meet human rights laws throughout Canada.

If an employee or a person accessing shelter or transition house services experiences discrimination or harassment, they can file a human rights complaint. In some instances, there are First Nations community-based dispute resolution processes that can be accessed. There is a growing movement in Canada to incorporate issues of harassment into federal, provincial and territorial labour laws that may also be applicable, based on the location of the shelter.³⁴ Saskatchewan, Manitoba, Ontario and





Quebec all include the responsibility of employers to prevent harassment in their labour laws.³⁵ Acts of harassment involving threats or unwanted physical contact may also be covered by criminal law depending on their severity.


Shelters and transition houses should adopt clear anti-discrimination and anti-harassment policies and ensure that staff is trained in their rights and responsibilities. Key principles and policies should also be made available in accessible forms to women receiving services. For more information, including a model anti-harassment policy statement, please see the Canadian Human Rights Commission's *Anti-Harassment Policies for the Workplace: An Employer's Guide*.³⁶

Prevention of discrimination may require specific accommodations. For example, discrimination occurs if an Indigenous woman who has a disability is denied service to a shelter because of her disability. The shelter has a duty to accommodate the person in the delivery of service. This duty is not absolute, however. It is subject to what is called "undue hardship," which means that the service provider will not be expected to accommodate a person with a disability if it would cost too much or be a health or safety risk to others. For example, if an Indigenous woman is deaf and requires sign language in order to receive services, a shelter that does not have a budget for this service may not be required to provide services to this person, if it would create an undue hardship.

The Canadian Human Rights Commission's Human Rights Handbook for First Nations:

As an employer, you are responsible for providing a harassment-free workplace. You must take appropriate action against any employee who harasses someone else. You can be held responsible for harassment committed by your employees. Have an anti-harassment policy and provide anti-harassment training to supervisors and staff to avoid this.





Making Shelters and Transition Houses Accessible for Indigenous Women with Disabilities: A Checklist

When responding to the needs of women with disabilities entering a shelter, the following access and barrier free issues should be considered, in order to make the facility inclusive of her needs.

Personal Care, Interpreter and Other Services

If a woman with a disability requires assistance with activities of daily living such as dressing, bathing, toileting and assistance with transfers, qualified trained personal care attendants must be available. In urban centres, attendant and personal care staff supports are available through government run programs and agencies. In rural and northern areas and First Nations communities, this can pose a challenge, and shelters and transition houses in these areas may consider accessing funding to train in house staff that can be available for women requiring this service. Women who are hearing or visually impaired will require specialized interpreters and interveners who are trained to assist with communication and guiding.

Key principles and policies should be made available in accessible forms to Indigenous women with disabilities receiving services from shelters and transition houses.

Services for Women with Hearing Impairments

Deaf women entering a shelter will require qualified sign language interpreters. Some deaf women may read lips or verbally speak, but may prefer using an interpreter qualified in American sign language (ASL), which is most commonly used in Canada. Deaf women from Québec may require French sign language interpreters. Using a pen and paper to communicate with a deaf woman is unacceptable and often offensive to the deaf woman, as this is based on a false assumption that ASL is a direct translation from English. ASL is considered a language on its own.

Some women may be hard of hearing, especially older women, and do not sign or require ASL interpreters, but instead may use hearing aids or other equipment for amplification.



Visual Disabilities

Women with visual impairments may require assistance with guiding, accessing printed materials and a barrier free facility that is safe and prevents tripping or falling. Further, women with visual impairments are not all blind - some may have low vision, and require less assistance.

Women with visual impairments may use various formats to access printed materials, including Braille, large print, audial or digital, and may use a white cane or a service dog for mobility or require no assistance if they have low vision.

Intellectual Disabilities

Women with intellectual disabilities will require information in plain language formats and shelter staff should be sensitive and understanding to women with intellectual disabilities' capability to learn and communicate. Women with intellectual disabilities need to be actively included in decision-making processes around their circumstances.

Mental Illness/Disability

Women with mental illness or psychiatric disorders require shelter staff to be sensitive and aware that mental illness can take many forms, and women should be treated as individuals. It is important that shelter staff be trained to dispel the fear and stigma around this disability that may be expressed by other residents.

General Tips

Many women with disabilities have what is termed "invisible disabilities." This means that their disabilities may not be apparent or visible. However, women with invisible disabilities can have episodic impairments such as auto immune disorders, arthritis, and other disabilities such as epilepsy, diabetes and learning disabilities to name a few.

It is important to note that disability can take many different forms, and the above list of accessibility issues is in no means complete or exhaustive.

Therefore, it's important that when women with disabilities access a shelter, staff listen and take direction from these women about their needs and access issues in a respectful and caring manner.

Women with disabilities should be viewed from a disability rights perspective, rather than from a medical or rehabilitation perspective.



Organizations for People with Disabilities

There are many programs and services working with persons with disabilities, and many of these organizations can offer support or information on specific programs and services. Aside from government run programs, there are organizations that service a specific target group such as the Canadian National Institute for the Blind (CNIB) that provide rehabilitation services and programs to blind, deaf/blind and partially sighted persons, the Canadian Paraplegic Association that support persons with spinal cord injuries and the March of Dimes that provides services to persons with physical disabilities throughout Canada to name a few.

As well, organizations exist that come from the self-help and advocacy community. These organizations tend to offer peer support and services from a self-help perspective. Some of these organizations include the Disabled Women's Network of Canada (DAWN Canada), the Association for Community Living, whose mandate is to support persons with intellectual disabilities and their families, the Canadian Mental Health Association that works with persons with mental illness, the Canadian Association of the Deaf, and the Independent Living Resource Centre that has chapters throughout Canada.

Most provinces have ASL and French language interpreter services with qualified trained interpreters that can be accessed when a deaf woman enters a shelter and requires an interpreter.

There tends to be fewer Indigenous run organizations that focus on persons with disabilities, and this is an area that requires further attention and development.

* Note: This checklist is prepared by Doreen Demas, an Indigenous woman with a disability who is an international advocate for the rights of Indigenous persons with disabilities.



Safety Plans

For women preparing to leave an abusive relationship, it is important to have a plan to ensure their safety and to minimize disruption to their lives. It is also critical to bear in mind that in most cases the risk of violent attack further increases if the abuser becomes aware that the woman is considering leaving and after she has left. A personal safety plan has a number of key elements described below: planning ahead, putting together essential items needed to leave, and preparing for emergencies. The Native Women's Association of Canada also emphasizes the benefits of a safety plan having community dimension – contacts and supports identified and prepared in advance to help the woman through this difficult transition.³⁷

Planning Ahead


Women should decide in advance each of the key decisions that they need to make and think through the possible consequences. We suggest, if possible, that women prepare and think of the following possibilities in advance:

- Is she going to a friend's house, a shelter or elsewhere?
- Does this require her to leave her home community?
- How will she get there?
- Does she need to take a leave from her current employment?
- Is she planning to take their children?
- Will the children continue to go to school?

Essential Items

We recommend that, if it is safe to do so, a woman planning to leave an abusive relationship should have ready access to the following:

- A safe place to stay;
- A list of emergency contacts including police, women's shelter and lawyer. It is much better if the woman is able to memorize these key numbers;
- Essential clothes and sanitary items;
- Emergency cash, bank cards, credit cards;
- Essential ID including driver's license, status card, health card, social insurance number and passport;
- Other important documentation such as health records, copies of any protective order against the spouse, any separation agreement, custody agreement or order or any other relevant legal documents;

- 
- Any necessary medication;
 - Any records related to children, including birth certificates, school records, etc.
 - Children's clothes, toys and other basics if she is leaving with her children;
 - Any items of special sacred or sentimental value;
 - A picture of the abuser.

It is recommended that these items be packed in a single bag and stored in a safe place where they won't be discovered or taken away, such as at the home of a trusted friend. If the woman has a car that she needs to use, she should make sure she has ready access to a set of keys and that the car has enough fuel. While this above list is ideal, the emphasis is always on ensuring the woman and her children's safety, above and beyond any personal belongings.

Preparing for Emergencies

Since the risk of violence often increases as women prepare to leave an abusive relationship, it is helpful for women to assess their level of safety by considering the following emergency precautions:

If there is a possibility that they will need to exit the house or their workplace quickly, what are the available exiting routes?

Do they need to get legal protection, such as a protective order?

Is there access to a police escort in their community?

Some community service agencies may be able to provide an emergency cell phone if the woman doesn't have one or a 'panic button' device.

Community Safety Plan

A *support network* can be invaluable. A woman leaving an abusive relationship can identify friends, colleagues and professional advocates that she can confidently share important information with, such as if she is planning to leave the home, where she intends to live, etc.

Check-ins: If a woman regularly lets her support network know where she is and whether she is okay, they can more easily mobilize to get help in an emergency.

More detailed information on safety planning can be found on the website of Public Health Canada: <http://www.phac-aspc.gc.ca/sfv-avf/info/ha-plan-eng.php>.





