

Alberta



DOMESTIC VIOLENCE HANDBOOK

for Police and Crown Prosecutors in Alberta

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This Handbook is dedicated to the memory of Cole Harder and all other innocent victims of domestic violence homicides.



Naomi Manuel with her two-year old son Cole Harder.

Table of Contents

1) Preface.....	7
2) Introduction.....	9
3) Definition of Domestic Violence	11
4) Family Violence Initiatives in Alberta.....	13
5) What We Know About Domestic Violence.....	21
6) Understanding the Abuser.....	25
7) Understanding the Victims of Domestic Violence	29
8) Aboriginal Victims of Domestic Violence	35
9) Children Exposed to Family Violence.....	37
10) Best Practices for Police Investigating Domestic Violence.....	43
11) Gathering and Documenting Evidence	57
12) Investigating Criminal Harassment.....	65
13) Dominant Aggressor / Dual Charging	77
14) Strangulation / Choking	87
15) Assessing Risk for Further Violence	91
16) Primary Risk Factors for Homicide	95
17) Safety Planning for Victims.....	99
18) Show Cause Hearings	103
19) Best Practices for Crown Prosecutors Addressing Victim’s Issues.....	107
20) Review of Civil Orders Used in Domestic Violence Cases.....	113
21) Firearms	123
22) Sentencing Domestic Violence Cases.....	129

23) Information for Victims of Crime.....	135
24) Elder Abuse.....	137
25) Relationship Between Animal (Pet) Abuse and Family Violence.....	145
26) Domestic Violence and People Who Have a Disability	147
27) Gay/Lesbian/Bisexual/Transsexual Victims of Domestic Violence.....	149
28) Language Barriers and Immigration Status	151
29) Coordination and Collaboration.....	153
30) A True Story	159
31) Bibliography	161

PREFACE

On September 1, 2001, the Crown prosecutors' office in Edmonton created a specialized "Domestic Violence Unit." All domestic violence cases were set down for trial in one courtroom with two designated prosecutors. My memory of the first few months exclusively prosecuting domestic violence cases consists of two images: The first is watching in helpless disbelief as most victims, often with children in tow, left the courtroom only to return to abusive and dangerous situations. The second image is that of dedicated police officers exiting the courtroom in frustration and anger, as yet another domestic violence charge was either stayed or dismissed for lack of evidence.¹

Locating and compelling victim witnesses to appear was challenge enough. When we were actually successful in having them appear for trial, many had become reluctant or hostile toward the proceedings. Since the vast majority of domestic violence occurs in the privacy of the home, independent witnesses are practically non-existent and most of the Crown's case was dependent on the victim being a credible witness in court.

Three years after the Domestic Violence Unit began, the Family Protection Unit now consists of six designated prosecutors in three specialized courtrooms. A significant achievement is the collaboration we enjoy with the Spousal Violence Intervention Teams and John Howard Society who are dedicated to participating in our docket court. Victims are now receiving essential support and fewer cases are falling through the cracks. The knowledge and skill we obtain from our collaborations significantly improves the way in which we now conduct bail hearings and respond to victims. In some cases, we have been able to secure convictions after trial without victim testimony. In at least one case, our collaborative intervention prevented a suicidal abuser from carrying out threats to murder his estranged wife and children.

After reading volumes of research and literature on domestic violence, consulting experts from a number of community agencies and systems, attending conferences, training sessions and learning risk assessment, it became apparent that for a domestic violence prosecution program to succeed, all participants in the system – Crown, police, judges, social service providers, crisis intervention and treatment providers, must have a sound understanding of domestic violence and be willing to work collaboratively.

This handbook is a compilation of the research, best practices, and knowledge that experts in the area of family violence would agree are essential to effective response by the criminal justice system. It is, in my opinion, the "what you need to know" type of information that is necessary to effectively respond to domestic violence and hopefully, save lives in the process.

Valerie J. Campbell
Coordinator of Family Violence Initiatives, Alberta Justice and Attorney General

¹ When batterers slip through the cracks they have reason to believe that even the vast power of the criminal justice system cannot stop them.

