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Spousal Abuse Protocol

(External version)

**The Honourable C.R. McQuaid Family Law Centre
Family Law Section
PEI Department of Justice and Public Safety**

The attached protocol developed by the Family Law Section of the Department of Justice and Public Safety is confirmed and comes into effect on June 1, 2017.

Dated this 5th day of June, 2017 at Charlottetown, Prince Edward Island.



Wade MacLauchlan
Minister of Justice and Public Safety
and Attorney General

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History:

- *May 27, 2010* – Spousal Abuse Protocol of the Family Law Section created.
- *May 5, 2017* - Some information that is contained in the internal version of the Spousal Abuse Protocol of the Family Law Section (which is available to Family Law Section staff only) has been removed from this version of the Spousal Abuse Protocol. Such confidential and sensitive information was removed in order to protect the safety and security of clients who may be experiencing family violence, their families, and Family Law Section staff.

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1.0 Introduction

1.1 Purpose

1.1.1 The purpose of the Spousal Abuse Protocol is to:

- a. Ensure safe, effective, and appropriate responses to victims of spousal abuse;
- b. Assist staff to appropriately encourage disclosure of abuse and to refer to support services;
- c. Support staff to identify spousal abuse and potential safety risks;
- d. Assist staff to recognize power dynamics of mandated services and potential impact on spousal abuse victims, staff, and others; and
- e. Implement safety procedures when potential or imminent risk is identified.

1.2 Scope

1.2.1 The Spousal Abuse Protocol applies to all programs in the Family Law Section, which are:

- a. Family Court Counsellors' Office;
- b. Maintenance Enforcement Program;
- c. Child Support Guidelines Office;
- d. Parent Education Program;
- e. Administrative Recalculation Office; and
- f. Central Authority's Office.

The Spousal Abuse Protocol applies to all staff in the Family Law Section.

1.3 Context

1.3.1 The Spousal Abuse Protocol recognizes existing and supportive policy, protocol, and legislation, including:

- a. *Family Law Centre Mutual Respect Policy*;
- b. *Family Law Centre Emergency Procedures Manual*, which includes procedures for dealing with threatening or suspicious individuals, telephone threats, bomb threat procedures, handling suspicious mail, and other emergency procedures;

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- c. *Freedom of Information and Protection of Privacy Act* (Section 37), which governs when personal information may be disclosed;
- d. *Child Protection Act*, subsection 9(m), which acknowledges that exposure to spousal abuse is harmful to children, and subsection 10(1) requires that every person who has knowledge or reasonable grounds to suspect that a child is in need of protection shall report this or cause this to be reported; and
- e. *Occupational Health and Safety Act*, General Regulations - Part 52 (Violence in the Workplace), and Part 53 (Working Alone).

1.3.2 The Family Law Section provides programs and services in a coordinated manner to separated or divorced families. Clients of the Family Law Centre are often vulnerable and experiencing heightened emotions and financial stress. These stressors, combined with a lack of knowledge of government programs, may result in unrealistic expectations of programs and staff.

1.3.3 Separation is a process that is unique to the people involved, and for some the emotional separation process can take many years and continue to impact agreements about assets and decisions about parenting.

1.3.4 A spouse whose approach to a relationship has been controlling may attempt to heighten that control at the time of separation, thereby increasing risk for the other spouse, children, and others.

1.3.5 Family Law Section programs have some degree of authority over clients, and interventions may contribute to increased risk.

1.4 Definitions

1.4.1 **Spouse:** The PEI *Domestic Relations Act* defines ‘spouse’ as:

- a. two people who are legally married;
- b. two people who have lived in a conjugal (sexual) relationship for three years or more; or
- c. two people who are living in a conjugal (sexual) relationship and are the natural or adoptive parents of a child or children.¹

For the purposes of this protocol, ‘spouse’ also extends to people who have lived in a conjugal relationship with or without children, and to those who are the parents of a child or children and have never lived together.

¹ *Domestic Relations Act* (PEI)

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1.4.2 **Spousal Abuse:** Spousal abuse is threatening behaviour, violence, or abuse (psychological, physical, sexual, financial, or emotional) by a person against a current or former intimate partner, regardless of gender, sexuality, culture, or ethnic background, or physical or mental abilities.

Spousal abuse may be a single act or a number of acts forming a pattern of behaviour, even though some or all of these acts when viewed in isolation may appear to be minor or trivial.