The Right to Accompaniment

Women escaping from violence may need help in navigating the complex bureaucracies such as the legal system, the health care system and the child protection system. They may also need moral support in confronting systems that are not culturally safe. Women have the right to be accompanied by someone they can trust, whether that is a friend, a family member or a professional advocate. It is appropriate for shelter workers to play this role, where possible. There may be other professional advocates available to assist including:

- Victim services
- Aboriginal court workers
- Patient advocates
- Psychologists
- Traditional Healers

Women also have the right to an interpreter, including an interpreter in Indigenous languages if it is the woman's primary language.

Pro Bono Lawyers

Many lawyers dedicate a specific portion of their work hours to assisting clients without charge. This is known as a pro bono service. It is recommended that shelters and transition houses maintain a list of local lawyers who provide pro bono service in diverse fields of the law, including criminal law, family law, labour law and Indigenous law. This can be kept in the list of useful resources.



V. Legal Tools for Indigenous Women's Safety

This section provides information on the legal tools that can be accessed by Indigenous women addressing violence, including in relation to obtaining protective orders, laying charges, specific protections against stalking and cyber-bullying and police responsibilities.

Protective Orders

Federal, provincial and territorial criminal and family law legislation provide the tools needed for a woman to obtain court protection to prevent an abuser or potential abuser harassing her, contacting her in any way, or entering a residence that she or a child in her custody is occupying. Protective orders take different forms and may be known by different names, including restraining orders, no-contact orders, peace bonds, protection orders, or recognizance orders.

Protective orders can include a variety of provisions. The potential abuser may be required to pay a financial bond, check in regularly with someone designated by the court, or place certain documents in the care of the court so that their movements are restricted. There may be additional specific restrictions on their behaviour based on the facts of the case. For example, they may be forbidden to own firearms or use drugs or alcohol. A First Nation woman living on a First Nation reserve, or a woman living on reserve with a First Nations spouse may be able to obtain a temporary or permanent **exclusive occupation order** to prevent an abusive spouse from entering the family home (see section entitled, "On Reserve Matrimonial Real Property" below). In all cases, the focus is on prevention. The order typically authorizes police to immediately arrest an individual who violates the restrictions.

Protective orders under family law can only be obtained against a family member: a current or ex-spouse, the parent or guardian of one's child, any member of one's family who lives with them or with their child, and any relatives of their partner or child who lives with them. Peace bonds, which are part of the criminal law system, can be obtained against anyone who represents a potential threat, regardless of the relationships involved.

In Quebec, there is no specific family law legislation providing protection for victims of family violence. However, reference can be made to the provincial *Crime Victims Compensation Act* and the *Act to Promote Good Citizenship*. In this jurisdiction, the *Criminal Code of Canada*, specifically section 810, provides protection.





The orders take precedence over other legal agreements. For example, a protection order that states a person must not have contact with their child means that any rights to visit the child set out in a custody agreement are put on hold.

A woman can apply for an order directly through the courts or through the police in the case of a peace bond. It is not necessary to have a lawyer, but it is clearly preferable. A woman can work with a lawyer to draft the specific protections she seeks so that the process is more efficient when it goes to court.

Obtaining a protective order requires some form of evidence of the threat. Women seeking a protective order should be encouraged to prepare in advance a list of possible witnesses, dates and times of specific incidents of threatening or abusive behaviour and other relevant evidence, such as emails, texts or voicemails. Information provided in the application should be as clear, factual and specific as possible.

Without the alleged abuser being notified, protective orders can be obtained on an emergency basis so that the woman does not need to confront her abuser in court and the abuser does not need to be located before the order goes into effect. Once the order has been granted, the abuser will have the opportunity to go to court to ask that it be lifted.

Protective orders do not limit the actions of the woman herself. For example, she can choose to voluntarily meet with a person who is subject to a protective order without violating it. The orders are supposed to be registered in confidential databases to which police have access. Women have the right to know whether or not the order has been properly registered.

Most protective orders apply in the province or territory where they were granted. Peace bonds, however, apply everywhere in Canada. Protective orders have time limits – ranging from 90 days to one year – but can be renewed.



How to Get a Protective Order:

All forms of protective orders are obtained through the court: “peace bonds” through criminal court and all other orders through a family court (keeping in mind that in Québec women only have access to peace bonds and not to other protective orders).

Particularly for peace bonds, which are part of criminal law, it is often helpful to have police involved.

British Columbia, New Brunswick, Saskatchewan, the Northwest Territories, Nunavut and the Yukon require applications for a Peace Bonds be presented to the police who will in turn present the applications to court.

In all other provinces, if a woman does not want to deal directly with the police, she can fill out the application herself or with other assistance. The provincial courthouse clerk should be prepared to assist in preparing the paperwork and filing for bond.

Protection orders obtained through family court do not require the involvement of a lawyer, although having a lawyer or other advocate can be very helpful.

A Justice of the Peace can also help with the process. Appointments with the Justice of the Peace are arranged through the courthouse.

Remember to advise the woman to prepare a list of details of possible witnesses, dates and times of specific incidents of threatening or abusive behaviour and other relevant evidence, such as emails, texts or voicemails.

It is important to be aware that officials in the criminal law and family law systems are not necessarily in communication with each other. For example, a family court considering a request for a protective order may not be aware of a previous protective order issued through a criminal court unless it is brought to their attention.

Laying Charges

Physical assault, threats of violence, coercion into sexual acts, use of force or threats to restrict someone’s movements, and disobeying court orders are all violations of the law. Police have a clear obligation to investigate, make arrests as appropriate, and make recommendations to the prosecutions branch of government over charges that should be laid.





Women or their advocates can request that charges be laid, but it is ultimately not their responsibility and police should act to protect women's safety in any event. In the course of an investigation, any police interviews with complainants should be conducted in privacy, separately from the accused abuser. Women may be asked to record a video statement. It is always the woman's choice whether or not to provide a statement.


In many abusive relationships, there is violence on both sides. For example, a woman might fight back in self-defence. Police are required to make a thorough investigation that includes any history of abuse and violence prior to the specific incident in question. As a result of this investigation, police have the responsibility to determine who is the dominant aggressor – the partner who has initiated or caused the most violence. In most instances, police should only charge the dominant aggressor. However, there is often a subjective element to this determination, allowing the biases and assumptions of individual officers to come into play. Therefore, there is always a risk that a woman seeking to have charges laid against an abuser could face charges herself.

In many jurisdictions in Canada, governments have introduced mandatory charging policies requiring police to always lay charges in domestic violence incidents if there are reasonable grounds to do so. The intention is to reduce the onus and risks for women, while also reducing discretion and potential for bias on the part of police. One unfortunate consequence, however, has been the increase in dual or cross charging in which police lay charges against both spouses.

In Quebec, the Director of Criminal and Penal Prosecutions (DCPP) prosecutes matters arising from the application of the *Criminal Code* and related laws. Its mission is “to provide an independent criminal and penal prosecution service to ensure the protection of society, in keeping with the public interest and the victims' legitimate interests.”³⁸ The burden of proof is high, given that it is based on the presumption of innocence until proven beyond a reasonable doubt that the offence was committed and that the accused was the perpetrator. It is not mandated to address systemic matters in relation to the police force and Indigenous peoples.

Criminal processes are generally public although there are circumstances, especially when children are involved, where part or all of a hearing may be closed to the public or the court may place a ban on publication of certain details.

Any witness in a court case, including a woman testifying against an abuser or assailant, may have to answer questions from the judge and from lawyers representing both the prosecution and the defense. It is important to answer all questions fully and truthfully. If a witness feels that a question is inappropriate or irrelevant, she or he can ask the judge whether or not the question has to be answered.



Failing to obey a judge's order to answer a question, or deliberately providing false information, are very serious matters. This can lead to the witness being charged with "contempt of court", which is considered a crime. The punishment for contempt of court can include fines or even imprisonment.

Witnesses should prepare for court by carefully reviewing the facts as they know them. In many instances, witnesses are allowed to bring written notes into the court. An online guide published by the charity "Victims of Violence"³⁹ provides a number of helpful recommendations for witnesses, including:

- Think about each question before you answer.
- Take your time so you can give a complete answer.
- If you do not understand a question, ask the lawyer to repeat or explain it.
- Try not to use phrases like "I think" or "I guess" when testifying. If you are not sure about an answer, just say so. It's okay to say, "I don't know" or "I don't remember."
- Explain what you saw or did or said yourself. Do not repeat the words someone else told you unless you are asked to do so.
- Speak clearly and loudly, so that people in court can hear you and write down what you say. The microphone in front of you usually only records your voice; it does not make it louder.
- It is okay to cry or become upset while testifying, however you must try to remain respectful. If you need a short break or a glass of water to help you calm down, ask the judge if that can be arranged until you are able to continue.

Children can also testify in court. If they are under the age of 14, the judge will first determine whether they are able to remember what happened and whether they are capable of describing the events accurately.

When people with intellectual disabilities are called to testify, the judge will consider whether or not they are able to understand the difference between truth and lies and whether they are able to accurately relate what they remember.