INTRODUCTION

On July 8, 1982, the House of Commons unanimously adopted a motion that “Parliament encourages all Canadian police forces to establish a practice of having the police regularly lay charges in instances of wife beating, as they are inclined to do with any other case of common assault.”² This motion was initially greeted with “laughter and jeers.”³ On July 15, 1982, the Solicitor General of Canada wrote a letter to the Canadian Association of Chiefs of Police requesting their support and co-operation in addressing spousal abuse and strongly encouraged them to lay charges in wife assault cases.⁴

Today, charging and prosecution policies on domestic violence remain in effect in all provinces and territories. All jurisdictions continue to support a similar criminal justice system response, the primary objective of which is the criminalization of spousal abuse. This sends a strong and clear message to society that this type of violence is wrong and seeks to prevent the individual abuser from committing further acts of domestic violence.

The criminal justice system still faces many challenges in ensuring a sensitive, responsible and constructive response to family violence. Despite pro-charge and pro-prosecution policies, advances in legislation such as the *Protection Against Family Violence Act*, and the provision of a wide range of services for victims and offenders, the effects of domestic violence still mar many individuals in Alberta. Its impact on families, communities, and society is long lasting, damaging, and serious.

It is argued that the response by police, prosecutors and the judiciary has been inadequate to meet the needs of the victims in these cases. The criminal justice system has traditionally been focussed on incidents occurring between strangers. The introduction of family relationships into this traditional paradigm poses many challenges. The highest proportion of these challenges are recanting and reluctant victims/witnesses and the ambiguous impacts of dispositions on perpetrators and victims. Further, in some jurisdictions there is a concern that systemic pressure on the courts prevents a thorough hearing of domestic violence cases.

Alberta Justice acknowledges that domestic violence needs to be more effectively addressed by the criminal justice system. Police services must properly respond to, and handle domestic calls, no matter how frequent, since failure to do so could expose individuals and the community to danger up to and including death. The system as a whole must provide consistent and responsive support to the victim. The Crown must recognize the complex dimensions of such cases and be knowledgeable about risk factors and available options to protect victims.

² Canada, House of Commons, *Debates* (8 July 1982) at 19119-19120.

³ Keri Sweetman, “Male MPs’ guffaws at wife beating query enrage female MPs” *The Ottawa Citizen* (13 May 1982).

⁴ Department of the Solicitor General Canada, *The Myth of “The Mandatory National Charging Policy,”* [unpublished draft] (1993) at 14.

Because domestic violence can and does have disastrous consequences for victims and their children, every criminal justice response to a domestic violence incident should be executed with sensitivity, diligence and above all, a firm understanding of the issues surrounding domestic violence.

By creating and widely distributing this Domestic Violence Handbook, the Alberta government is demonstrating its commitment to eradicating family violence. Alberta's dedication to ending family violence is ongoing, and as such, this Handbook will be electronically up-dated as the need arises to keep abreast of new developments in family violence research and programming. If you wish to learn about the current services available to those affected by family violence, the latest research, or how changes to family violence-related legislation may affect you, please visit the Alberta Justice website at: <http://www.justice.gov.ab.ca/home/>, or the Alberta Solicitor General and Public Security website at: <http://www.solgps.gov.ab.ca/home/> to access the most current version of the handbook. Guidelines to develop domestic violence Police and Crown Protocols will be included in an upcoming electronic version of the Handbook.

Definition of Domestic Violence

DOMESTIC VIOLENCE is defined as any use of physical or sexual force, actual or threatened, in an intimate relationship. It may include a single act of violence, or a number of acts forming a pattern of abuse through the use of assaultive and controlling behaviour. The pattern of abuse may include:

- Physical abuse
- Emotional abuse
- Psychological abuse
- Sexual abuse
- Criminal harassment (stalking)
- Threats to harm children, other family members, pets, and property

The violence is used to intimidate, humiliate or frighten a partner of an intimate relationship, or to make them powerless.

INTIMATE RELATIONSHIP is defined as between opposite-sex or same-sex partners. These relationships vary in duration and legal formality, and include:

- Current and former dating relationships
- Current and former common-law relationships
- Current and former married relationships
- Persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time

Domestic violence is also commonly referred to as:

- Domestic abuse
- Domestic assault
- Domestic conflict
- Spousal abuse
- Spousal assault
- Battering
- Intimate partner abuse
- Intimate partner assault
- Relationship abuse
- Family violence

PLEASE NOTE - While the terms “domestic violence” and “family violence” appear interchangeably throughout this Handbook, the intended focus is on intimate partner violence.

