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# Community Legal Information Association of Prince Edward Island, Inc.

## Family Violence and the Law

### Introduction

Everyone has the right to live their lives free of violence. It is a crime for someone to threaten you, harass you, damage your property, hit you or physically hurt you.

Family violence is any violence by one family member against another family member. It includes violence by one partner against the other, by a parent against a child, by a child against a parent, between brothers and sisters, or involving grandparents. Family violence can happen in both heterosexual and same-sex relationships.

This pamphlet outlines the laws that protect victims of family violence and the resources available to victims and their families.

In PEI, family violence is addressed by three laws:

1. *Victims of Family Violence Act* (provincial)
2. *Family Law Act* (provincial)
3. *Criminal Code of Canada* (federal)

### 1. *Victims of Family Violence Act*

The *Victims of Family Violence Act* defines a family relationship as any two people who are or have been married to each other, or who have lived together in a spousal or sexual relationship, or are members of the same family.

The *Act* recognizes that a victim can be a person who:

- has lived with the abuser in a family relationship, or
- is living with the abuser in a family relationship, or
- has one or more children with the abuser, regardless of whether the victim and abuser were married or lived together at any time.

The *Act* defines family violence as including:

- any assault on the victim
- any reckless act or omission that causes injury to the victim or damage to property
- any behaviour or threat that causes a reasonable fear of injury to the victim or damage to property
- forced confinement of the victim
- actions or threats of sexual abuse, physical abuse or emotional abuse of the victim
- any behaviour that deprives a victim of food, clothing, medical attention, shelter, transportation or other necessities of life

The *Act* is meant to be used together with the *Criminal Code of Canada*. In appropriate cases, the police will lay charges under the *Criminal Code of Canada* and will also seek a court order under the *Victims of Family Violence Act* to protect the victim.

Victims may be able to stay in their own home with the help of an order under the *Victims of Family Violence Act*. In the past, many victims of family violence were forced to leave their home as a result of the violence. They may also have had to leave the support of family and friends.

The *Act* does not replace the need for a shelter for victims and their children. In some cases, police are not able to ensure the safety of the victim; in other cases, the victim may choose to leave the home where violence is happening.

The *Act* provides two ways to help victims of family violence:

- emergency protection orders (EPOs)
- victim assistance orders (VAOs)

### **Emergency protection order (EPO)**

An emergency protection order is intended to provide immediate protection to a victim of family violence in an emergency situation. An EPO is:

- available 24 hours a day
- authorized by a specially designated justice of the peace
- effective as soon as the abuser is told about it
- in effect for as long as directed by the justice of the peace (up to 90 days)

It is usually a police officer or Victim Services worker who applies for an emergency protection order on behalf of the victim. The victim can call Victim Services or the police to ask about getting an order.

An emergency protection order can:

- direct a police officer to remove the abuser from the home
- order the abuser not to contact the victim or the victim's family

- order the abuser to stay away from any place identified in the order
- order the abuser not to take, sell, or damage property
- order the abuser not to commit any further acts of violence against the victim
- give the victim temporary possession of specified personal property, such as a car
- give the victim exclusive occupation of the home for a stated period of time
- give temporary custody or day to day care of children to the victim or another person
- direct a police officer to accompany the victim or the abuser to the home to supervise removal of personal belongings
- prohibit the publishing of the victim's name and address
- restrain the abuser from terminating the basic services of utilities
- require the abuser to make rent or mortgage payments on the residence
- extend protection to family members of the victim in appropriate circumstances

An emergency protection order is made only if a justice of the peace is satisfied that family violence has happened and the situation is serious and urgent.

The Justice of the Peace forwards one copy of the emergency protection order and all supporting documents to the court. The order and documents are reviewed within five working days by a judge of the Supreme Court who decides whether to confirm or change the order or re-hear the application.

The *Victims of Family Violence Act* also states clearly that if the abuser encourages another person to commit a violent act against the victim, then the abuser will be held responsible for the violence.