The Victims of Violence website is among a number of excellent guides and other available resources to help survivors of violence and other victims of violent crime prepare to tell their stories in court, including *A Victim's Guide to Being a Witness and Testifying in Court* prepared by the charity "Victims of Violence."⁴⁰

The chart on the following page from the Nunavut Legal Information Manual provides an excellent depiction of the criminal justice process, identifying the key steps in the legal process relevant to all jurisdictions.

Criminal Justice Process From Offence to Sentencing

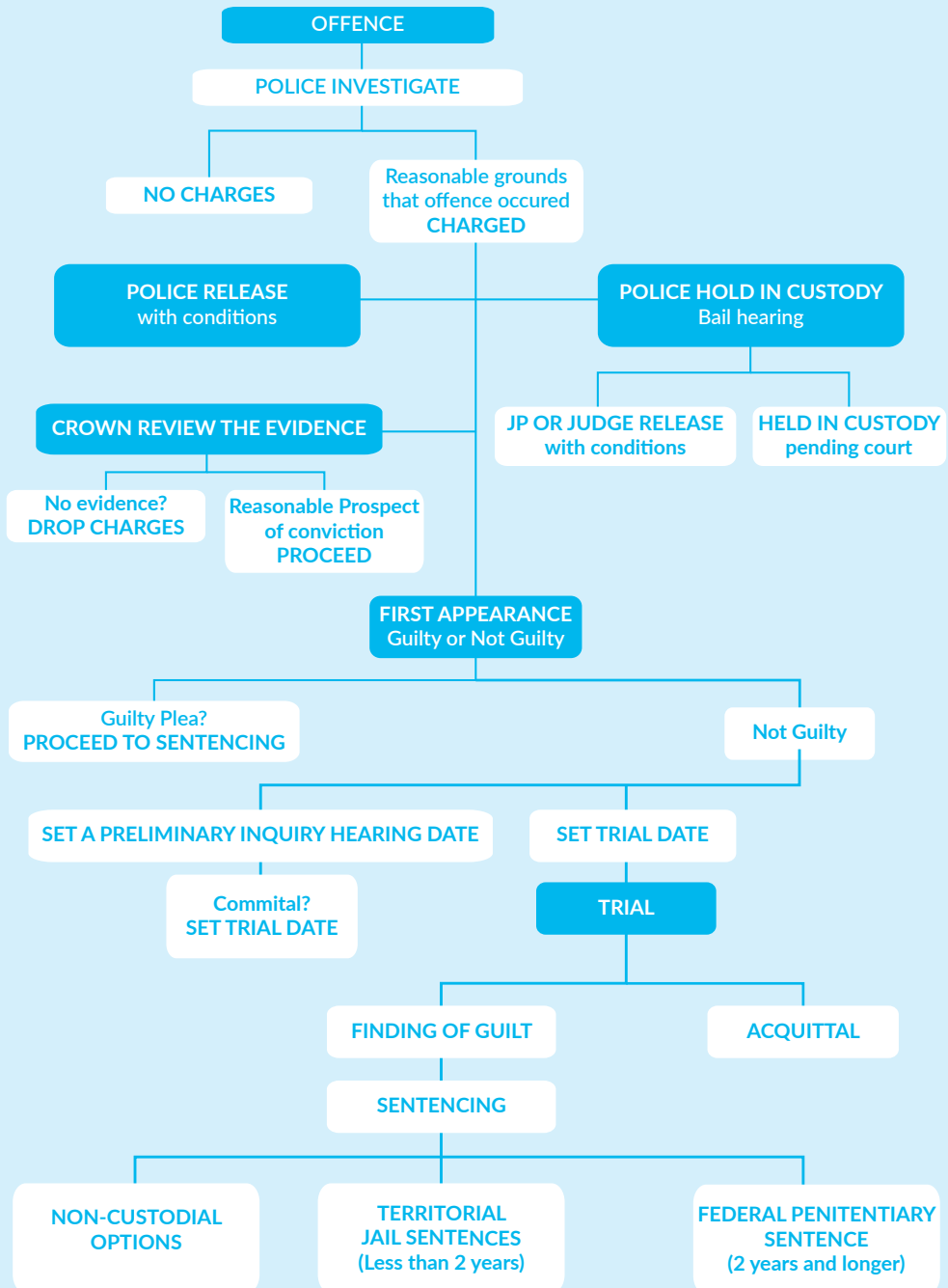


Figure 1. (Source: <http://ywcacanada.ca/data/publications/00000064.pdf>)

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Specific Protections against Stalking and Cyber-bullying

Stalking is the act of repeatedly following a person or a person's relative, friend or other known relation, or repeatedly communicating with a person (directly or indirectly) in a threatening manner. Cyber-bullying is harassment through social media technology with the intent to harm, embarrass, slander or defame a person. Both stalking and cyber-bullying can constitute criminal harassment under the *Criminal Code of Canada*. Specific cyber-bullying legislation introduced in 2015 additionally makes it a crime to share intimate images of a person without their consent.

All social media services have options to block other users so that you will not receive messages from them. A person can verify privacy settings, including the setting that makes the location of someone public (which can occur with Facebook). The sites also maintain guidelines on what can and cannot be posted and also allow users to report inappropriate, offensive or criminal content. Despite such measures, numerous women have also reported difficulties in convincing the operators of social media sites to remove inappropriate and harmful content. In some cases, it has taken pressure from multiple complainants to get content removed. Given these difficulties, it may be in a woman's best interest to remove herself from social media altogether.

The Safety of Women in the Sex Trade

Social marginalization, economic insecurity and drug and alcohol dependency sharply limit some Indigenous women's choices about how to earn a living and can leave them vulnerable to those who would exploit them. These factors have led to a greatly disproportionate number of Indigenous women and girls involved with the commercial sex trade. This includes women and girls who work in the especially dangerous street level sex trade, women employed by escort agencies, and women and girls who occasionally exchange sex for money, a place to stay or other benefits.

Canadian law has never directly outlawed the selling of sex, but has instead focused on the purchase of sex, acts of communication to arrange to sell sex, and the provision of services such as security and bookkeeping to support the sale of sex. Following a 2013 Supreme Court decision, a new law was introduced in 2014 that distinguished between communication to buy sex (which the law criminalized) and communication to sell sex (which was decriminalized, with the exceptions of communication near a school or playground).⁴¹ The purchase of sex remains a criminal offense, as does running a brothel or providing services that support the buying and selling of, or any other action that derives a "material benefit" from the sex-trade, except for the selling of sex.



The criminal offense of trafficking in persons applies to situations where someone uses coercion to exploit another, or benefits from such coercion. Despite the common misconceptions about the term “trafficking”, the law is not limited to situations where someone has been brought to Canada from another country or has been forcibly moved within this country.

Other criminal laws on sexual assault, abduction and forcible confinement also apply to instances in which a person has not consented to engage in sexual relations, whether or not money or other transactions may be involved.

There are strong differences of opinion among women’s rights advocates whether continuing to outlaw the purchase of sex helps protect sex workers by reducing demand or increasing risks to their safety by keeping the sex trade underground and unregulated. This controversy should not obscure the common concern for the rights and safety of women and girls who have been trafficked and exploited against their wills, who have been denied other choices for economic survival, or who face discrimination and violence for the fact that they are involved in the sex trade.

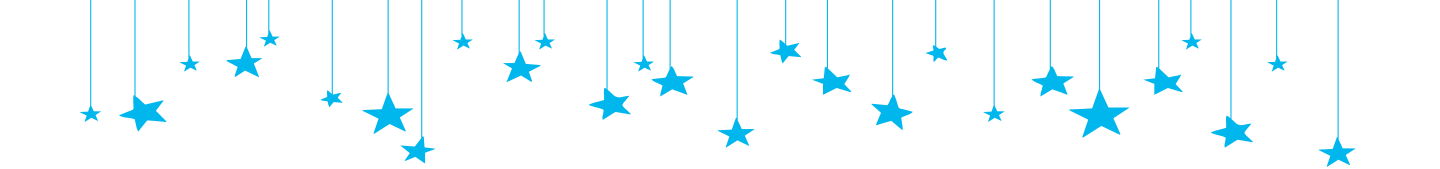
The stigmatization of sex work, and a long history of discrimination and harassment directed against sex workers, leads many women to conceal the fact that they have engaged in sex work. Shelters and transition houses should not require women to disclose this information if they do not want to discuss it. No woman should be denied service because they have been or are still involved in sex work.

Police Responsibilities

Police have a duty to investigate reports of violence and threats. Police also have a duty to take action to prevent violence. This includes enforcement of court orders such as restraining orders (see above). If a woman has no choice but to enter a situation where she feels unsafe – such as collecting papers and other possessions from a shared home – she has the right to police protection.

Police forces in Canada include the RCMP, provincial police forces in Ontario, Québec and Newfoundland and Labrador, and municipal police forces. As well, some First Nations have their own police services, appointed under agreements with the federal, provincial and territorial governments. Which police service has jurisdiction will depend on factors such as where an assault has taken place or the place of residence where a woman is seeking protection. More than one police service may become involved in a case.