Family Violence Initiatives in Alberta

Throughout Alberta's history, we have made great strides in helping to prevent, and deal with family violence. Starting with the introduction of the Office for the Prevention of Family Violence in 1984, and culminating with the Alberta Roundtable on Family Violence and Bullying in 2004, the following is a summary of the development of family violence initiatives in Alberta.

OFFICE FOR THE PREVENTION OF FAMILY VIOLENCE (1984)

In 1984, Alberta Family and Social Services established the Office for the Prevention of Family Violence to provide support and leadership in developing an effective response to family violence. The office distributes educational materials, develops government policies, and funds women's shelters and prevention projects. The Office for the Prevention of Family Violence was the first of its kind in Canada. In 1990, the United Nations commended Alberta for its progress in addressing family violence through the efforts of this office.

SPOUSAL ASSAULT GUIDELINES (1985)

In 1985, the Alberta Attorney General and the Alberta Solicitor General wanted to send out the message that family violence is real and that victims do not have to stop it on their own – police and prosecutors can, and will, take a lead role. As well, the Alberta government wanted to let abusers know that family violence cannot remain hidden and that there are serious consequences for abusing a partner. To reinforce these messages, the Assistant Deputy Minister, Criminal Justice Division, Alberta Attorney General's department, first issued spousal assault guidelines in 1985. These guidelines called for:

- Police to lay charges where facts and circumstances warrant, rather than placing the responsibility on the complainant.
- Crown prosecutors to request the court to consider including a condition of treatment in sentencing, where indicated.
- Crown prosecutors to withdraw cases only in exceptional cases, even when the victim indicates a desire not to proceed and to advise the victim of any support services available.
- Crown prosecutors to reflect, in their sentencing submissions or breach of peace bond charges, the serious nature of such offences or breaches.
- Crown prosecutors to make greater use of bail, interim release and probation to restrict the movement of offenders and thereby offer greater protection to the victim.

POLICE GUIDELINES (1990)

In October 1990, the Alberta Solicitor General's department introduced family violence policing initiatives after consultation with all Alberta police services and police commissions. The family violence guidelines were issued to all municipal police services and the RCMP to establish a uniform policy for handling family violence complaints. The nine general guidelines stated:

- Police shall assign the same priority to calls involving incidents of family violence as to any call where the safety of a person is being threatened.
- During the course of their investigation, police shall interview the complainant and the alleged abuser separately.
- A charge shall be laid when police officers have reasonable and probable grounds to believe an offence has occurred. The decision should not be dependant on the complainant's wishes.
- When a charge has been laid, police shall endeavor to obtain a signed statement from the complainant, as well as medical reports and photographs of injuries when injury is evident.
- Police shall offer assistance to the complainant in arranging medical attention, transportation to a safe place, and referrals to legal and community services.
- Police shall complete and file a report on all incidents of family violence regardless of what subsequent action was taken.
- Police shall make telephone contact with the complainant within one week after responding to a call to ensure the complainant's safety and to answer any questions regarding court proceedings.
- On a quarterly basis, police shall submit a Family Violence Report to the Department of Justice.
- Police shall receive specialized training on family violence.

PROSECUTOR GUIDELINES (1990)

In support of the Policing Guidelines issued to police services in 1990, guidelines were issued to all Chief Crown Prosecutors in March 1991, re-emphasizing the spousal assault guidelines first issued in 1985.

In addition, the March 1991 guidelines encouraged Crown prosecutors, in cases where detention in custody was not appropriate, to seek imposition of conditions in the release document which would assist in stabilizing the domestic situation and reducing the possibility of further violence. Such conditions included: banning the accused from the family residence, proscribing or limiting contact with the victim(s) or witnesses, banning the possession of firearms and abstention from the consumption of alcohol.