Spousal abuse can include:

- a. physical abuse, including slapping, pushing, hitting, stabbing, pinching, and physical intimidation;
- b. indirect physical violence, which may include destruction of objects, striking or throwing objects near the victim, or harm to pets;
- c. sexual abuse, including being rough during or forcing sex (rape), or forcing pornography;
- d. financial abuse, including withholding, diverting, embezzling, or controlling funds;
- e. psychological abuse, including intimidation, harassment, or threats of physical or sexual abuse; controlling behaviour such as isolating a person from family or friends, or degrading the person in front of family or friends; threats to parenting such as turning the children against the parent or threatening to take the children away from the parent; and harm to self or threats of harm to self;
- f. forced marriage; and
- g. unwarranted and passive action which jeopardizes physical or mental health or well-being, especially of a spouse who is particularly dependent by reason of disability or frailty.

1.5 Factors

1.5.1 *Spousal Violence Definitions Relevant to Family Law*²

- a. Abusive-controlling violent relationships (ACV), also called battering or intimate terrorism, is an ongoing pattern of use of threat, force, emotional abuse, and other coercive means to unilaterally dominate one partner and induce fear, submission, and compliance in the other.

² Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, Nicholas Bala, *Custody Dispute Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, Family Court Review, Vol. 46 No. 3, July 2008 500–522.

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- b. Conflict-instigated violence (CIV), also called situational or couple violence, occurs when violence is perpetrated by both partners who have limited skills in resolving conflict, involving bilateral assertion of power by both partners.
 - c. Violent resistance (VR) occurs when a partner uses violence to defend himself/herself in response to abuse by the other partner.
 - d. Separation-instigated violence (SIV) is isolated acts of violence perpetrated by either partner reacting to stress during separation, divorce, and its aftermath in a relationship that has not otherwise been characterized by violence or coercive control.
- 1.5.2 **Violence:** Includes spousal abuse, child abuse or abduction, harm to self (threatened or attempted suicide), and harm to others.
- 1.5.3 **Self Harm:** Actual or threatened harm to self by the perpetrator, and may result in harm to self or intimidation of the spouse or others.
- 1.5.4 **Diversity Factors:** Regardless of gender, sexual orientation, physical or mental abilities, cultural background, or family make-up, anyone can be a victim of spousal abuse, and nearly anyone can be a perpetrator. Diversity awareness means recognizing the different experiences and impacts that can result from these diversity factors.

The following are examples of diversity factors.

- a. A woman is more likely than a man to experience ongoing abuse and to be impacted by serious injury or death.
- b. A man, expected by societal norms to be strong, may have little personal support to disclose spousal abuse.
- c. A person with a physical or mental disability or physical frailty may be more at risk of abuse and less able to leave an abusive situation; a spouse could, for example, abuse a partner with a disability of frailty by controlling medications, food, water, personal care or restricting access to assistive devices.
- d. In same-sex relationships, intimidation may take the form of threats to “out” the partner, i.e. to make homosexuality public if the partner has chosen to keep it private.
- e. If one or both spouses have children, the abuser may injure or threaten to injure the children, or threaten to bar the partner from access to the children.
- f. Newcomers may be unaware of cultural customs and traditional practices from their respective cultures that are illegal or unacceptable in Canada.

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- g. First-generation immigrants who have limited proficiency in English or French can be isolated through language, culture, economic barriers, or threatened deportation; extreme dependency on a relatively small group of supporters inevitably may make them more vulnerable to spousal abuse.
- h. Victims in Aboriginal communities may have to leave their community for safety, and experience additional distress of having to abandon their support systems, kinship, and cultural roots.

1.5.5 ***Impact of Spousal Abuse:*** A spouse who has been physically abused often lives with fear, worry, guilt, and self-blame, and may feel worthless, helpless, or ashamed. The effects of emotional and psychological abuse can be just as harmful. Victims of spousal abuse may lose their self-respect and may use alcohol or drugs to dull their emotions. Furthermore, victims have a higher risk than non-victims of re-involvement in an abusive relationship.

1.5.6 ***Victim Self-Determination:*** People have the right to make their own decisions, and victims of spousal abuse may have had most decisions controlled by the abuser. Except in rare circumstances, intervention or referral should not happen without the victim's informed consent. The goal of victim self-determination is to facilitate independence.