It is the responsibility of the police to resolve these jurisdictional issues and to coordinate among themselves. Unfortunately, as past inquiries into the Canadian justice system have shown, such as the British Columbia Missing and Murdered Women Inquiry⁴², such coordination often breaks down. Therefore, it is important that advocates for Indigenous women be familiar with the various police services that may be involved in their client's case, know who to contact in each police service, and have effective working relationships with them. Some police services have their own staff dedicated to helping victims of crime in making reports, or resolving problems with the police service. The RCMP, for example, has dedicated Aboriginal liaison officers in some detachments. Victim services staff, whether employed within the police service or through an independent agency, may also be of assistance.

If a woman feels that police response has been inadequate or inappropriate, there are a number of ways to try to correct the situation. Which approach to take will depend on the urgency of the woman's situation, the seriousness of police wrongdoing, and the woman's willingness and ability to engage with a complaint process. Concerns may arise over the failure to properly investigate or provide protection or, in some cases, acts of abuse at the hands of police, including victim-blaming, disrespectful behaviour, or even acts of coercion and violence.

The simplest way to address a concern is to take any concerns to a more senior police officer. Some police services have an internal complaint process, which should be described on their website. Internal complaints processes are typically administered by the Professional Standards Sections of that police service, on terms set out in the federal, provincial or territorial legislation governing policing standards in that jurisdiction. For municipal police services, it is also often possible to bring complaints through an appointed civilian police board.

The federal and all provinces have established arms-length civilian review boards, such as the Office of the Independent Police Review in Ontario or the Office of the Police Complaint Commissioner in British Columbia that can investigate complaints of police misconduct anywhere within their jurisdictions.⁴³ These review processes offer greater impartiality and transparency than reviews conducted by the police forces. The actual powers of these bodies vary. There are limits that vary from organization to organization, on whether a complaint will be accepted based on how much time has passed. All require that complaints be submitted in writing, usually using a specific form that they have developed.





Obtaining a Pardon

For some women, criminal records for their past actions are an enormous barrier to starting a new life. A pardon - technically called a record suspension - does not alter or erase one's record of being charged or convicted of a crime. But it does ensure that it is kept separately from other criminal records so that it will not be accessed through a routine criminal record check and can be disclosed only in exceptional circumstances.

The federal parole board has exclusive authority to grant a pardon. Eligibility depends on the nature of the charges or conviction and how much time has passed. If charges have been withdrawn or dismissed, or a trial results in an acquittal, a pardon application can be made after 5 months. If prosecution did not lead to a fine or incarceration, a pardon application can be made after 1 year absolute discharges, stayed convictions and most peace bonds and after 3 years for a conditional discharge. In the event of a summary conviction - one leading to a maximum sentence of six months and/or a maximum fine of \$5000 - a pardon application can be made after 5 years. For serious offenses, a pardon application can be made 10 years after the sentence has been served. Pardons are not available for sexual offenses involving a minor or if the person has served four or more sentences of at least two years.

The various forms needed to apply for a pardon are obtained through the federal parole board. There are many steps to this process, all of which are set out on the board website. Regardless of where the woman lives, she will need to obtain her criminal record through the RCMP. A pardon application also requires finger printing, a local police record check and copies of the court documents pertaining to any conviction. There is also a significant application fee (\$631 in 2016), as well as fees for the record check and finger printing. Processing of an application can take a year or longer. If the pardon request is denied, it is possible to appeal the decision.



VI. Legal Protections for Indigenous Women's Well-Being while Escaping Violence

On Reserve Matrimonial Real Property

For many Indigenous women, escaping an abusive or violent relationship is made more complicated and difficult if the woman owns property jointly with the abusive spouse, shares a bank account, or shares a lease or other rental agreement. Provincial and territorial family laws provide protections to ensure that jointly owned property can be fairly divided. These family laws may also provide additional protection. For example, depending on the laws of each province or territory, a woman may be able to apply to have an abusive spouse removed from the home so that she and her children can safely stay there while the division of property is worked out.

For First Nations women living on reserve, the issues of jointly owned property are further complicated by the fact that many of the legal protections available in other communities do not apply to “real property” – land and homes – on First Nations reserves, either because the provinces and territories do not have jurisdiction or are limited by other factors, such as First Nations collective ownership. The *Indian Act*, which sets parameters for governance and administration of reserve communities, does not include family law provisions, creating a legislative gap. This issue is often referred to by the technical term, as “on reserve matrimonial real property” or “MRP.”

In 2013, Parliament passed new legislation to close these gaps for First Nations individuals living on reserves. The legislation is called the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. The Act empowers First Nations to pass their own family laws. It also provides a default set of protections that apply wherever First Nations have not adopted their own measures, either under the Act or through some form of self-government agreement.

Protections under the Act apply to all married and common law couples living on reserves where one or both has or have Indian Status. These default protections came into force on December 16, 2014. The act is not retroactive: it does not apply to divisions of households that took place before the Act came into force.





The default protections include the following provisions:


- The protections apply equally to individuals who are married and to those who have lived together for at least one year.
- On a break-up of relationship, the value of any property must be divided equitably, taking into account factors such as debt and the needs of any children.
- Provincial and territorial courts have jurisdiction to resolve disputes.
- The consent of both persons is required to sell or give away jointly owned property considered to be Matrimonial Real Property (this does not necessarily apply to all jointly owned property).
- A person living in a relationship cannot be blocked from access to the family home except in the case of a court decision on grounds such as abuse.

These measures apply equally in Québec despite differences between Québec and other provinces and territories in respect to family law in other instances. For example, although Québec law does not provide for equal division of property between common law couples, the MRP Act means that on First Nation reserves there can be equal division of property for both married and common law couples.

Significantly, the law does not change the legal status of land on First Nations reserves. For example, the division of property after the break-up of a relationship cannot result in land reserved for the Nation being awarded to an individual who is not a member of that Nation. Nor can it require the selling off of land reserved for the Nation. However, a court might order compensation instead.

In general, the matrimonial real property law prevents either partner from being denied access to the family home. However, provisions for an **Exclusive Occupation Order** are relevant to women who have experienced abuse. Under the MRP Act, a judge can consider a history of family violence in determining whether to remove an abuser from the family home or bar them from re-entering the home, regardless of who owns the home. An exclusive occupation order can be temporary or permanent and like other protective orders requires that evidence of a threat be submitted to the court. The alleged abuser is informed that the order is being sought before it is heard - which can create risks for the spouse. Manitoba has established an expedited process allowing applications for exclusive occupation orders to be heard within two days in cases of family violence.





There are also provisions under the Act for to apply to a judge for an Emergency Protection Order. Like an Exclusive Occupancy Order, an Emergency Protection Order can protect the safety and interests of a spouse who has experienced violence by allowing them to live in the family home and bar the alleged abuser from the home for a specific period of time – in this case up to 90 days. Unlike an Exclusive Occupancy Order, an Emergency Protection Order can be put in place before the alleged abuser is notified.

Application for an emergency protection order can be made by the individual at risk or by a police officer acting with that person’s consent. There is also provision that in exceptional circumstances, someone else acting without that person’s consent – such as a friend or family member - can make an application if it is in the best interest of the person at risk. Critically, however, the Act requires each province to designate judges to hear such orders and as of early 2017 only two (2) provinces, New Brunswick and Prince Edward Island, had done so.⁴⁴

Another significant difference between the family law provisions under the Act and those of general applicability under provincial or territorial jurisdiction is that First Nations Band Councils are informed of court proceedings under the Act – except for emergency orders or similar actions involving confidentiality – so that they have the opportunity to present information on any collective interest of the First Nations that may be relevant to the outcome.

To date, comparatively few First Nations have adopted their own MRP laws.⁴⁵ For those that have, the federally-established Centre of Excellence for Matrimonial Real Property reports that most promote resolution of disputes within the community but almost all also provide access to provincial courts.⁴⁶ Shelter workers in the Northwest Territories and the Yukon should be aware that the majority of First Nations are governed according to negotiated self-government agreements and are not subject to this Act. Specific provisions around MRP will vary from Nation to Nation. In addition, protections against discrimination in Canadian law, such as under the *Canadian Human Rights Act* always apply.

Understanding Status under the *Indian Act*

Under the *Indian Act*, the federal government maintains a registry of women, men and children who the government recognizes to be First Nations. This is known as “Indian status.”

Indian status is associated with a range of important rights and benefits. First Nations status is also necessary to access a variety of health benefits provided through the First Nations and Inuit Health Branch of the federal Department of Health. These benefits are known as “Non-Insured Health Benefits,” because they are intended to cover areas not included in other provincial and territorial





health plans. These include dental care, vision care, and coverage of prescription drugs and medical equipment. Except for a relatively small number of First Nations that have adopted membership provisions significantly different from those set out under the *Indian Act*, status is needed to vote in the band elections and will affect rights to live within one's reserve.

Registration for status, both for children and for anyone who had previously been denied for reasons explained below, is done through the federal department of Indigenous Affairs and Northern Development.⁴⁷ Applicants are required to provide information about their parents and grandparents, such as names, dates of birth, the name of their First Nation, and their registration numbers.

