



Community Legal Information Association of Prince Edward Island, Inc.

Women, Assault and the Law

Introduction

Each of us has the right to live our lives free of the fear of violence.

When someone threatens you, harasses you, damages your property, deliberately hits you or physically hurts you, it is a crime. It is against the law for a man to threaten or to assault his partner, girlfriend, mother or sister, just as it is for any person to threaten or assault another. This law applies equally regardless of race, sex or the relationship between people.

This booklet will give you information about the main options available through the criminal justice system. If you are thinking about going through the justice system many questions will run through your mind: Is it worth it? Will it stop him from abusing me? Or, will it just make him more angry? What if the judge finds him not guilty? What about our relationship -- is it really over? These are very difficult questions.

Over time violence usually increases in frequency and severity. You can retain your hope and at the same time take measures to protect yourself. A safety plan -- a plan for dealing with crisis situations and getting you and your children to safety -- takes some of the pressure off you in emergencies. It's a good idea to have necessities such as money, spare health cards, family documents (e.g. mortgage documents) and children's clothing and supplies kept where you can get them should you decide to leave. Tell someone you trust about what is happening to you. You may decide to keep a journal or calendar recording the incidents of abuse. Keep it in a safe place as it may be helpful later if you decide to go through the justice system.

YOUR LEGAL OPTIONS

You have several options:

- a) the police may, with your consent, apply for an Emergency Protection Order (EPO);
- b) you can apply for a Victim Assistance Order (VAO);
- c) the police may lay a charge;
- d) you may obtain a Recognizance Order;
- e) you may apply for a Restraining Order.

In some cases several options may be used at the same time, e.g. an EPO and a charge.

Victims of Family Violence Act

The *Victims of Family Violence Act* came into effect in December 1996. It is used together with the *Criminal Code* of Canada but does not replace it. The Act itself does not carry any criminal consequences and your partner will not have a criminal record. In certain circumstances the police may lay charges under the *Criminal Code* and also seek an EPO.

Obtaining an Emergency Protection Order

An Emergency Protection Order or EPO 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 and remains in effect for a specific number of days as directed by a Justice of the Peace. If the provision is granted by a Justice of the Peace it will be effective as soon as the abuser is told about it.

When the police are called because of family violence and they believe the situation is serious, they may ask you if you wish to apply for an EPO. If you say you do, the officer will telephone a Justice of the Peace who will decide if an EPO will be made and what it will include. If the provision is granted this order can ensure that your abuser is removed from the home and that he not take, sell or damage property. It can also give you or another person, temporary custody of the children and give you temporary exclusive possession of the home. Your partner may also be told to stay away from you and commit no further acts of violence.

Filing for a Victim Assistance Order

A Victim Assistance Order Application (VAO), is reviewed by a judge of the Supreme Court as soon as possible after the application has been filed. The VAO is a longer term remedy than the Emergency Protection Order and can be used when that order expires or if the situation is not an emergency. The *Islanders' Guide to the Victims of Family Violence Act*, published by Community Legal Information Association, (CLIA) has information regarding this act and these orders.

The VAO may give you exclusive use of your home for a specified time, temporary custody of your child/ren, police supervision of removal of your personal belongings and those of your child/ren from your home and a stay away directive to your partner. These are only some of the provisions.

A VAO is a legal process and you will need a lawyer to help you. You will need to talk to your own lawyer through Lawyer Referral Service, or, if you qualify financially, a lawyer through Legal Aid. There are telephone numbers at the end of this pamphlet that will help you. Also there is a *Victim Assistance Orders Information Kit*, available from Victim Services and Transition House Association Outreach Workers.

Police Lay a Charge.

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

Make a statement that includes any injuries to you and/or damage to your property. If you need medical attention ask police to take you to the hospital. Tell the doctor how you were hurt and ask the doctor to write a detailed report.