### **Victim assistance order (VAO)**

Victim assistance orders are meant to be used as a longer term solution for victims. They can be used when an emergency protection order expires or when the situation is no longer an emergency.

Victim Assistance Orders Information Kits are available to help victims make an application for a VAO or to help victims understand the legislation better. These are available from Victim Services (368-4582 or 888-8218) or CLIA (892-0853 or 1-800-240-9798).

A victim assistance order is made by a judge of the Supreme Court within ten days of the application being received and approved. It may include the same provisions as an emergency protection order plus access to children and any other provisions the judge thinks are appropriate.

Any of the following may be part of a victim assistance order:

- exclusive occupation of the home for a defined period of time
- removal of the abuser from the home immediately or within a specified time
- police supervision of the removal of personal belongings from the home
- direction to the abuser to stay away from specific places like the victim's workplace or school
- temporary custody or day to day care of children
- temporary possession of personal property
- direction to the abuser to make rent or mortgage payments on the residence
- restrain the abuser from terminating the basic services of utilities

The abuser may be ordered not to:

- communicate directly or indirectly (e.g. through other people) with the victim
- take, sell or damage property
- commit any further acts of violence against the victim

A victim assistance order may also:

- prevent publication of the victim's name and address
- grant access to children for the abuser while ensuring the safety and well-being of the children and victim
- any other provision the judge thinks is appropriate

### **Offences under the *Victims of Family Violence Act***

It is an offence for anyone to:

- fail to comply with the provisions of an order (disobey the order)
- falsely and maliciously make an application for a court order
- obstruct any person who is performing any function authorized by an order
- publish any information that might identify victim(s)

You could be charged.

## **2. *Family Law Act***

The *Family Law Act* regulates how people whose relationship has broken down deal with:

- the division of property between legally married persons,
- child support, and

- spousal support.

The *Act* also contains a section on restraining orders, which is an important section for victims of family violence.

### **Restraining orders**

A victim of family violence can apply for a restraining order. A restraining order is a court order that requires your spouse or former spouse to refrain from "molesting, annoying, or harassing" you or the children in your lawful custody. You can apply for a restraining order only if you are already living apart with no reasonable prospect that you will get back together. Under the *Family Law Act*, restraining orders apply to opposite- or same-sex couples in common law relationships, as well as those who are legally married.

To obtain a restraining order, you need a lawyer. You can go to a private lawyer or, if you qualify and are a victim of family violence, you can apply for Family Legal Aid

### **3. Criminal Code of Canada**

The *Criminal Code of Canada* contains most of the criminal offences and criminal procedure in Canada. The *Code* defines what behaviours are criminal offences and also defines the punishment that may be imposed when an individual is convicted of an offence.

Under the *Criminal Code of Canada*, family violence can result in:

- a peace bond to protect the victim
- criminal charges against the abuser
- an undertaking signed by the abuser in which he or she agrees to follow certain conditions upon release from custody (if criminal charges have been laid)

### **Peace bonds**

A peace bond, also called a Recognizance Order, can be obtained under Section 810 of the *Criminal Code of Canada*.

If you fear that your abuser will injure you or your children or damage your property, you can apply for a peace bond.

A peace bond is a legal promise that your abuser signs. It requires that he or she has no contact with you, keeps the peace, is of good behaviour and complies with any reasonable conditions that the Judge considers necessary.

To get a peace bond, speak to an officer at your local police station or RCMP detachment and explain why you want a peace bond. If you need help to write your statement, the police or Victim Services will help you.

Usually the police will present evidence for a peace bond to a Justice of the Peace, but you can do this yourself if necessary. Your abuser will be served a notice to appear in court. If your abuser does not agree to sign the peace bond, you will be called to testify before a Provincial Court Judge.

On the basis of the evidence, the Judge may order that your abuser sign a peace bond. If your abuser refuses to sign, he or she may be sent to jail.

The Judge will set the length of time the peace bond stays in effect. In most cases, the peace bond will be in effect for a period of up to one year. However, in some circumstances, if the person has been convicted of a sexual offence against someone under the age of 16 or convicted of a violent offence, the judge may order a peace bond for up to two years. The peace bond cannot be renewed, but you can apply for a new one if you still have reason to fear this person. The person who is bound by the peace bond can apply to Provincial Court to change it.