Until 1985, under the *Indian Act*, the federal government took Indian status away from any woman who married outside her community. The *Indian Act* also made the status of children dependent exclusively on the status of the father. First Nations women had a long struggle to change these inequitable provisions, including taking the issue to the United Nations. After the UN Human Rights Committee found that these provisions were discriminatory, the federal government amended the *Indian Act* in 1985. This amendment, known as Bill C-31, ended the practice of removing status for "marrying out," allowing either parent to pass on status, and enabled tens of thousands of women and their descendants to regain status.

Critically however, Bill C-31 created new forms of discrimination. Bill C-31 introduced what is known as the "second generation cut off". What this means is a person cannot have status based on a single grandparent with status. A person *can* have status if only one parent has status. However, they in turn can only pass on status if they have a child with someone else who also has status.

One implication is that if First Nations women want to pass on status to their children, they have a unique obligation in Canadian law to identify the father of their child in order for that child to have their status registered. Meeting this requirement may require that the biological father's name be included on the birth certificate, that the biological father provides a legal declaration of paternity, or that immediate family members of the biological father provide a similar declaration. These requirements are often problematic for women if the father is not cooperative or, as in cases of rape, there are reasons not to identify the father.⁴⁸

The differential forms of status introduced in 1985 are discriminatory in other ways as well. Under C-31, the second generation cut off rule was applied retroactively to the children of women who status had been taken away for marrying out. This was partially corrected in new amendments to the *Indian Act* in 2011, known as Bill C-3, after a successful legal challenge brought by First Nations lawyer Sharon McIvor. As of 2016, the federal government is reviewing further changes needed to restore status to all First Nations people who are currently excluded from status as a legacy of past discrimination.⁴⁹





Family Law

Canadian law provides protections for the rights of both spouses in a marriage or common law relationship as well as their dependents. These protections are part of a system of law that is called “family law.” Family law covers issues such as spousal and child support, custody of children, and division of property after a divorce or separation, as discussed in this section. Family law also includes protections against abuse or mistreatment of children.

Some provinces and territories have specific legislation under their family law systems that address family violence and/or domestic violence. These are:

Alberta:	<u><i>Protection Against Family Violence Act;</i></u>
Manitoba:	<u><i>Domestic Violence and Stalking Act;</i></u>
Newfoundland and Labrador:	<u><i>Family Violence Protection Act;</i></u>
Northwest Territories:	<u><i>Protection Against Family Violence Act;</i></u>
Nova Scotia:	<u><i>Domestic Violence Intervention Act;</i></u>
Nunavut:	<u><i>Family Abuse Intervention Act;</i></u>
Prince Edward Island:	<u><i>Victims of Family Violence Act;</i></u>
Saskatchewan:	<u><i>Victims of Domestic Violence Act;</i></u>
Yukon:	<u><i>Family Violence Prevention Act.</i></u> ⁵⁰

Family law is a specialized and complex field of law. Many provinces and territories have recently amended their laws. Understanding family law is further complicated by significant differences among jurisdictions. Québec, in fact, has historically had a fundamentally different body of civil law that takes a distinct approach to family law. Women should be supported to obtain legal advice to work through the family law system.

Divorce

The definition of marriage and conditions for legally married couples to obtain a divorce are part of federal jurisdiction and therefore consistent across Canada. A divorce can be granted on the basis of physical or emotional cruelty or adultery, which must be proven to the satisfaction of the court, or if the spouses have not lived together for a year or longer.



Common Law Relationships

Couples who have lived together, but have not been legally married, may be considered to be in a common law relationship. The definition of a common law relation is under provincial jurisdiction and varies among provinces and territories. Couples who have lived in a common law relationship do not receive a divorce but may be legally entitled to a formal separation agreement covering such issues as division of property. Québec uniquely does not recognize common law relationships or impose conditions on separation for couples who have lived together without getting married. Importantly, this distinction in Québec does not apply to common law couples living on reserve, as provincial laws do not apply.

Spousal Support


Whether a couple has been divorced, or recognized to have lived in a common law relationship, either may be entitled to ongoing financial support based on provincial or territorial laws. If one spouse has earned more money and supported the other throughout the relationship, the “dependent” spouse is generally entitled to a continuation of such support – to the extent that the other person is capable of providing it.

Divorced or separated couples are free to negotiate support levels between them – although they may in some instances need to have the agreement that they reach reviewed by a court or notarized. There may be options to assist in this negotiation, including access to trained mediators. If they are unable or unwilling to reach an agreement in this way, either party is entitled to adjudication through the court. Enforcement of spousal support falls under provincial and territorial jurisdiction.

Child Custody, Access and Support

Child custody, access to children in the custody of someone else, and requirements to provide support are under the jurisdiction of the federal *Divorce Act* if the couple was legally married. Otherwise custody, access and support are under the jurisdiction of provincial and territorial governments. Provincial and territorial laws provide the means to enforce custody, access and child support.

Canadian laws no longer make assumptions based on gender about which partner in a relationship is more likely to be entitled to custody or more able to provide support. If courts are asked to intervene, their decisions are guided by the principle of the best interest of the child. That is, the best interests of the child take precedence over the interests of the parents.



It is generally recognized that the best interest of the child includes maintaining her or his bonds with their Indigenous community and identity. In some jurisdictions, family law formally defines the best interests of the child as including preservation of their cultural identity. It is important to note however, that this is sometimes an area of conflict between Indigenous and non-Indigenous women and men when a relationship ends.

Division of Property

Division of common property is also a matter of provincial and territorial jurisdiction – with the exception of housing and land on First Nations reserves (discussed above). As a general rule, family requires an equal division of property after the ending of a marriage or a common law relationship.

Non-Discrimination and Provincial, Territorial and Federal Human Rights

Provincial, territorial and federal human rights laws ensure that people must receive services in a non-discriminatory way. This means that an individual must not be treated in an unfair or negative way because of a characteristic protected under human right laws. These characteristics include race, national or ethnic origin, colour, gender, disability, sexual orientation, family status, marital status, age or religion. Examples of unfair treatment include denial of services or harassing a person receiving service. For example, if a woman is a lesbian, service at the shelter cannot be denied to her because of her sexual orientation. Furthermore, workers cannot make derogatory comments about the client or humiliate the client regarding her sexual orientation. This is called harassment, a discriminatory practice that is not permitted.

Employment Rights

When Indigenous women and her children arrive at a shelter, she may require some time off work to get settled into the shelter and complete the admission process. In March 2016, Manitoba passed new legislation that allows individuals who have experienced domestic violence to take five (5) days paid leave, and between five (5) days and seventeen (17) weeks of unpaid leave. Manitoba is currently the only jurisdiction to provide specific leave for individuals leaving violent relationships. However, there are more general provisions for family leave or sick leave that can be pursued in any jurisdiction. For example, a woman may be able to receive a doctor's note indicating that she requires two weeks leave due to experiencing a high level of stress. The employment rights vary from province to province and territory to territory, depending on the particular labour laws in that jurisdiction.



Navigating the Child Welfare System

When an Indigenous woman arrives at a shelter, seeking protection for herself and her children from family violence, child protection agencies frequently become involved, due to the fact that the child or children have experienced and/or witnessed the abuse. Or, a woman may have already had her children apprehended into care prior to arriving at the shelter.

If the child welfare agency believes a parent has failed to protect a child from abuse, this can be a reason for apprehending a child into care. Each province and territory has specific child welfare legislation. When the location is a First Nation community, provincial or territorial standards will apply, although the Band Council will administer them.


A child will be apprehended when it is determined that he or she is in need of protection. While each province or territory may vary in specific considerations identified in the child welfare act, common considerations will include:

- Physical harm or risk of harm;
- Emotional or mental well-being harmed or at risk of harm;
- Sexual abuse or risk of sexual abuse;
- Demonstrated signs of anxiety, depression, self-destructive behaviours, or withdrawal that have not been addressed by the parent through treatment or healing;
- Malnutrition;
- Abandonment by a parent without alternative care provided;
- Ongoing exposure to family violence without a willingness by the parent to protect against this.⁵¹

The child welfare system is intended to evaluate what is in the best interests of the child, when determining whether to apprehend a child. The best interests of the child include consideration of:

- The child's safety;
 - His or her physical, mental and emotional developmental stage and needs;
 - His or her cultural, linguistic and spiritual or religious upbringing and ties
- The importance of a positive relationship with his or her parent(s) and family;
- Whether a parent or family can provide a stable environment;
- The importance of continuity of care of a child (i.e. avoidance of placement in multiple families);
 - The risks associated with a child remaining or being removed from the care of a parent;
 - The positive aspects of a plan of care for a child;



- 
- The child's relationship by blood or through adoption with a parent;
 - The child's opinions (depending on the age and ability of a child to express these opinions);
 - The effect of a delay on making a decision about a plan.⁵²

In 2009, the UN Committee on the Rights of the Child issued General Comment No. 11, which sets out some key principles to be applied in relation to Indigenous children. The Committee has noted that when applied to Indigenous children, this right is conceived as both a collective and individual right.⁵³ Furthermore, child welfare agencies should consider the cultural rights of the Indigenous child and his or her need to exercise such rights collectively with members of their group and deliver services in a culturally appropriate way.⁵⁴

The Committee further states that:

In States parties where indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity.⁵⁵

Shelter workers are required by law to report to child welfare agencies any possible case where a child may be in need of protection. Involvement with the child welfare system can be very overwhelming for an Indigenous woman leaving a violent relationship. Often, a desire to keep her children safe and to keep custody of her children will be a main reason for leaving an abusive relationship and seeking out the assistance of a shelter. If her children are already in care, leaving an abusive relationship may be established grounds for getting them back.