On December 17, 1993, the Assistant Deputy Minister, Criminal Justice wrote to all law enforcement agencies and Chief Crown prosecutor offices to provide guidance in relation to the recent *Criminal Code* amendments (including the new stalking offence and the new conditions of bail in Section 515) and to emphasize the following points:

- There is a need to focus on protection and support for the victim between the time of charging and the trial date.
- Section 264 of the Criminal Code, the criminal harassment (stalking) charge may be particularly useful in the period between a charge and the court appearance date, if the accused is attempting to intimidate the victim through actions which fall short of assault.

The Assistant Deputy Minister, Criminal Justice also sought police and prosecutor commitment to adopting an innovative, multidisciplinary approach to addressing enforcement and prosecution challenges associated with family violence.

In April 1995, Agents Manual Guideline #44 was issued. It reaffirms Alberta Justice's position that spousal assaults are serious criminal offences and are to be prosecuted accordingly. It consolidates key points on judicial interim release and sentencing.

PROTECTION AGAINST FAMILY VIOLENCE ACT (1999)

On June 1, 1999, the *Protection Against Family Violence Act* was proclaimed in Alberta. One of the provisions of this legislation allows police or social workers to obtain an Emergency Protection Order (EPO) by contacting a Justice of the Peace, on a 24-hour basis. The EPO is a temporary order that can order the respondent to stay away from family members and the residence, and allow the claimant (victim of violence) to remain in the home if it is safe. The legislation also allows a person to apply directly for a Queen's Bench Protection Order (a longer-term order) and allows police to obtain a Warrant of Entry to assist victims of family violence.

REVIEW OF BAIL PROCEDURES – SERIOUS DOMESTIC VIOLENCE CASES (1999)

Guidelines were announced on July 29, 1999 to improve bail notification and protection to victims of serious domestic violence. These guidelines allow police and Crown prosecutors around the province to identify cases where victims are considered to be at risk, and to notify the victims of offenders being released on bail.

- Police can flag cases where victims are deemed to be at particular risk, and victims can ask for notification. The speed of notification will depend on the ability of the police or Crown to contact the victim. The guidelines recommend telephone or personal notification whenever possible.
- Victims will be notified of the results of initial bail hearings and bail review hearings.
- Cases of spousal violence that have been flagged will be referred to specialized police spousal units, where such units exist.
- Crown prosecutors are to be individually assigned to cases of serious domestic violence, to ensure continuity throughout all stages of the case.
- Victim bail notification procedures will be included in domestic violence training programs for people employed in the criminal justice system.
- Police and Crown prosecutors are encouraged to develop local risk factoring tools to identify those accused who are most likely to offend while on bail.

CHILD, YOUTH AND FAMILY ENHANCEMENT ACT (2004)

The *Child, Youth and Family Enhancement Act* emphasizes that for families who experience domestic violence, intervention services should be provided in a manner that supports the abused family members and prevents the need to remove the child from the custody of an abused family member, while keeping in mind that the safety of children is of paramount concern. Family violence has been highlighted in the *Child, Youth and Family Enhancement Act*, and the definition of emotional injury has been expanded to include exposure to family violence. As well, police may now be required to report every family violence incident where children are present in the home.

SPECIALIZED CROWN AND COURTS – CALGARY

There are a number of specialized courts in Alberta that address charges that have been laid as a result of family violence. In 2000, a domestic violence court commenced operation in Calgary. The Calgary Domestic Violence Court is a docket court with two dedicated Crown prosecutors. The Calgary Justice Working Committee and Calgary's Action Committee Against Violence developed the Calgary Justice Working Project, of which the Domestic Violence Court is one component. The Calgary Justice Working Project, now called HomeFront, is a specialized, coordinated system that is integrated with community services.

SPECIALIZED CROWN AND COURTS – EDMONTON

In January of 2002, the Edmonton Domestic Violence Trial Court started hearing cases. Since that time, a Family Protection Unit has assumed responsibility for cases involving domestic violence, elder abuse, family-related crime, and crimes against children. There are six designated prosecutors that handle everything that comes into the Unit, but the majority of cases are domestic violence-related. There are now three Provincial Court courtrooms that deal specifically with Family Protection cases. These include: one full time trial court for family/domestic violence; one full time trial court for child protection (which also handles overflow for domestic violence trials) that is a specially designed courtroom for children who can testify behind a wall with the use of cameras so they do not have to face the accused when they testify; and a docket courtroom where all family protection cases are heard two afternoons per week for first appearance, bail, and setting trial dates. There is also a child-friendly courtroom in the Court of Queen's Bench.