1.5.7 ***Obligation with Respect to Safety:*** Extreme circumstances of imminent risk of injury or death override privacy and victim self-determination.

2.0 Protocol

(See Appendix A – Protocol Framework)

2.1 Detection

- 2.1.1 All staff with client contact will be familiar with signs and symptoms of spousal abuse, as well as the diversity factors that recognize different experiences and impacts.
- 2.1.2 Screening for spousal abuse will be undertaken for clients identified through files and records, and those presenting with warning signs.
- 2.1.3 Where potential spousal abuse is detected, conversations must be conducted safely, ensuring that during phone conversations the person is free to speak, and that during face-to-face meetings, the conversation is conducted in a private space.

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2.2 Safety

- 2.2.1 The safety of clients, their children, and staff will be regarded as paramount when spousal abuse has been detected.
- 2.2.2 Staff will assess safety and risk using the guidelines outlined in the internal policy (See *Appendix B – Factors that Might Suggest Potential for Risk of Violence*).

2.3 Safe Contact Plan³

Recognizing the potential for Family Law Section program actions to increase risk where spousal abuse has been identified, staff will:

- a. ask the client about potential risk to the client, children, and spouse when enforcement action is taken, and develop a safe contact plan with the client;
- b. ensure that the safe contact plan includes current contact information for safe mail, emails, or telephone contact; and
- c. where the safe contact plan includes contact with a person other than the client, complete release of information form(s), and ensure current contact information is available.

2.4 Referrals

- 2.4.1 Staff will provide referral information to clients about services that promote client safety and support, including Victim Services, counseling, social assistance, protection, and legal services.
- 2.4.2 Staff may offer to follow-up with clients who have disclosed abuse, such as by offering a phone call (if it is safe to do so) or follow-up appointment.

2.5 Confidentiality

- 2.5.1 Privacy and confidentiality will be maintained except in specific circumstances where staff deems that there is imminent danger to the health or safety of any person.⁴

³ The Safe Contact Plan is specific to the Family Law Section contacts and is different from a comprehensive Safety Plan that could be developed with the support of Victim Services.

⁴ *Freedom of Information and Protection of Privacy Act* (PEI), Section 37(1)

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3.0 Program Specific Guidelines

3.1 Family Court Counsellors' Office⁵

This section guides the mediator in the Family Court Counsellors' Office when mediating cases where spousal abuse is suspected or has been identified. This section also guides Family Court Counsellors when conducting home studies that could result in a settlement where spousal abuse has been identified or is suspected.

3.1.1 *Mediation Services*

- a. Since 2001, Family Court Services has used a Woman Abuse Protocol, and prior to the protocol, all cases for abuse which were referred to Family Court Services for mediation were screened.
- b. Parties who participate in mediation must be able to negotiate safely, voluntarily, and competently in order to reach a fair agreement. Mediation cannot be fair if one of the parties is unable to mediate effectively and competently.
- c. Abuse in intimate relationships poses serious safety risks and may significantly diminish a person's ability to mediate. Family mediation cases in which there is or has been domestic violence are complicated and can be dangerous to the participants and the mediator.
- d. Mediators need to identify which cases are appropriate to mediate and which cases are inappropriate to mediate. Each family situation is different and needs to be assessed on its own unique merits.
- e. Generally, mediation is not appropriate in instances of family violence. However, people need options in order to resolve family law issues.
- f. Some families who have experienced abusive spousal relationships desire a non-adversarial approach to settling parenting issues after separation/divorce. In such cases, the issues to be addressed are child-focused and divorce-related, and not mediation of the domestic violence itself.

⁵ The Family Court Counsellors' Section was adapted from the PEI Woman Abuse Protocols, 2001.

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3.1.2 *Pre-Screening Assessment*

- a. Screening for abuse, including power and control issues, is done before a case is accepted for mediation. Screening for issues related to spousal abuse is done throughout the mediation process to determine if the process should be terminated. Screening for abuse, power and control, and their effects is required to:
 - identify and sort those cases for which mediation is likely to be appropriate, and those cases for which it is not appropriate;
 - determine whether other alternatives to mediation may be more appropriate;
 - ensure that clients have the ability to mediate safely and competently and ensure that mediation's primary standards of safety, voluntary participation and fairness can be met;
 - determine the probability that certain cases, once in progress, may need to be terminated because mediation standards cannot be met;
 - provide information that can be used to identify strategies in the mediation process to comply with the standards of safety, voluntariness and fairness; and
 - protect mediators from harm and from being a party to an unsafe and unfair process.
- b. Separate telephone screening is conducted ensuring that the person being screened is free to talk openly and safely.
- c. Separate office interviews may be conducted with the parties to further screen for appropriateness of mediation prior to beginning the formal joint negotiation process.

