

# Family Violence and the Law

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## Introduction

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

If you are in immediate danger, call 911.

[Text box] The information in this guide is not legal advice, and does not replace guidance from a lawyer.

## What is Family Violence?

**Family violence** is any violence by one family member against another family member. There are legal options to protect yourself from family violence.

In PEI, family violence is addressed by the following laws:

1. *Victims of Family Violence Act* (provincial)
3. *Criminal Code of Canada* (federal)
4. *Family Law Act* (provincial)
5. *The Divorce Act* (federal)
6. *The Children's Law Act* (provincial)

## Safety Plans

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 a tool that can help you plan ahead for crisis situations and how you will get you and your children to safety. See our guide called “Making A Safety Plan in Violent or Abusive Relationships.”

## Victims of Family Violence Act

The *Victims of Family Violence Act* defines a family relationship as the relationship between two people who:

- Are or have been married to each other; or
- Have lived together in a spousal or sexual relationship; or
- Are members of the same family.

**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.

You could experience violence from someone you are dating without living with them.

According to the *Victims of Family Violence Act*, a victim is a person who:

- Has lived with the person who harmed them in a family relationship, or
- Is living with the person who harmed them in a family relationship, or
- Has one or more children with the person who harmed them, regardless of whether the victim and person who harmed them were married or lived together at any time.

The *Victims of Family Violence 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 *Victims of Family Violence 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*.

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 Orders

An emergency protection order (EPO) can immediately protect victims of family violence in an emergency. An EPO is:

- Available 24 hours a day;
- Ordered by a Justice of the Peace;
- Effective as soon as the person who harmed you is served a copy of the order;
- Remains in effect for as long as directed by the Justice of the Peace (up to 90 days).

If the person who harmed you seems to be avoiding receiving the EPO, a Justice of the Peace may decide that service of the order is not required. In these cases, the EPO is still active even though the person who harmed you has not received a copy of it.

### How do I get an Emergency Protection Order?

An EPO is made only if a Justice of the Peace is sure that family violence has happened, and your situation is an emergency. If you want an EPO after an incident, apply without delay. A police officer or a Victim Services worker may apply for an EPO on your behalf.

**Victim Services** assists victims of crime throughout the criminal justice process. They can keep you updated on the status of your case, help you to understand the criminal justice system and your rights, make a victim impact statement, and prepare for court if you are called as a witness.

**Victim Services in Charlottetown 902-368-4582 or [victimservicescharlottetown@gov.pe.ca](mailto:victimservicescharlottetown@gov.pe.ca)**

**Victim Services in Summerside 902-888-8218 or [victimservicessummerside@gov.pe.ca](mailto:victimservicessummerside@gov.pe.ca).**

For more information on Emergency Protection Orders, please see our guide “Court Orders for Your Protection.”

[Textbox] If the person who harmed you encourages someone else to commit violence against you, the person who harmed you will be held responsible for the violence.

## Victim Assistance Orders (VAOs)

Victim Assistance Orders (VAOs) are longer-term tools to help victims of family violence. They can be used for non-emergency situations. They can also be used when an emergency protection order is about to expire.

A Victim Assistance Order may include the same requirements as an emergency protection order. They may also include parenting requirements and any other requirements the Judge thinks are appropriate.

A Victim Assistance Order can:

- Give you exclusive occupation of the home for a defined period of time;
- Remove the person who harmed you from the home immediately or within a specified time;
- Grant police supervision of the removal of personal belongings from the home;
- Direct the person who harmed you to stay away from specific places like your workplace or school;
- Give you temporary decision-making responsibility or day to day care of children;
- Remove your personal property from the person who harmed you;
- Direct the person who harmed you to make rent or mortgage payments on the residence;
- Direct the person who harmed you to not terminate basic services of utilities;
- Prevent publication of your name and address;
- Grant supervised parenting time to the person who harmed you while ensuring the safety and well-being of you and your children;
- Include any other requirement the Judge thinks is appropriate.

The person who harmed you may be ordered not to:

- Communicate directly or indirectly with you. An example of communicating indirectly is asking a friend to give you a note. An example of communicating directly is sending you an email or trying to talk to you in person.
- Take, sell, or damage property.
- Commit more acts of violence against you.

For more information on Victim Assistant Orders, please see our guide “Court Orders for Your Protection.”

## Offences under the Victims of Family Violence Act

It is an offence for anyone to:

- Disobey a court order;
- Falsely apply for a court order;
- Obstruct anyone doing anything that is authorized by an order;
- Publish any information that might identify victim(s).

## Criminal Code of Canada

The *Criminal Code of Canada* defines what behaviours are criminal offences and defines the punishment that may be given when someone is convicted of an offence.

It is a crime for someone to:

- Threaten you;
- Harass you;
- Damage your property;
- Hit you; or
- Physically hurt you.