SPECIALIZED CROWN AND COURTS – LETHBRIDGE, RED DEER, AND MEDICINE HAT

Lethbridge opened a domestic violence docket court in March 2004 that operates one afternoon per week. Lethbridge Crown prosecutors work with police, corrections, treatment and support providers, known as the "Domestic Violence Action Team" to ensure a better response to domestic violence for both the victim and the perpetrator by creating a coordinated, integrated strategy. Eleven protocols outline policy and procedures for every step of the response process, from intervention through to rehabilitation.

On October 6, 2005 new domestic violence courts opened in Red Deer and Medicine Hat. In Red Deer Provincial Court a half-day per week is assigned to domestic violence first appearance cases, and in Medicine Hat Provincial Court, one day per week is dedicated to first appearance and domestic violence trials.

COORDINATOR OF FAMILY VIOLENCE INITIATIVES FOR ALBERTA JUSTICE

On April 1, 2004 a specialized Crown prosecutor from Edmonton's Family Protection Unit was seconded as the Alberta Justice Coordinator for Family Violence Initiatives to take a lead role on provincial initiatives to reduce and prevent family violence. This handbook is one of those initiatives. She works with community and government stakeholders and with Alberta Solicitor

General and Public Security, Alberta Children's Services, and police services developing province wide domestic violence protocol for police and Crown prosecutors. She also develops and delivers province wide training to prosecutors, police and other front line professionals to assist them with domestic violence cases.

SPECIALIZED POLICE SERVICES – CALGARY

Calgary Police Service street personnel initiate all domestic violence investigations. Upon completion, each report is forwarded to the Domestic Conflict Unit, which consists of ten specialized investigators. Every report is reviewed and assessed for level of risk and determination of further involvement by the Unit. The Unit looks for cases of high risk, dangerousness or habitual behaviour. The Unit specializes in risk assessment, risk management, additional charges, breach enforcement and criminal harassment/stalking offences. The Domestic Conflict Unit is partnered with HomeFront, who are co-located within the Unit. HomeFront provides caseworkers that work with every victim of domestic violence where criminal charges have been laid. Working in the domestic violence docket court, the HomeFront caseworkers provide referrals to community agencies and services. The caseworkers also recognize high-risk victims and refer their cases directly to a Domestic Conflict investigator. This collaboration allows a diverse approach to addressing the needs of the victims. The Unit provides an investigator to the domestic violence courtroom, offering assistance to the Crown and court team. This daily monitoring also recognizes high-risk offenders and victims. The Domestic Conflict Unit also provides assistance to street personnel and numerous community partners.

SPECIALIZED POLICE SERVICES – EDMONTON

The Spousal Violence Intervention Teams are a joint venture of Edmonton Community Services and the Edmonton Police Service that resulted from the Mayor's Task Force on Safer Cities. Each Spousal Violence Intervention Team is made up of an Edmonton Police Service detective partnered with a social worker from Edmonton Community Services. Once the initial investigation is complete, copies of the report are sent to the Spousal Violence Intervention Team in the geographic area in which the incident occurred. The files are reviewed, then based on a group of selection criteria and personal experience, the file is rated as high, medium or low risk. For the victim, working with the team is optional. If a victim does not wish to work with a team, information is provided about where to get help and about developing a safety plan. The Teams work closely with the Crown prosecutors' office to provide as much information on the accused and the investigation as possible. The teams have dedicated themselves to the Family Protection Unit docket court where they assist victims and Crown.