The police may remove the abuser, and charge him. They may place him in jail overnight, and/or take him before a justice of the peace and request that he be placed on an undertaking with conditions, for example that he refrain from contacting you. **If you are afraid of the abuser and you want no contact with him, be sure to tell the police.**

An undertaking or other stay away order will only be effective if you do not contact the abuser yourself and you immediately tell the police about any efforts he makes to contact you. It is a good idea to contact Victim Services to help you through the criminal justice process. They will assist you with a Victim Impact Statement and help you prepare for court. They will also help you with any criminal injuries compensation claims.

If the police decide not to lay a charge, ask why. If you feel that the reason is not satisfactory, get the name of the officer who is dealing with your case and talk to him or the officer in charge. Victim Services can help you.

Once a charge has been laid your abuser will be served with an appearance notice. This will indicate when he must go to court for his first appearance. If he pleads "guilty" there will be no trial and sentencing may take place immediately. If he pleads "not guilty" a trial date will be set. The amount of time between the first appearance and the trial will vary.

At the trial the charge will have to be proven beyond a reasonable doubt before your partner can be found guilty. If you receive a subpoena you must go to court to testify. *A Guide for Witnesses*; and *A Guide to the Courts in Prince Edward Island*; published by CLIA have helpful information for anyone preparing to be a witness in court. They are free.

The Crown Attorney is the lawyer who represents the whole community. S/he is not your lawyer. S/he will ask you questions about the incident that led to the charges. Answer these questions as accurately as you can. You may not be allowed to talk about previous incidents of violence.

The trial proceeds as follows:

- **First**, the Crown Attorney will call you to the stand to answer questions.
- **Next**, your partner's lawyer (the defence lawyer), if he 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. If your partner does not have a lawyer defending him, he can ask you relevant questions himself.
- **The Judge** may also ask you questions.
- **When** you have finished your testimony, the Crown may call other witnesses.
- **After** the Crown presents its case, the defence lawyer may or may not call your partner and his witnesses, if any, to testify. They may not agree with the facts that you have presented.
- **The Crown Attorney** will then "cross-examine" the defence witnesses.

If your partner is found guilty, the Judge will decide what the sentence will be. This might not happen on the same day. Possible sentences might include:

An absolute discharge -- which means that your partner has been found guilty but does not have to serve any sentence.

A conditional discharge -- which means that if your partner follows certain conditions for a period of time he won't have a criminal record.

A suspended sentence -- which means that he will have criminal record, but won't have to go to jail if he stays out of trouble and follows certain conditions set by the Judge.

A conditional sentence -- means the Judge will require certain additional conditions in the sentence, some of which may include:

- providing for support of you and your children;
- not drinking or doing drugs;
- not owning or carrying a weapon;
- attending a treatment programme; or
- staying away from you and having no contact.

Your partner will be given a copy of the order and someone will explain it to him.

A fine.

A jail term.

Any of these sentences may be imposed together with a probation order. Probation means that for a set period of time the offender must follow all the conditions set by the judge in the probation order. He will be supervised by a probation officer. You have a right to speak to the probation officer if you wish.

Remember that the final outcome of the case is important to you. Think about what you would like and don't be afraid to make any reasonable suggestions to the Crown attorney or the police. 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.

For a Judge to find your partner guilty s/he must be convinced **beyond a reasonable doubt** that he committed the crime. If the Judge finds that your partner is not guilty, he will be free to go. You should prepare yourself for this outcome.

Going through the process is worthwhile even if your partner is found not guilty. You've still taken a stand, and you've let your partner know you are serious. If your partner assaults you again, the next time there may be enough evidence to obtain a conviction.

Obtaining a Recognizance Order

A Recognizance Order is also called a peace bond and is obtained under Section 810 of the *Criminal Code*.

If you fear that your partner will injure you or your children or damage your property you can apply for a Recognizance Order. This order is intended to protect you. It requires that there be **no contact** between you and your partner.

A Recognizance Order is a legal promise that your partner signs. It requires that he keep the peace, be of good behaviour and comply with any reasonable conditions that you request and that the Judge considers necessary.