If your abuser breaks the conditions of the peace bond, the police can arrest him or her and charge him or her with the criminal offence of breaching a peace bond.

### **Criminal Charges**

If the police respond to a situation of family violence, they may lay criminal charges against the abuser.

When the police talk to you about the incident, be sure to tell them all the details, as well as any past incidents and any fears you have for the future.

Make a statement that includes any injuries to you and damage to your property. If you need medical attention, ask the police to take you to the hospital. Tell the doctor how you were hurt and ask the doctor to write a detailed report. The doctor may charge you a fee to write this report.

The police may remove the abuser and charge him or her. They may place him or her in jail or on an undertaking with conditions.

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### **Undertakings**

An undertaking or any other stay-away order will only be effective if you do not contact the abuser and you immediately tell the police about any efforts he or she makes to contact you. If you initiate contact with the abuser, you can be charged with breach of an undertaking. If an abuser breaks the conditions of an undertaking or stay-away order, and the police decide not to lay a charge against the abuser, ask why. If you feel that the reason is not satisfactory, speak to the officer who is dealing with your case or to the officer in charge. Victim Services can help you.

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It is a good idea to contact Victim Services to help you through the criminal justice process. They will keep you updated on the status of your case, help you to understand the criminal justice system and your rights, assist you in preparing a victim impact statement, and help you prepare for court if you are called as a witness.

Once a charge has been laid, your abuser will go to court for his or her first appearance.

If he or she pleads "guilty," there will be no trial. If he or she pleads "not guilty," a trial date will be set.

The charge will have to be proven beyond a reasonable doubt before your abuser can be found guilty. You may have to testify in court.

The Crown Attorney is the lawyer who prosecutes criminal cases. He or she represents society and is not your lawyer.

The trial proceeds as follows:

- The Crown Attorney will call you to the stand to answer questions.
- The defence lawyer (the abuser's lawyer), if the abuser has one, will cross-examine you. This means the defence lawyer can ask more questions about the incident that resulted in charges and any other relevant matters.
- The Judge may also ask you questions.
- When you have finished your testimony, the Crown Attorney may call other witnesses.
- After the Crown Attorney presents his or her case, the defence lawyer may call witnesses to testify.
- The Crown Attorney will then cross-examine the defence witnesses.

For more information, see CLIA's pamphlets called "Going to Court: Criminal Trial Procedures" and "A Guide for Witnesses".

After the trial:

- If your abuser is found guilty, the Judge will decide what the sentence will be. This will probably not happen on the same day.
- The Judge will also consider a Victim Impact Statement when sentencing. This statement, which you write, is filed by Victim Services and includes information about your physical injuries, the emotional effect of the crime on you and any financial loss you have experienced.
- If the abuser is given probation, you have a right to speak to the probation officer if you wish. You can make reasonable suggestions to the Crown Attorney or the police.
- For more information on sentencing, see CLIA's pamphlet called "Sentencing".

### **Your Safety and the *Firearms Act***

Sections of the *Firearms Act* are relevant when violence has occurred in families or when there is a fear that violence may occur. These sections may apply after the relationship has ended.

The law requires all firearms owners or users to obtain a Firearms Possession License. This license will allow people to continue to possess the firearms that they already owned on October 1, 1998 and to borrow firearms of a similar class, e.g., long guns. Those wishing to acquire a new firearm or a crossbow, must obtain a Possession and Acquisition License. These licenses must be renewed every five years.

When someone applies for a license to get a firearm or crossbow, any current or former spouse or common law partner with whom the applicant has lived in the last two years will be notified.

An application for a firearms license can be refused if the safety of the applicant or any other person is at risk.