SPECIALIZED POLICE SERVICES – MEDICINE HAT

The Medicine Hat Police Service provides policing to a community of 51,000. Street personnel initiate all domestic violence investigations by the Medicine Hat Police Service. Upon completion, each report is flagged to the Family Crime Unit (FCU) in the Criminal Investigations Section of the Police Service. Within the Family Crime Unit, two Sergeants are dedicated to investigating crimes involving family violence, sexual assaults, child abuse and elder abuse. One Child Protection worker, employed with the Southeastern Alberta Child and

Family Services Authority, works alongside the Sergeants in the Family Crime Unit. The Family Crime Unit was initiated in September 2004, and is based out of the Police Service building as a result of a joint investigative initiative signed by the two parties. The child protection worker has full access to police files, and police have access to child protection files. The team jointly investigates domestic violence, sexual assault and child abuse cases when children are involved or are exposed to risks. The Unit is also responsible for assessing levels of risk and completing risk assessments in all domestic violence files. The purpose of the joint investigative initiative is to provide an improved interdisciplinary response to complaints of children at risk.

SPECIALIZED POLICE SERVICES – LETHBRIDGE

The Lethbridge Regional Police Service provides policing to the communities of Lethbridge and Coaldale. The Major Crimes section of the service has two detectives dedicated to investigating crimes involving family violence and sexual assault. The other detectives of the section can fill in these roles as required. In addition, for the past four years, two child protection workers employed with Southwest Alberta Child and Family Services Authority have worked along side and out of the Police headquarters building as a result of a joint investigative initiative signed by the two parties. The child protection workers have full access to police files, and all members of the police service have access to the child protection workers. The team jointly investigates family violence and sexual assault cases, if children are involved or are exposed to risks. The purpose of this joint investigative initiative is to provide an improved interdisciplinary response to complaints of children at risk.

In March 2004 a Domestic Violence Court was set up in Lethbridge and all initial domestic violence cases are now heard at 2pm every Tuesday afternoon. This Domestic Violence Court saw further collaboration between the police, Crown, child protection, Harbour House, defense lawyers, and the Lethbridge Regional Police Victim/Witness Services workers in dealing with domestic violence.

ZEBRA CHILD PROTECTION CENTRE - EDMONTON

Since 2002, The Zebra Child Protection Centre has been lending strength to victims of child abuse within Edmonton. This interdisciplinary partnership of child protection professionals (i.e. EPS child protection detectives, Children's Services special investigators, Child at Risk Response Teams, child and family advocates, Crown prosecutors, Stollery forensic pediatricians) supports children and their caregivers throughout the disclosure, investigation, court and recovery/healing process. By providing an integrated system of services under one roof and in a child-centred, community based environment, the Centre works to minimize stress and trauma and foster healing. The majority of investigations/files originate from EPS Patrol and Children's Services Crisis Centre. This community model provides for child-centred services including a child-friendly facility; multi-disciplinary team investigations; taped forensic interviews; child advocates and supportive services for families; medical services referrals; Child at Risk Response Teams; mental health services referrals and outreach/education programs. The intervention, advocacy, educational and outreach services are supported by volunteers and funding from individuals, organizations and the government.

CHILD AT-RISK RESPONSE TEAMS

The Edmonton and Calgary Police Services also provide Child At-Risk Response Teams (CARRT) in situations where children are considered at risk. The CARRT Teams are made up of two-person teams, consisting of a police officer and a social worker. They are first responders to calls that originate from police communications, the child abuse unit, and the agency's crisis unit. A computerized database of case files is accessible by both police and social workers. Each team investigates situations that pose immediate safety concerns involving children at risk. The goal of this collaborative effort is to protect children from all forms of abuse, exploitation, and neglect. The CARRT teams give presentations that increase the public's knowledge of ways to protect children.

POLICE-BASED VICTIM SERVICE UNITS

Police-based victim service units are available to deliver services to victims of crime in 98% of Alberta. Although victim service units work closely with the police, they are independent organizations. They operate out of police facilities and deliver ongoing, frontline services to victims of crime that includes providing information about available programs and services, updates on the status of court cases, court preparation and court accompaniment. Victims of crime are referred to victim service units by police and collaboration occurs with many community partners to provide education and increase awareness. Victim service units provide information, assistance and support to victims of family violence during the police investigation and any subsequent court proceeding. In some communities, the victim service unit may be the only service available to victims of family violence.