The procedure for obtaining a Recognizance Order is the same as for laying an charge. Go to your local police station or R.C.M.P. detachment, ask to speak to the court officer or officer in charge and explain why you want a Recognizance Order. If you need help in writing your statement the police will help you. If your partner has committed an offence against you, you may find that the police prefer to lay a charge rather than seek a Recognizance Order.

Usually the police will swear the information for a Recognizance Order before a Justice of the Peace but you can do this yourself if necessary. Your partner will be served a notice to appear in court. If your partner does not agree to sign the Recognizance Order, you will be called to testify before a Provincial Court Judge.

On the basis of the evidence presented, the Judge may find that your partner should sign a Recognizance Order and will order him to do so. If your partner refuses to sign, he may be sent to jail for a maximum of twelve months. However, this rarely happens. Usually, he signs the Recognizance Order which requires him to keep the peace, be of good behaviour, and comply with any other reasonable conditions that are set down by the Judge after taking your wishes into consideration.

Recognizance Orders are in effect for up to 12 months. They cannot be renewed. To get another Order you must have another complaint about a new incident.

If your partner breaks the conditions of the order, the police can arrest him and charge him with the criminal offence of breaching a Recognizance Order.

Obtaining a Restraining Order

A Restraining Order is a court order under the *Family Law Act* that requires your spouse or former spouse to refrain from "molesting, annoying, or harassing" you or the children in your lawful custody. You can only apply for a Restraining Order if you are already living apart with no reasonable prospect that you will resume living together. Under the *Family Law Act*, Restraining Orders apply to couples in common law relationships as well as those who are legally married.

The Recognizance Orders discussed in the previous section are obtained only in situations that involve fear of physical violence or property damage. Restraining Orders are broader in that they can be used in harassment and annoyance situations. An example of such a situation would be one in which a man who is separated from his spouse constantly telephones her and comes to her home without actually threatening any harm.

To obtain a Restraining Order you need a lawyer. You can go to either a private lawyer or, if you qualify financially and are or have been a victim of family violence, you can ask for Legal Aid.

New Legislation: *Firearms Act*

Sometimes a new Act can benefit you in ways that are not always obvious. If you are being abused or if you have been abused by your spouse or former spouse the *Firearms Act* has a section that will be of interest to you.

The new *Firearms Act* and Regulations are effective October 1, 1998. Sections of this Act are relevant when violence has occurred in families or when there is a fear that violence may occur; and they continue to apply after the relationship has ended. When an application is made for a licence to acquire a firearm or crossbow; the 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 licence can be refused if the safety of the applicant **or any other person** is at risk.

The new law will require all firearms owners or users to obtain a Firearms Possession Licence. This licence 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 Licence. These licences must be renewed every five years.

For further information contact the Canadian Firearms Centre at 1-800-731-4000 or their website at: www.canadianfirearms.com

TERMS AND THEIR MEANINGS

Accused (also called the Defendant) - The person in court who is charged with an offence.

Contempt of Court - Any form of misconduct which shows disrespect for the court, e.g. disobeying a court order or insulting the Judge.

Criminal Injuries Compensation - A program available to help victims recover financial and other losses due to injuries resulting from a crime. Applications are made through Victim Services.

Cross-examination - The questioning of a witness by the opposing lawyer. The purpose is to clarify or discredit testimony already given under direct examination.

Crown Attorney - The lawyer who is acting for the Crown and community and is presenting evidence to support the charge against the accused. S/he does not represent the victim.

Defence Lawyer - The lawyer who is acting on behalf of the person who is charged with the offence.

Direct Examination - The initial questioning of a witness by the lawyer who called the witness. The purpose is to present evidence supporting the factual argument the lawyer is making.

EPO - Emergency Protection Order is an immediate response to family violence which can put certain measures in place for your protection.

Family Violence - Is any violence by one family member against another family member. It includes violence by one partner against another, parent against a child, child against parent, between brothers and sisters and can also include violence between blood relatives i.e. cousins, nieces, nephews.