For further information contact the Canadian Firearms Centre at 1-800-731-4000 or their website at: [www.canadianfirearms.com](http://www.canadianfirearms.com)

### **Conclusion**

In a violent relationship, the violence usually increases. Even if you do not plan to leave the relationship, it is a good idea to create a safety plan for you and your children. A safety plan is for dealing with crisis situations and getting you and your children to safety. This takes some of the pressure off you in emergencies. Community Legal Information Association has a publication called *Making A Safety Plan in Violent or Abusive Relationships*. This publication is available free of charge. If you would like a copy, please call us at 892-0853 or 1-800-240-9798 or email us at [clia@cliapei.ca](mailto:clia@cliapei.ca) We also have this publication available on our website at [www.cliapei.ca](http://www.cliapei.ca) .

### **CLIA Publications**

Community Legal Information Association has pamphlets on all of the topics covered in this booklet. Copies are available, free of charge, if you would like to learn more about a topic.

- Court Orders for Your Protection
- Making a Safety Plan in Violent or Abusive Relationships
- Sexual Assault
- A Guide for Witnesses
- Going to Court: Criminal Trial Procedure
- Family Court Procedures
- Child Support: What You Need to Know
- Spousal Support: What You Need to Know
- Custody and Access
- Islander's Guide to the *Family Law Act*
- Living Together: Common Law Relationships
- Sentencing

### **Important Contacts**

The following is a list of important numbers that you may find helpful:

#### **Emergencies 911**

#### **Municipal Police**

Charlottetown	629-4172
Summerside	432-1210

Borden-Carleton 437-2228  
Kensington 836-4499

**RCMP Detachments**

Charlottetown 368-9300  
Summerside 436-9300  
Alberton 853-9300  
Montague 838-9300  
Souris 687-9300

**Family Violence Prevention Services Inc**

Anderson House  
(24-hour crisis line) 1-800-240-9894 or 892-0960

**Outreach Services:**

West Prince 859-8849  
East Prince 436-0517  
Eastern PEI 838-0795  
Queens 566-1480

**Chief Mary Bernard Memorial Women's Shelter**

(24-hour crisis line) 831-2332

**PEI Rape and Sexual Assault Centre**

Toll free crisis line 1-800-289-5656 or 566-8999  
Main office 566-1864  
Therapy line 368-8055

**Child Abuse Line – to report child abuse**

O'Leary 859-8811  
Summerside 888-8100  
Charlottetown 368-5330  
Montague 838-0703  
Souris 687-7063  
After Hours Emergency 1-800-341-6868

**Adult Protection Program (Home Care and Support)**

*for vulnerable adults who are unable to protect themselves from abuse or neglect*

Charlottetown 368-4790  
Montague 838-0786  
O'Leary 859-8730  
Souris 687-7096  
Summerside 888-8440

**Island Help Line** 1-800-218-2885

**Victim Services of Prince Edward Island**

Charlottetown 368-4582

Summerside 888-8218

**Community Legal Information Association** 1-800-240-9798 or 892-0853

**Lawyer Referral Service** 1-800-240-9798 or 892-0853

**Family Legal Aid**

Charlottetown 368-6540

Summerside 888-8066

**Criminal Legal Aid**

Charlottetown 368-6043

Summerside 888-8219

**MCPEI Aboriginal  
Justice Program**

367-3681

**PEI Association for  
Newcomers to Canada**

628-6009

**Salvation Army: (Emergency Shelter, Food and/or Clothing )**

Charlottetown 892-8870

Summerside 888-3870

**Disclaimer**

This pamphlet was published by Community Legal Information Association of Prince Edward Island Inc (CLIA) for informational and education purposes only. It contains general information about the law. It does not contain a complete statement of the law in this area and is not a substitute for legal advice.

If you need legal advice contact a lawyer. If you do not know a lawyer, you may contact one through the Lawyer Referral Service (902-892-0853 or 1-800-240-9798). A 30 minute appointment with a lawyer through this service will cost you \$10 plus tax.

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For more information, you can telephone CLIA at 892-0853 or 1-800-240-9798, visit our website at [www.cliapei.ca](http://www.cliapei.ca) or email us at [clia@cliapei.ca](mailto:clia@cliapei.ca) .

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