ALBERTA HIGH RISK ENHANCED SUPPORT (AHRES) PROGRAM

The Alberta High Risk Enhanced Supports (AHRES) Program is designed to assist persons who are escaping high-risk relationship violence. The program builds on and enhances the work of community based family violence service providers such as police agencies and women's shelters. The program is under the umbrella of the Office for the Prevention of Family Violence & Bullying, Alberta Children's Services and was formerly known as New Identities for Victims of Abuse (NIVA).

Although the secure name change process is still a component of the AHRES Program, AHRES provides access to a broader range of services along a threat management continuum. Working in cooperation with community and cross sector partners, the program assists individuals and when necessary their children, by providing them with various protective measures until a threat assessment is completed. The threat assessment assists in determining available options to best support client safety.

A number of steps are undertaken when considering a person for involvement in the AHRES program and the process is initiated only after a partnering agency, the police, women's shelter or Human Resources Development Skills Canada (HRDSC) makes a referral to program staff. Referrals to the program are made by community service providers once they determine all local efforts to stabilize client safety have been exhausted and there is need for specialized support.

ALBERTA ROUNDTABLE ON FAMILY VIOLENCE AND BULLYING (2004)

In October 2003, Premier Klein announced that family violence would be a priority for the provincial government. Following seven months of consultation that included; 13 workshops, 33 focus groups, 423 submitted questionnaires, and 571 entries in the “My Alberta” contest for youth, the Alberta Roundtable on Family Violence and Bullying took place in Calgary on March 7, 2004, with over 300 delegates. Using the recommendations from the Alberta Roundtable, a Cross Ministry Business Plan - Strategy for the Prevention of Family Violence and Bullying 2005-08 was developed under the lead of Children’s Services. Alberta Justice was an active participant in the Roundtable.

FAMILY VIOLENCE SERVICES IN THE COMMUNITY

Many community organizations throughout Alberta provide services to families impacted by family violence. Women’s shelters, community agencies, churches, psychologists, psychiatrists and many other service providers work diligently to provide programs and services to victims and children, and perpetrators of family violence.

There are many examples of community agencies carrying out this important work, including: the YWCA Family Violence Program which provides family violence victims with a 24-hour crisis line, counseling, legal assistance, referral and advocacy services, and traditional housing; and the Edmonton John Howard Victim Assistance Program which provides services to victims of domestic violence appearing in domestic violence courts. Changing Ways in Edmonton and the Calgary Coalition on Family Violence are grass roots agencies that assist victims and provide programming for perpetrators of family violence.

What We Know About Domestic Violence

It is difficult to obtain a complete picture of the full extent of domestic violence in Canada because it often remains hidden. A person who is being abused may endure the abuse for a long time before seeking support, while some victims never tell anyone about the abuse. The Alberta Council of Women's Shelters estimates that eighty per cent of women sheltered do not plan on reporting the abuse to police.

A person who is being abused may be reluctant, unable to talk about, or report abuse for many different reasons.⁵ They may:

- Be emotionally attached to the abusive partner
- Have strong beliefs about keeping their relationship or family together
- Fear that the abuser will retaliate against them or their loved ones
- Fear being stigmatized by others
- Be economically dependent on the abusive partner
- Live in an isolated area
- Be socially isolated from others
- Face communications, language or cultural barriers
- Feel ashamed or powerless and lack access to information, resources and support.

In particular, victims may be reluctant to involve authorities because they:

- Do not want the abuser to be removed from the home, go to jail, or have a criminal record.
- Do not believe that involving the criminal justice system will stop the abuse.
- Do not believe that the criminal justice system can help or protect them.

According to Statistics Canada, between 1994 and 2003, spousal homicides represented approximately one-in-five solved homicides in Canada (18%) and almost half of all solved family homicides (47%).⁶ There were 1,695 family-related homicides between 1994 and 2003. Overall, six out of ten family-related homicides involved female victims. Rates of spousal homicide among the four Western provinces were higher than all other regions.

In 2003, there were a total of 78 persons who were killed by their spouse in Canada, of which 64 were female victims and 14 were male victims. A history of family violence was present in 6 out of 10 spousal homicides. As well, in 2003, there were 59 homicides committed against children and youth (under the age of 18 years), representing 11% of all homicides in Canada. Slightly more than half of these homicides (53%) were committed by a family member. Finally, there were 35 homicides committed against older adults (aged 65 years and older), representing about

⁵ Canada, Statistics Canada, Family Violence in Canada: A Statistical Profile 2002 (Ottawa: Statistics Canada, 2002).