An example of the steps involved with a child welfare investigation, in relation to both the scenario of apprehension and of closing the case after an investigation, is set out in the chart below. It is important for shelter service providers to receive training on how to support women who are involved with the child welfare system. Ideally, Indigenous women will be provided with the resources necessary to meet the needs of their children. Where this is not possible, it will be important that the children receive culturally appropriate care and that voluntary placements are put in place wherever possible.

In Quebec, the *Youth Protection Act* sets out specific rights of parents and guardians. These rights include the right to be consulted in the decisions made under the Act, such as the decision to remove the child from her or his home or to transfer the child from one state institution to another; the right





to be informed about the outcome of any such decisions; and the right to information and support in dealing with this process. Child welfare legislation in British Columbia, Manitoba, and Ontario also includes respecting the right of parents to be informed about their child while she or he is in state care and to participate in decisions affecting that child.

The Children’s Aid Society has developed a Circle of Care model to help Indigenous families navigate the child welfare system and resolve disputes. The Circle of Care model draws on Indigenous traditions including the talking circle to provide support to parents in what can be an extremely stressful process. Some Indigenous health centres and women’s centers in Ontario have been able to access provincial funding to put staff in place to coordinate access to this model of support.⁵⁶

Shelter workers can refer to an essential guide, entitled “Lexicon of Child Welfare: Legal Statuses and Placements/Care Types with Relevant Information” that sets out the relevant child protection provisions for each province and territory.⁵⁷

Child Protection Process Flowchart

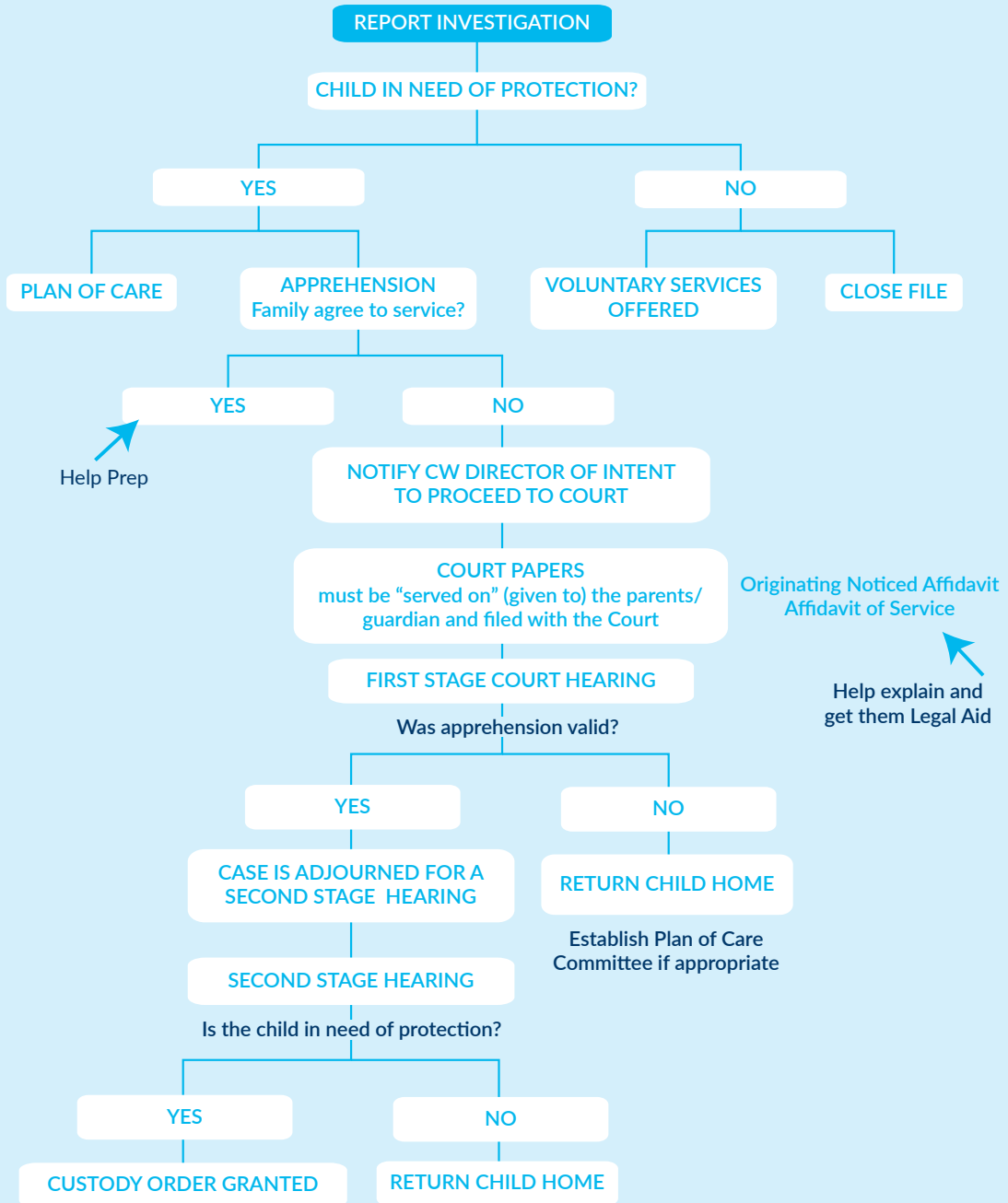


Figure 2. (Source: <http://ywcacanada.ca/data/publications/00000064.pdf>)

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Navigating the Income Assistance System

If a woman leaving a violent relationship needs income assistance, she may have to re-apply wherever she is now residing. If she was previously receiving assistance, she will need to give notification that she has relocated. If she has moved from one jurisdiction to another – either from one province or territory to another or from a reserve resident to an off-reserve location – she may need to reapply. Income assistance is regulated by provincial and territorial legislation. For women living on reserve, income assistance is managed through the Band Office.

It will be important for shelter service providers to be familiar with these laws and systems in order to assist Indigenous women in securing income assistance without delay. Given that Indigenous women sometimes face discrimination or unfair treatment by workers, it will be important for shelter service providers to be familiar with the human rights laws of that province or territory and how they apply to the provision of income support. Sometimes, the presence of an advocate can prevent discriminatory practices by income assistance workers.

Housing Rights

Indigenous women who have left a violent relationship, and are seeking new, long-term housing have a right to adequate, affordable, habitable, accessible housing.⁵⁸ Finding affordable housing is often extremely challenging, especially for women relying on income assistance, seeking new employment or supporting a family on one income. Human rights protections in Canada do not address the availability of affordable housing, but they do provide protection against discrimination by landlords, housing agencies and others.

Anti-discrimination laws in Canada mean that landlords cannot refuse to rent to someone because they are Indigenous or because of their gender or other aspect of their identity. They also cannot impose arbitrary conditions on rental arrangements that have the same effect.

It is helpful for shelter workers to be familiar with the relevant provincial, territorial or federal human rights codes, as well as housing and landlord tenant laws (sometimes referred to as residential tenancy laws) in order to be able to support women in finding housing. There may be residential tenancy boards or municipal housing authority or First Nation Housing Authority that can be of assistance in cases of discrimination, harassment or threatening actions by a landlord. It may also be possible to file a human rights complaint. The timeframe for solving complaints through these means will vary. Whether they are a practical option will depend on the woman's circumstances but the simple act of initiating a complaint can sometimes lead to a resolution.



Some cities have formal Plans to End Homelessness with agencies and resources aimed at assisting low-income individuals in finding affordable, accessible, appropriate housing. Some Indigenous organizations provide housing supports, such as Friendship Centres that have programs aimed at providing initial down payments for apartments, or programs that provide emergency financial support for utility bills that individuals cannot pay. Many provinces and territories provide subsidized housing to low-income individuals that can also be accessed by Indigenous women seeking long-term housing. Available community and government services vary greatly across Canada.





VII. Recommendations to Shelters and Transition Houses

Providing Effective Supports

It is recommended that shelters and transition houses maintain a list of local lawyers who provide pro bono service in diverse fields of the law, including criminal law, family law, labour law and Indigenous law.

Cultural Safety

Shelters and transition houses are encouraged to share experiences and best practices with other shelters, transition houses and other organizations supporting women escaping violence.