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

- A **peace bond**. A peace bond is a legal promise signed by the person who caused you harm. It includes requirements that they have no contact with you, keep the peace, behave well, and obey any reasonable requirements that the Judge considers necessary.
- Criminal charges against the person who caused harm;
- An **undertaking**. An undertaking is an agreement signed by the person who caused harm if criminal charges have been laid. It lists conditions they must follow when they are released from custody.

### Peace Bonds

If you fear that the person who harmed you will injure you or your children or damage your property, you can ask for a peace bond. A peace bond is a legal promise signed by the person who caused you harm. It includes requirements that they have no contact with you, keep the peace, behave well, and obey other requirements the Judge makes. A Peace Bond is also called a **Recognizance Order**.

#### How do I get a peace bond?

You can apply for a peace bond against any person causing you to fear for your personal safety or for your property. The court will only order a peace bond if it is convinced that you have a good reason to be afraid.

To get a peace bond, either you, or a police officer on your behalf, must apply through the Provincial Court. Provincial courts are in Georgetown, Charlottetown and Summerside.

For more information on peace bonds, see our guide “Court Orders for Your Protection.”

### Criminal Charges

If the police respond to a situation of family violence, they may lay criminal charges against the person who harmed you.

It can be scary and intimidating to speak about abuse to the police. The police are best able to act on your behalf if you give them all of the information.

When you make a statement:

- Share any concerns you have about your safety.
- If you are worried that sharing information with the police puts you at risk, tell the police.
- Tell police all the details of what happened.
- Include information about any past incidents.
- Describe 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 person that harmed you from your home and lay charges. The police may put them in jail or on an **undertaking** with conditions.

### Undertakings

An **undertaking** is an agreement signed by the person who caused harm if criminal charges have been laid. It lists conditions they must follow when they are released from custody. The undertaking may include conditions to protect you.

Conditions listed in an undertaking may include:

- No contact or communication with you, directly or indirectly. An example of communicating indirectly is asking a friend to give you a note. An example of communicating directly is sending you an email or trying to talk to you in person.
- The person must stay away from your home and/or work.

If the undertaking is put in place by police, make sure you explain your fears and concerns to the police. If the police know what your fears and concerns are, the order will be more likely to include the conditions you need to be safe.

Conditions stay in place for as long as the court is dealing with the charges, or until the conditions are changed or removed from the undertaking. As the victim of violence, you cannot apply to have the conditions changed. Only the Crown Attorney or the accused person can apply for changes.

If the person who harmed you disobeys the conditions, tell the police immediately. The person may be arrested for disobeying the undertaking. A person who disobeys an undertaking may have to stay in custody until their charges are dealt with by the criminal courts.

If conditions include no contact with you, you are also not allowed to contact the person who harmed you. You may be charged with a criminal offence if you contact the person who harmed you or encourage them to contact you.

If the police decide not to lay a charge against the person who harmed you, ask why. If you think that the reason is not good enough, speak to the officer who is dealing with your case or to the officer in charge. Victim Services can also help you.

Once a charge has been laid, the person who harmed you will go to court for their first appearance. If they plead guilty, there will not be a trial. If they plead not guilty, a trial date will be set.

The charge will have to be proven beyond a reasonable doubt before the person who harmed you can be found guilty. You may have to testify in court. **Testifying** is telling the court about what happened.

The Crown Attorney is the lawyer who prosecutes criminal cases. The Crown Attorney represents society. The Crown Attorney is not a lawyer that represents you as an individual.

The trial proceeds as follows:

- The Crown Attorney asks you questions about the incident that resulted in charges, and any other related matters.
- The defence lawyer (the lawyer representing the person who harmed you) will cross-examine you. This means the defence lawyer can ask more questions about the incident that resulted in charges, and any other related 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 their case, the defence lawyer may call witnesses to testify.
- The Crown Attorney will then cross-examine the defence witnesses.

If you are going to be a witness at a trial, you may want more information. Our resource, “A Guide for Witnesses” may help.

After the trial:

- If the person who harmed you is found guilty, the Judge decides what the sentence will be. A **sentence** is the punishment for committing a crime. The judge does not usually give the sentence during the trial. For more information on sentencing, see our guide “Sentencing.”
- The Judge will also consider a Victim Impact Statement when sentencing. A **Victim Impact Statement** is a document you write that includes information about your physical and emotional injuries, and any financial loss you experienced because you were a victim of crime. This statement is filed on your behalf by Victim Services. Victim Services can help you write the statement.
- The court may put the person who harmed you on a Probation Order. In the Probation Order, the court may impose conditions for a period of time. If the person who harmed you 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 Probation Orders, see our guide “Court Orders for Your Protection.”

## 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.

The law requires all firearms owners or users to get a Firearms Possession License. This license allows people to continue to possess the firearms that they already owned on October 1, 1998 and to borrow firearms of a similar class, for example, long guns. People who want to get a new firearm or a crossbow, must get 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 visit their website at: [www.canadianfirearms.com](http://www.canadianfirearms.com) .