3.2 **Maintenance Enforcement Program (“MEP”)**

3.2.1 *Identification of Potential Violence*

When the review of a case indicates that the payor has potential for spousal violence, program staff will manage the case with special care to prevent harm from occurring.⁶

3.2.2 *Reciprocity Enforcement Officer*

When preparing outgoing inter-jurisdictional and cross-border files, the Reciprocity Enforcement Officer will communicate any special circumstances

⁶ Adapted from Nova Scotia's Maintenance Enforcement Program Policy and Procedure Manual

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about potential risk with the Interjurisdictional Support Orders Office in the receiving jurisdiction.

3.3 Child Support Guidelines Office

When spousal abuse is suspected or confirmed, in addition to following the general Spousal Abuse Protocol (at Section 2), staff will:

- a. When the victim client is requesting that someone serve the client's court documents on the alleged abuser, advise the client to inform the process server of the abuser's history of spousal abuse or other violence and any special circumstances that could present risk.
- b. When supporting self-represented clients at court, advise the deputy sheriff of any special circumstances that could present risk and request that a deputy sheriff be present at the court hearing.
- c. Advise the victim client, when completing the MEP Filing Form, to indicate on the form that there are special circumstances, to describe the potential risk, and to attach any relevant court orders.

3.4 Parent Education Program

The Parent Education Program ensures that separated co-parents are in separate sessions. Further, the Parent Education Coordinator manages participation at sessions and is available to address concerns related to spousal abuse.

3.5 Administrative Recalculation Office

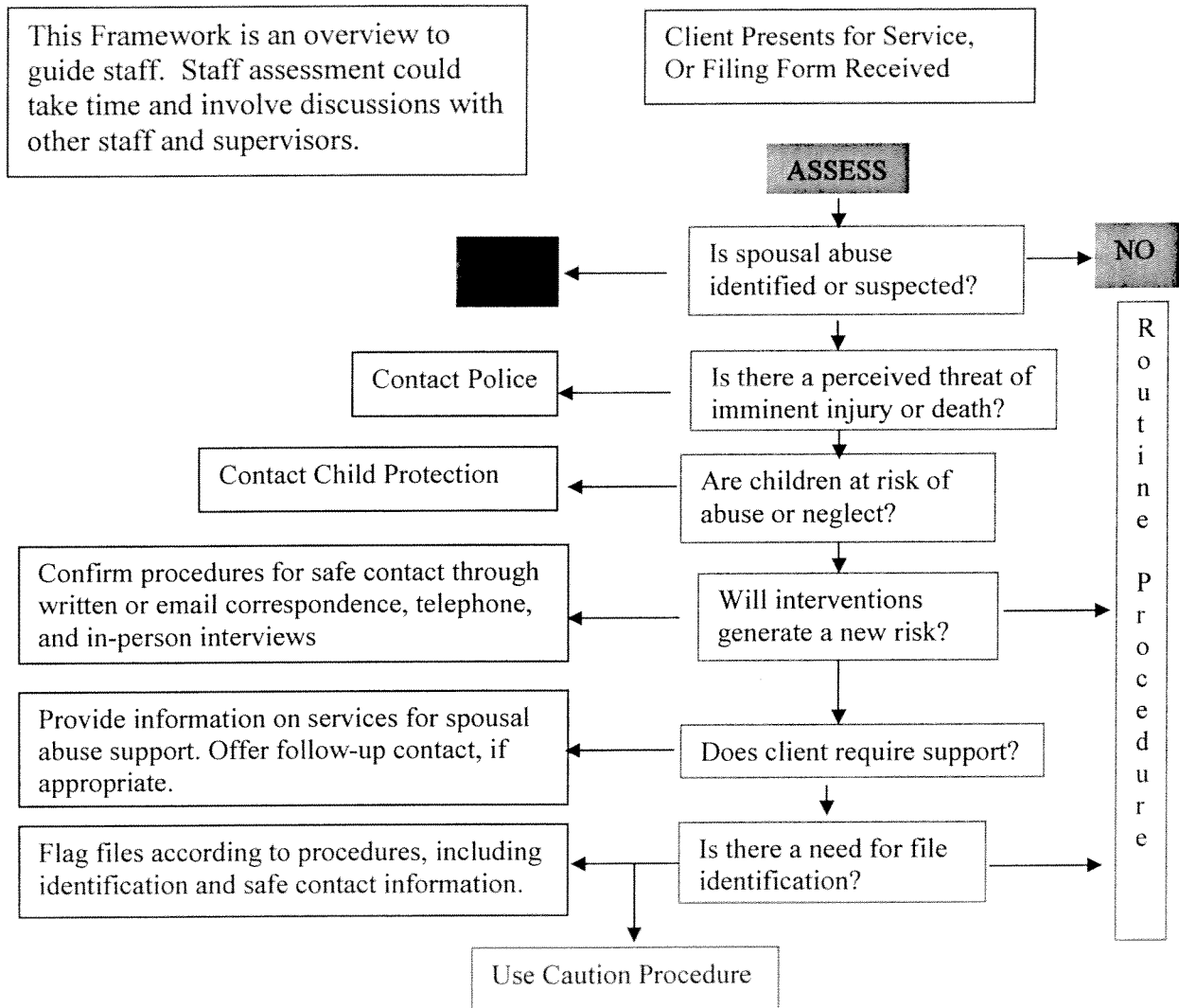
Follow Spousal Abuse Protocol (See Section 2).