Wherever possible, shelters and transition houses should work with other service providers in the same region to develop common service models, so that the experience of women receiving support can be more consistent and they can better understand what to expect of service organizations.

Shelters and transition houses should put in place mandatory cultural safety and trauma-informed practice training for all staff. This training should be offered on an ongoing basis.

Making Shelters and Transition Houses Physically Accessible to Persons with Disabilities

When responding to the needs of women with disabilities entering a shelter or transition houses, the following access and barrier free issues should be considered, in order to make the facility inclusive of her needs:

- The facility should have level entrances to and from the building, or be equipped with a ramp that meets building code standards or a lift.
- Doorways in the building should be wide enough to accommodate wheelchairs, scooters or walkers, and are bathrooms equipped with a wheelchair accessible stall, that includes sinks and grab bars for easy access.
- If the facility has more than one floor, there should be an elevator or stair lift to accommodate a woman using a wheelchair or other equipment. For full accessibility, the facility should be accessible to a woman with mobility impairment in all areas of the building.





*A Call for
an International Strategy to
Prevent Murdered and Missing
Indigenous Women
and Children Worldwide**

*The First recommendation of the Indigenous Women Shelter Network
at the Third World Conference of Women's Shelters in November 2015.



Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

The United Nations *Declaration on the Rights of Indigenous Peoples* is an international human rights instrument that resulted from over 20 years of deliberations among UN agencies, states, Indigenous peoples and civil society representatives. It was adopted by vote at the UN General Assembly on September 13, 2007. Initially, four states, Canada, the United States, New Zealand and Australia voted against the UN *Declaration*, but all four have since withdrawn their opposition.

The UN *Declaration* sets the minimum standards for the rights of Indigenous peoples. It consolidates human rights norms that were already recognized within the international community at the time of its adoption and provides an authoritative statement of government obligations.

The right to self-determination – the right of Indigenous peoples to make their own decisions about their lives and futures and to maintain and revitalize their own institutions of government and law - is a cornerstone right of the UN *Declaration*. Rights related to lands, territories and resources are recognized and protected. It recognizes the impacts of racism and colonialism and emphasizes the need to overcome these impacts through mutual respect and partnership and through specific measures aimed at addressing resulting inequalities. The participation of Indigenous peoples in decision-making is emphasized throughout the UN *Declaration*.

Article 21 calls for special measures for the improvement of economic and social conditions, including in relation to health, of Indigenous elders, women, youth, children and persons with disabilities.

Article 22 calls for particular attention to be paid to the rights and special needs of Indigenous women and other vulnerable groups, and calls for special measures to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 44 calls for the rights and freedoms recognized in the UN *Declaration* to be equally applied to Indigenous male and female individuals.

Like international human rights standards, these provisions of the UN *Declaration* are intended to be understood as part of a larger whole. At times, they need to be balanced against each other, but the overall direction is for each provision to support and complement the other. International human rights protections are not constrained by domestic law (i.e. federal, provincial or territorial laws in Canada) and they create obligations on all levels of government.

These provisions can be applied to the work of shelters and transition houses, when advocating for the advancement of the rights of Indigenous women and their children.



Implementation of the Truth and Reconciliation Commission of Canada's Calls to Action

In 2015, the Truth and Reconciliation Commission of Canada issued 94 Calls to Action. These Calls to Action relate to the legacy of the residential school system, in the areas of child welfare; language and culture; health; and justice. The Calls to Action also relate to reconciliation, in numerous areas, including Canadian governments and the United Nations *Declaration on the Rights of Indigenous Peoples*, equity for Indigenous People in the legal system and the establishment of a National Council for Reconciliation.

Child Welfare

A number of these Calls to Action relate to the work of shelters and transition houses, particularly those serving Indigenous women. Service providers are encouraged to assist in supporting parents to maintain custody of their children whenever possible and to provide culturally appropriate environments (Call to Action 1). Governments are also encouraged to educate social workers about the history and impacts of residential schools on Indigenous families and the importance of Indigenous communities and families in finding solutions to family healing (Call to Action 1).

Jordan's Principle


All levels of government are called upon to fully implement Jordan's Principle, which is intended to ensure that First Nations children receive access to health care services, regardless of jurisdictional disputes or misunderstandings between federal, provincial or territorial governments. Jordan's Principle requires health care service providers to provide the service to First Nations children, and to work out with other levels of government final payment (Call to Action 3).

Language Rights

Call to Action 13 calls on the federal government to acknowledge that Aboriginal rights include language rights, which is relevant to advocating for provision of court services in Indigenous languages.

Health

Calls to Action 18 to 24 address the health of Indigenous Peoples, calling for federal, provincial, territorial and Indigenous governments to acknowledge that the current health status of Indigenous people directly results from Canadian government policies, including the residential school system, and the need to recognize and implement the health rights of Indigenous peoples under international and constitutional law and under the Treaties (Call to Action 18). The establishment of Healing Centres through sustainable healing, recognition of traditional Indigenous healing practices,



increased numbers of Indigenous health professionals and cultural competency training for all health professionals are identified (Calls to Action 21, 22 and 23).

Justice

Law schools and law societies are called upon to provide cultural competency training to law students and lawyers, including on the history and legacy of residential schools, the UN *Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. (Calls to Action 27 and 28)⁵⁹

Federal, provincial, territorial and Indigenous governments are called upon to work with Indigenous communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused (Call to Action 36). Governments are called upon to address the over-representation of Indigenous people and in particular Indigenous youth in prisons (Calls to Action 30 and 38).

Call to Action 39 calls for the federal government to develop a national plan to collect and publish data on the criminal victimization of Indigenous people, including data related to homicide and family-violence victimization.

Call to Action 40 calls for all levels of government, in collaboration with Indigenous peoples, to create Indigenous-specific victim programs and services. Call to Action 41 supports the call for a public inquiry into the disproportionate victimization of Indigenous women and girls. Call to Action 42 identifies implementation of Indigenous justice systems.

Reconciliation

Full adoption and implementation of the UN *Declaration on the Rights of Indigenous Peoples*, including through a national action plan, is identified in Calls to Action 43 and 44.

Equity for Indigenous people in the legal system is identified in Calls to Action 50 to 52. An independent, national, oversight body, referred to as a National Council for Reconciliation is called for, under Calls to Action 53 to 56.



VIII. Conclusion

The National Aboriginal Circle Against Family Violence is honoured to work on behalf of Indigenous families. The NACAFV hopes that this legal information manual for shelter workers makes a difference to Indigenous women and their families in achieving a life free from violence. It is hoped that the historical and social context set out helps to provide a perspective on cultural strengths that can be rekindled and on barriers that must be removed, in order for Indigenous women to regain their rightful place in society.

The manual provides key considerations for shelter workers in addressing violence against Indigenous women, as well as legal tools and protections that can be accessed when assisting Indigenous women who are, or have been, experiencing violence. Lastly, recommendations to shelter and transitions houses are provided that aim to create systemic change to reduce or eliminate violence against Indigenous women and their families. While there are many challenges facing Indigenous women, their families and communities, in society in general, as well as in the justice, child welfare, income assistance and housing systems in particular, there are rights, tools and resources that can be utilized to overcome these challenges. Every person has a right to live free from violence. Our job as advocates is to make sure this right becomes realized.



Glossary of Legal Terms

Acquittal

Clearing of criminal charges against an individual who has been found not guilty of the crime.

Canadian Charter of Rights and Freedoms

A bill of rights that is entrenched as part of the *Constitution Act, 1982*. As part of the Constitution, the Charter takes precedence over laws passed by Parliament.

Canadian Human Rights Act

Federal anti-discrimination legislation. The *Canadian Human Rights Act, 1985*, prohibits discrimination (e.g., based on sex, religion, marital status, sexual orientation, etc.) in areas including the provision of goods, services, facilities, accommodations, and employment.

Charges

A formal statement of allegations of criminal behaviour for which the government will attempt to obtain a conviction.

Child Apprehension

The removal of a child from her or his parents, guardians or custodians as a result of a decision by a child welfare or family protection agency.

Conviction

A formal determination of guilt on criminal charges, made by a judge, either as a result of a trial or through an agreement between the accused and the state. Sentencing occurs after conviction.

Criminal Code of Canada

A federal statute, first enacted in 1892 (currently R.S.C. 1985, c. C-46), which sets out the majority of criminal laws in Canada.

Criminal Record

A police record that may include any crimes for which one has been convicted, whether or not these resulted in a prison sentence; charges that have been laid but withdrawn; and charges for which one has been acquitted. These records may also include other information on contact with the police such as records of apprehension on mental health grounds.



Discrimination

Differences in treatment or action because of the characteristics and identity of, or perceptions about, an individual or group. The term is usually used in reference to negative or harmful forms of discrimination. This is sometimes called “adverse discrimination.” Grounds for discrimination include ethnicity, religion, gender and sexual identity. Discrimination is prohibited by human rights codes and other laws where it has the effect of “of imposing burdens, obligations, or disadvantages... not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.” *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 (S.C.C.).

