



Community Legal Information Association of Prince Edward Island, Inc.

Islanders' Guide to the Victims of Family Violence Act Helping victims of family violence

What is the *Victims of Family Violence Act*?

The *Victims of Family Violence Act* is a provincial law which came into effect on December 16, 1996. and

- addresses the need for victims of family violence to stay in their own homes;
- provides a civil way to supplement the *Criminal Code of Canada*; and
- enables the justice system to provide a more effective and timely response to family violence.

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

What is family violence?

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, a child against a parent, between brothers and sisters, or involving grandparents.

The *Act* provides the following definitions:

family relationship:

"...a relationship between:

- (i) a man and a woman who are or have been married to each other or who have cohabited in a spousal or sexual relationship; or
- (ii) members of the same family."

victim:

"(i) a person who has resided with or is residing with the respondent* in a family relationship [*the respondent is the abuser]; or
(ii) a person, who with the respondent, is a parent of one or more children, regardless of marital status or whether the victim and respondent have lived together at any time, Who has been subjected to family violence by the respondent."

family violence:

includes:

- (i) any assault of the victim;
- (ii) any reckless act or omission that causes injury to the victim or damage to property;

(iii) any act or threat that causes a reasonable fear of injury to the victim or damage to property;
(iv) forced confinement of the victim;
(v) actions or threats of sexual abuse, physical abuse or emotional abuse of the victim; or
(vi) depriving a victim of food, clothing, medical attention, shelter, transportation or other necessities of life."

How will this *Act* help victims?

In many cases, women and children are forced to leave their home and belongings as a result of family violence. They also leave the support of family and friends at this time of crisis.

If the safety of the family can be ensured through an **emergency protection order**, or a **victim assistance order**, victims may be able to stay in their own home and community.

These Orders may also contain other provisions such as:

- temporary custody of children or day to day care of children
- no contact with the victim, or
- no further acts of violence

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

The *Act* does not replace the need for a shelter for women and children who are the victims of family violence. In some cases police are not able to guarantee the safety of the victim; in other cases the victim may feel the need to leave the home where violence is happening. This law gives us another way to help victims and, clearly sends out the message that family violence is **never** acceptable.

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

Emergency Protection Orders and Victim Assistance Orders.

What is an Emergency Protection Order?

An **emergency protection order** gives us a way to take immediate action to protect a victim of family violence in an emergency situation. It 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 and
- remains in effect for as long as directed by the justice of the peace (up to 90 days)

Every police officer on Prince Edward Island has received training about the *Victims of Family Violence Act*. It is usually a police officer who applies for an **emergency protection order** on behalf of the victim. A Victim Services worker may also apply for an **emergency protection order**.

When police are called because of family violence or the fear of family violence, and they believe that the situation is serious and urgent, they should ask if the victim wishes to apply for an **emergency protection order**. If the answer is "yes," the police officer, acting on behalf of the victim, will telephone a justice of the peace. When granted, the order is effective immediately.

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 a child 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 that the situation is serious and urgent.

The justice of the peace must look at the nature and history of family violence, the existence of immediate danger, and the best interests of the victim or any child or other person in the victim's care.

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

What is a Victim Assistance Order?

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

The Office of the Attorney General has published a **Victim Assistance Orders Information Kit**. This is available to help victims make an application on their own behalf or gain a better understanding of the legislation before meeting with a lawyer.

Please note:

Applying for a victim assistance order is a legal process and you are advised to talk with a lawyer for advice and help.

If you do not have a lawyer, the **Lawyer Referral Service** may be of help. Through this service you may speak with a lawyer for thirty minutes at a cost of \$10 plus PST and GST. You can ask the lawyer if you are eligible for family legal aid.

Family Legal Aid is available to low-income victims of family violence. To find out if you are eligible for family legal aid, call the legal aid office at 368-6043 in Charlottetown or 888-8219 in Summerside, or talk to a Victim Services Worker who will make a referral in appropriate cases.

An application for 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 provision the judge thinks is appropriate.

Any or all 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 identified places
- 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

The abuser may be ordered not to:

- communicate directly or indirectly (i.e. 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 while ensuring the safety and well-being of children and victim; and any other provision the judge thinks is appropriate.

What are the offences under the Act?

It is an offence for anyone to:

- fail to comply with the provisions of an order
- falsely and maliciously make an application
- obstruct any person who is performing any function authorized by an order, or
- publish any information in contravention of an order

How does this *Act* change how the justice system deals with family violence?

The *Victims of Family Violence Act* is a law that focuses on the needs of victims. It supplements other laws which are already in place. It gives police and Victim Services one more tool to use to protect victims of family violence. When these laws are used together they help to ensure that we respond more effectively to family violence.

If there is clear evidence that child abuse, spousal assault, sexual assault or any other assault has happened the police will lay charges under the *Criminal Code*. These charges cannot be withdrawn by the victim.

In some cases a recognizance order (Peace Bond) under the Criminal Code may help to keep someone you fear from contacting you.

Where a child's safety may be at risk, Child Protection can take action including possibly removing the child from the family using the *Child Protection Act*.

In some cases an application for a restraining order can be made under the *Family Law Act*.

When a vulnerable adult is at risk, the *Adult Protection Act* may be used to ensure safety.

How can a victim use this law?

If you believe that an **emergency protection order** will help you, ask the police or Victim Services to apply for an order on your behalf.

If you believe that a **victim assistance order** will help you, and you wish to obtain a copy of the Victim Assistance Orders Information Kit, contact any of the following:

Victim Services Charlottetown (902) 368-4582
 Summerside (902) 888-8217

Registrars Charlottetown Courthouse (902) 368-6003
 Summerside Courthouse (902) 888-8125

Transition House Association -- Outreach Services
 Queens (902) 566-1480
 East Prince (902) 436-0517
 West Prince (902) 859-8849
 Eastern PEI (902) 838-0795
 (toll-free) (902) 651-2062

Community Legal Information Association

Charlottetown local (902) 892-0853 (toll-free) 1-800-240-9798

To obtain legal help in applying for a victim assistance order or if you have to attend a court hearing about an order, call your lawyer or:

Lawyer Referral Service (902) 892-0853 or 1-800-240-9798

Family Legal Aid: Charlottetown (902) 368-6043
 Summerside (902) 888-8219

Help for Victims of Crime

Victim Services provides a link between victims and the justice system and can provide information to help victims find other services they may need. If you have been the victim of family violence or any other crime, contact Victim Services at:

Charlottetown (902) 368-4582

Summerside (902) 888-8217

This pamphlet has been prepared and published by the Community Legal Information Association of Prince Edward Island Inc.(CLIA) for informational and education purposes only. It contains general information about the *Victims of Family Violence Act*. It does not contain a complete statement of the law in this area.

If you need legal advice contact a lawyer. If you do not know a lawyer you may contact one through the Lawyer Referral Service, Phone 902-892-0853 or 1-800-240-9798. You will be given the names of two lawyers. A half hour appointment with a lawyer through this service will cost you \$10 plus tax.

As changes in the law and court procedure occur, the information in this pamphlet may become out of date.

Community Legal Information Association of Prince Edward Island Inc. is a charitable organization funded by the Department of Justice Canada, the Office of the Attorney General P.E.I., the Law Foundation of Prince Edward Island and other funding sources. CLIA provides Islanders with useful, understandable information about our laws and the justice system. You may support the Association through volunteering, becoming a member or by making a donation.

Phone 892-0853 or Toll-free 1-800-240-9798

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