3.6 Central Authority's Office

Any special considerations regarding abuse are covered in the *Hague Convention on the Civil Aspects of International Child Abduction*, including the obligation to contact child protection authorities if child is being harmed or is at risk of harm.

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Appendix A – Protocol Framework



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Appendix B – Factors that Might Suggest Potential for Risk of Violence

Factors that increase risk

Although they are not direct *causes* of abuse, statistics indicate that there are a number of factors that, alone or in combination with other factors, are associated with an increased risk of abuse. Some of the risk factors, for men and women, include:

- being a young person
- being in a common law relationship
- having a partner who periodically drinks heavily
- having a partner who is emotionally abusive in the relationship (an important predictor of physical violence)
- marital separation (women's risk of being killed increases after separation)

Risk Factors for Spousal Abuse

- Separation
- Control
- Past assault
- Sense of entitlement (e.g. male privilege)
- Violation of Court Orders
- Stalking
- Threats
- Minimizing Criminal History
- Animal Abuse
- Employment Issues
- Pregnancy
- Substance Abuse
- Child Abuse
- Sexual Assault
- Suicidal
- Mental Health Issues

Some factors may make people more vulnerable than others to spousal abuse. For example, a person may be more vulnerable if she/he:

- Has a disability (physical or mental)
- Cannot effectively communicate in English
- Is living in an isolated community (geographically or socially)
- Has an insecure immigration status
- Does not work outside of the home
- Lacks economic independence

Critical Incidents for Safety Assessment and Planning

- If a stay of proceedings is entered
- Upon application for a Peace Bond or other protection order
- Upon application to vary protection order conditions

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- When accused is released on interim conditions
- When either party initiates a legal action proceeding such as for divorce, custody or access, or property division
- When court documents papers are served on the spouse such as Restraining Orders, or a Petition for Divorce
- When either party enters into another relationship⁷

Behaviours or personal history that may suggest potential for violence include⁸:

- History of violence (best single predictor)
- Current alcohol and/or street drug abuse
- Delusions
- Hallucinations
- Verbally abusive and challenging
- Controlling, loud, and verbose during interactions
- Impaired judgment, poor reality testing, and little or no insight
- Psychomotor agitation, over stimulation
- Unable to form and sustain adequate relationships
- Poor impulse control
- Lacks empathy

⁷ From *Information Sharing: The Key to Collaborative Safety Planning Community Coordination for Women's Safety*, presentation by Gail Edinger, Michelle Novakowski, Regional Coordinators, available at www.erabc.ca/era2007.ppt.

⁸ Safety Procedures for Employees Working Alone, 2007, *PEI Community and Correctional Services Policy and Procedures*, Appendix A.