Emergency Protection Order

A provision under the *Family Homes on Reserves and Matrimonial Interests or Rights Act* through which an alleged abuser can be barred from the family home on reserve for up to 90 days and that can be put in place without prior notification.

Exclusive Occupation Order:

A provision under the *Family Homes on Reserves and Matrimonial Interests or Rights Act* through which an alleged abuser can be temporarily or permanently removed from the family home on reserve. Unlike an Emergency Protection Order, the alleged abuser is notified before the order is given so that he or she has the opportunity to argue against it.

Family Law

The law governing family relationships, including marriage, separation and divorce, child custody and adoption.

Indian Act

The *Indian Act* is the principal legal framework through which the federal government administers Indian status, defines the powers of First Nations governments and establishes procedures for the management of reserve land and other assets.

Indian Status

Refers to the rights and benefits associated with being registered under the *Indian Act*, according to definitions and terms established by the federal government.

Justice of the Peace

A local court official having jurisdiction over minor criminal offenses and minor civil disputes, and authority to perform routine functions such as performing marriage ceremonies.





Matrimonial Property

Property that is jointly owned during marriage or a common law relationship and that is divided among spouses after divorce or separation.

Non-Insured Health Benefits

The federal Non-Insured Health Benefits (NIHB) Program provides registered First Nation persons and recognized Inuit persons coverage with a range of health benefits to supplement those provided through private insurance plans, provincial/territorial health and social programs. Coverage under the NIHB Program includes: prescription drugs and over-the-counter medications; dental care; vision care; medical supplies and equipment; mental health counselling; and medical transportation.

Peace Bond

A peace bond is a protection order made by a court under section 810 of the *Criminal Code*. It is used if individual appears likely to commit a criminal offence, such as when there is reason to believe that an individual is a threat to the safety of their spouse or former spouse. The Court may impose specific conditions that are designed to prevent the defendant from committing harm or damaging property.

Pardon

A formal decision by government authorities to remove information about charges or convictions against an individual from their criminal record. The more accurate term in Canadian law is “record suspension.” A pardon does not erase or reverse the charges or conviction but it does mean that they will not be found in a routine criminal record check.

Peace Bond

An order obtained through the criminal law system to limit contact between any one individual and someone they are accused of harassing, threatening or assaulting. Once a complaint is filed, if the accused does not agree to the requested terms voluntarily, a trial will be held to determine if a peace bond is warranted and what terms should apply. Violation of a peace bond can result in criminal charges.

Pro Bono

Legal services that are donated by a lawyer without charge.



Protection Orders

Orders obtained through the provincial or territorial family law system in response to violence or threatening behaviour. Unlike peace bonds issued through the criminal justice system, protection orders apply only to spouses, ex-spouses and family members. Protection orders restrict the behaviour or action of the alleged abuser, such as ordering them to leave the family home or stop following contacting their spouse. Evidence of threatening behaviour, harassment or violence must be presented. In emergency circumstances, protection orders can be obtained without the alleged abuser being notified in advance. A person who violates a protection or restraining order can be charged with a crime.

Protective Order

A general term describing a range of tools under criminal and family law, including peace bonds, protection orders and restraining orders, under which a court can limit the movements or actions of an abuser or potential abuser, such as ordering them to leave the family residence, avoiding their spouse or not contacting their spouse. Violation of a protective order can lead to criminal charges.

Restraining Order

A court order restricting the actions or movements of an individual, often granted for the protection of another. Restraining orders are issued under provincial or territorial jurisdiction, rather than under the federal criminal code. Unlike protection orders, they are not limited to spouses and family members.

Spouse

An individual recognized to be in a legal union with another. Spouses may be legally married, or in most provinces and territories except for Quebec may be considered spouses if they have lived together for a certain period of time which varies from one jurisdiction to the next. Spouses can be of the opposite sex or the same sex.

Stalking

This is the offence provided under Canadian criminal law. It allows for prosecution of someone who follows another to harass that person or in preparation for another crime, such as assault.

Victim Services

Supports to victims of crime that may be offered by government agencies, police services, courts, volunteers or non-governmental organizations and community groups.





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Appendix A

Example of Anti-Harassment Policy Statement (from the Canadian Human Rights Commission)⁶¹

To: All employees

Date:

Subject: Policy Statement for XYZ Company

Our Commitment

At XYZ Company, we are committed to providing a safe and respectful work environment for all staff and customers. No one, whether a manager, an employee, a contractor, or a member of the public, has to put up with harassment at XYZ Company, for any reason, at any time. And no one has the right to harass anyone else, at work or in any situation related to employment. This policy is one step toward ensuring that our workplace is a comfortable place for all of us.

Harassment is against the law

The *Canadian Human Rights Act* and the *Canada Labour Code* protect us from harassment. The *Criminal Code* protects us from physical and sexual assault. You have a right to live and work without being harassed, and if you are harassed, you can do something about it.

Employees' responsibilities

All employees have the responsibility to treat each other with respect, and to speak up if they or someone else is being harassed. All employees have a responsibility to report harassment to the appropriate person. All employees are responsible for respecting the confidentiality of anyone involved in a harassment complaint.



Managers' responsibilities

Each manager and supervisor is responsible for fostering a safe working environment, free of harassment. Managers must set an example for appropriate workplace behaviour, and must deal with situations of harassment immediately upon becoming aware of them, whether or not there has been a complaint. Courts may impose penalties on the employer and the manager, even if neither of them was actually involved in or aware of the harassment, but should have known about it. A manager that didn't do anything to prevent harassment or to mitigate its effects may find her or himself facing financial and legal consequences.

XYZ Company's responsibilities

As an employer, XYZ Company also has a responsibility to be aware of what is happening in the workplace. As President, I promise to treat all incidents of harassment seriously. I undertake to act on all complaints and to ensure that they are resolved quickly, confidentially, and fairly. I will discipline anyone who has harassed a person or group of people or who retaliates in any way against anyone who has complained of harassment, given evidence in harassment investigations, or been found guilty of harassment. I will discipline managers who do not act properly to end harassment. At XYZ Company, we will not put up with harassment.

Sincerely, Mr./Ms. ABC, President



Endnotes

¹ Please note that the term “Indigenous” refers to First Nations, Métis and Inuit Peoples.

² Article 22 of the UN *Declaration* states that:

“1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.” See also the *International Covenant on Economic, Social and Cultural Rights*.

³ Quebec Native Women, Inc., *Wasaiya – Because we are Women and Aboriginal: Ensuring the Full Respect of Aboriginal Women’s Right to Equality in Quebec*, page 20.

⁴ McKay and Benjamin, “Systematic violations of the collective rights of Indigenous peoples put the rights of individual Indigenous women at risk. Linkages need to be made between, for example, the sexual exploitation of individual Indigenous women in Vancouver’s Downtown East Side and the long term socio-economic, social, cultural, and political power through the operation of the *Indian Act* and other forms of colonization.”

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⁶ Samuel Perreault. *Criminal Victimization in Canada, 2014*. Statistics Canada. 23 November 2015.

⁷ Marta Burczycka. “Trends in Self-Reported spousal violence in Canada, 2014” in *Family Violence in Canada: A Statistical Profile*. Statistics Canada. 21 January 2016.


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¹⁴ Truth and Reconciliation Commission of Canada. *Honouring the Truth, Reconciling for the Future. Summary of the Final Report*. June 2015.

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²¹ Jessica Ball. "Cultural Safety in Practice with Children, Families and Communities." School of Child and Youth Care, University of Victoria. <http://www.ecdip.org/docs/pdf/Cultural%20Safety%20Poster.pdf>

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²⁵ Suzy Goodleaf and Wanda Gabriel. "The Frontline of Revitalization: Influences Impacting Aboriginal Helpers." *First Nations Child and Family Review*. Vol. 4: No. 2. 2009. Pp. 18-29.

²⁶ See: McCann, I.L. & Pearlman, L.A., "Vicarious traumatization: A framework for understanding the psychological effects of working with victims," *J Trauma Stress* (1990) 3: 131; and Brave Heart, M., Chase, J., Elkins, J., & Altschul, D. B. (2011). Historical trauma among indigenous peoples of the Americas: Concepts, research, and clinical considerations. *Journal of Psychoactive Drugs*, 43(4), 282-290.





²⁷ Indigenous and Northern Affairs Canada. “Family Violence Prevention Programme.” Online posting updated 10 June 2016. <https://www.aadnc-aandc.gc.ca/eng/1100100035253/1100100035254>.

²⁸ Canadian Human Rights Tribunal. First Nations Child and Family Caring Society et al. 2016 CHRT 2. 26 January 2016.

²⁹ *Family Violence Outreach Counsellor Manual: Guidelines for Practice*, February 2007.

³⁰ More detailed guidance on record-keeping can be found in the NACAFV publication, Policies and Procedures Guidelines for Shelters. Available online at: <http://54.186.211.6/wp-content/uploads/2014/03/NACAFV-EN-Policies-Procedures.pdf>.

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⁴⁵ A list of First Nations who have established their own laws on MRP may be found online at: <https://www.aadnc-aandc.gc.ca/eng/1408981855429/1408981949311>.

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