Reasonable Doubt - A degree of doubt that would make a reasonable person hesitate before believing someone is guilty of an offence. Before an accused person can be convicted, the Crown Attorney must prove that person guilty "beyond a reasonable doubt". The accused does not have to prove innocence.

Recognizance Order - Sometimes called a Peace Bond it is a no contact order in effect for up to 12 months and cannot be renewed.

Restraining Order - Requires that your spouse or former spouse refrain from molesting, annoying or harassing you or your children. You have to be living apart from your spouse in order to obtain this order.

Spouse - Your husband or common law partner.

Statement - Factual information given to the police.

Swear the Information - Give information under oath or affirmation.

Testify - Give evidence under oath or affirmation during a trial or preliminary inquiry.

Trial - A court hearing during which a Judge, or Judge and jury, hears evidence and decides on the basis of that evidence whether an accused person is guilty or not guilty.

Undertaking - An assurance given to a Justice of the Peace or a Judge that an accused will do as ordered, e.g. stay away from you until the case is dealt with by the court.

VAO - Victim Assistance Order is a court order that you can apply for before your EPO expires or if the situation is no longer an emergency.

Victim Impact Statement - A written statement outlining any financial loss, physical injury, or emotional upset resulting from a crime. The information can be considered by the Judge at the time of sentencing. Victim Services is responsible for filing Victim Impact Statements with the court.

Witness - A person who gives evidence in court.

IMPORTANT PHONE NUMBERS

Transition House Association:

Anderson House Shelter, 892-0960 Charlottetown

Crisis Line 1-800-240-9894 toll free

Outreach Workers

- West Prince 859-8849 O'Leary
- East Prince 436-0517 Summerside
- Kings County 838-0795 Montague
- Queen's County 566-1480 Charlottetown

Child Abuse 1-800-341-6868 toll free

Child and Family Services:

- West Prince 859-8811 O'Leary
- East Prince 888-8100 Summerside
- Queen's 368-5330 Charlottetown

- Southern Kings 838-0700 Montague
- Eastern Kings 687-7060 Souris

PEI Rape and Sexual Assault:
 Crisis Centre 566-8999 Charlottetown
 Crisis Line, Counselling 1-800-289-5656 toll free

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

- 892-8870 Charlottetown
- 888-3870 Summerside
- 436-4519 Summerside
- 687-4116 Souris

Victim Services: (Province wide help)
 368-4582 Charlottetown
 888-8217 Summerside

Community Legal Information Association
 1-800-240-9798 toll free
 892-0853 Charlottetown

Lawyer Referral Service 566-1666 Charlottetown

Legal Aid 368-6043 Charlottetown; 888-8219 Summerside

Probation Services:

- 368-6060 Charlottetown
- 888-8200 Summerside
- 838-0600 Montague
- 859-8806 O'Leary
- 687-7017 Souris

Adult Protection:

- 368-5770 Charlottetown
- 687-7097 Eastern Kings
- 838-0795 Southern Kings
- 888-8440 East Prince
- 859-8730 West Prince

Resource Pamphlets

- **A Guide for Witnesses**
- **A Guide to the Courts in Prince Edward Island**
- **Anderson House**
- **Common Law Relationships**
- **Islanders Guide to the Victims of Family Violence Act**
- **Lawyer Referral Service**
- **Sentencing**

- **Stalking is a Crime Called Criminal Harassment**
- **Sexual Assault**
- **Victim Assistance Order Information Kit**
- **You and Your Lawyer**
- **Victim Services**

*This publication contains general information about one area of the law only, the assault of women within a relationship. It does not contain a complete statement of the law in this area. For legal advice about this or any other area of the law contact a lawyer. If you do not know a lawyer call **Lawyer Referral Service**. A half hour appointment with a lawyer through this service will cost you \$10 plus tax. As changes in the law occur the information in this publication may go out of date.*

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