## Family Violence and Family Law

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 important for victims of family violence.

### Restraining Orders

A Restraining Order is a court order under the *Family Law Act* that requires your partner or ex-partner to stop “molesting, annoying or harassing” you or your children. You can only apply for a Restraining Order if you are already living apart with no plans to live together again. These orders apply to common law couples as well as to those who are legally married.

Restraining orders can be used in harassment or annoyance situations. For example, you can apply for a Restraining Order if your ex constantly telephones you or goes to your house, even if they are not threatening to harm you.

### **How do I get a restraining order?**

To get a Restraining Order, you need a lawyer. You can go to a private lawyer.

Family Legal Aid may provide you with free legal representation for some family law issues. To qualify for legal aid, you must meet certain criteria. Call Legal Aid to see if you qualify for this service or not.

Charlottetown: 902-368-6656

Summerside: 902-888-8066

## Family Violence and Parenting Arrangements – The Divorce Act and the Children’s Law Act

For the purposes of the *Divorce Act*, family violence is defined as any conduct that:

- Is violent;
- Is threatening;
- Is a pattern of coercive and controlling behaviour; or
- Causes a family member to fear for their safety.

In the case of a child, family violence also includes direct or indirect exposure to the behaviour listed above. Behaviour that falls within this definition is not necessarily a crime. However, the court will consider any behaviour that falls within this definition when making decisions about parenting arrangements.

When the court makes decisions about parenting arrangements, its only consideration is the child’s best interests. Whether there is family violence present is an important part of determining the best interests of the child. When someone is seeking a parenting order or a support order, the courts are required to consider any:

- Civil protection orders;
- Child protection orders; or
- Orders relating to criminal matters.

If any of the above orders are pending or in effect, the court must consider them unless it would be clearly inappropriate to do so.

## Helpful Publications

Community Legal Information has more information on many of the topics covered in this booklet. Copies of the following legal information guides are available, free of charge.

- Court Orders for Your Protection
- Making a Safety Plan in Violent or Abusive Relationships
- Health & Safety Plan for Aboriginal Families
- Being Safer: A Guide for Women with Intellectual Challenges
- Sexual Violence and the Law
- A Guide for Witnesses
- Defending Yourself in Criminal Court
- Parenting and the Law
- What do I Need to Know?: A Guide to Child Protection for Youth

## Important Contacts

### **Emergencies 911**

#### **Municipal Police**

Charlottetown 902-629-4172

Summerside 902-432-1201

Kensington 902-836-4499

#### **RCMP Detachments**

Queens 902-368-9300

East Prince 902-436-9300

West Prince 902-853-9300

Montague 902-838-9300

Souris 902-687-9300

#### **Family Violence Prevention Services**

Anderson House (24-hour by phone, text available 7:00am – 10:00pm) 1-800-240-9894 or 902-892-0960

Outreach Services:

West Prince 902-859-8849

East Prince 902-436-0517

Eastern PEI 902-838-4600 ext 23

Queens 902-566-1480

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

(24-hour crisis line) 902-831-2332

#### **PEI Rape and Sexual Assault Centre**

Toll free 1-866-566-1864

Main office 902-566-1864

Therapy line 902-368-8055

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

Week days: 902-368-5330 or 1-877-341-3101

Evenings, weekends and holidays: 902-368-6868 or 1-800-341-6868

**Adult Protection Program (Home Care)** for vulnerable adults who are unable to protect themselves from abuse or neglect

Charlottetown 902-368-4790

Montague 902-838-0786

O'Leary 902-859-8730

Souris 902-687-7096

Summerside 902-888-8440

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

### **Victim Services**

Victim Services in Charlottetown 902-368-4582 or [victimservicescharlottetown@gov.pe.ca](mailto:victimservicescharlottetown@gov.pe.ca)

Victim Services in Summerside 902-888-8218 or [victimservicessummerside@gov.pe.ca](mailto:victimservicessummerside@gov.pe.ca)

**Community Legal Information & Lawyer Referral Service** 1-800-240-9798 or 902-892-0853

**RISE Program** (for victims of sexualized violence and workplace sexual harassment) 902-218-6143

### **Family Legal Aid**

Charlottetown 902-368-6540

Summerside 902-888-8066

### **Criminal Legal Aid**

Charlottetown 902-368-6043

Summerside 902-888-8219

**MCPEI Indigenous Justice Program** 902-367-3681

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

Charlottetown 902-892-8870

Summerside 902-888-3870

**Blooming House** (Women's Shelter)

902-213-9969

Community Legal Information is a registered charity that receives funding from Justice Canada, the Law Foundation of PEI, the Law Society of PEI, the PEI Department of Justice and Public Safety, and other sources. Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

For more information on other legal topics, visit [www.legalinfopei.ca](http://www.legalinfopei.ca), email us at [info@legalinfopei.ca](mailto:info@legalinfopei.ca), or call us at 902-892-0853 or 1-800-240-9798. You can also find us on social media.

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