⁶ Canada, Statistics Canada, Family Violence in Canada: A Statistical Profile 2005 (Ottawa: Statistics Canada, 2005).

6% of all homicides in Canada. Almost one-third of these homicides (31%) were committed by a family member.

Violence experienced by women tends to be more severe - and more often repeated - than the violence directed at men. For example, compared to men, women were:⁷

- Six times more likely to report being sexually assaulted
- Five times more likely to report being choked
- Five times more likely to require medical attention, as a result of an assault
- Three times more likely to be physically injured by an assault
- More than twice as likely to report being beaten
- Almost twice as likely to report being threatened with, or having a gun or knife used against them
- Much more likely to fear for their lives, or be afraid for their children as a result of the violence
- More likely to have sleeping problems, suffer depression or anxiety attacks, or have lowered self-esteem as a result of being abused
- More likely to report repeated victimization.

Some researchers have noted that women also experience higher levels of certain types of emotional abuse. Compared to men, women:

- Were four times more likely to report being threatened, harmed, or having someone close to them threatened or harmed
- Were four times more likely to report being denied access to family income
- Were more than twice as likely to report having their property damaged or their possessions destroyed
- Reported a higher incidence of being isolated from family and friends
- Reported a higher rate of name-calling and put-downs.

ALBERTA STATISTICS

In 2004, a total of 5,520 spousal abuse incidents were reported to police in Alberta, resulting in 3,865 charges being laid.⁸ According to Statistics Canada, women in Alberta experience the highest rates of domestic violence in Canada (10%).⁹ Women in Alberta also experienced the highest stalking rates in Canada, with 13% of women reporting a stalking incident within the past five years. A Canadian Institute for Health Information Report released in September 2003, (based on 1999 statistics), showed that Alberta has a higher proportion of cases involving domestic violence against women than any other province.

⁷ Information about the extent of spousal abuse in Canada comes from the 1999 General Social Survey on Victimization (GSS). This victimization survey asked almost 26,000 women and men in Canada about their experiences of abuse including experiences of violence and emotional abuse in their current or previous marriages and common law partnerships.

⁸ Statistics from Alberta Solicitor General and Public Security

⁹ Canada, Statistics Canada, Family Violence in Canada: A Statistical Profile 2005 (Ottawa: Statistics Canada, 2005).

In 2003/04, 5,929 women and 5,558 dependant children were sheltered in Alberta.¹⁰ As well, the Alberta Council of Women's Shelters helped 34,000 callers on crisis lines. Alberta's shelters were unable to accommodate 3,835 women and 3,006 children because they were full.

To respond effectively, criminal justice professionals should approach domestic violence cases with the following factors in mind:

Domestic violence:

- Is a serious crime
- Is an abuse of trust
- Takes many forms, although only behaviour that is "criminal" can trigger prosecution
- Can have devastating effect upon the victim, families, and children who witness or live with the consequences of that violence
- Is likely to become more frequent and more serious the longer it continues
- Can result in death.

Historically, the legal system has become involved only after:

- The pattern of abuse is well established
- The level of physical injury has become serious
- The violence has spread beyond the intimate relationship or family.

In some cases, victims of domestic violence:

- Continue to live with their abuser
- Are financially, emotionally, and psychologically dependent on their abuser
- Experience continuing threats to their safety
- Find it difficult to give evidence in court because of the complex nature of domestic violence
- Have difficult decisions to make that will affect their lives and the lives of those close to them (particularly those who may have suffered over a considerable period of time)
- May blame themselves or feel that agencies may blame them
- Do not make complaints of domestic violence in a timely fashion or at all for fear of reprisals, intimidation or a number of other factors
- May fear reporting offences, especially if they are disabled people or elderly and the abuser is also the caregiver
- A victim's first contact with law enforcement or the courts rarely happens after the first or second domestic violence incident
- A victim may be involved in a criminal proceeding, a civil matter, custody, support and visitation proceedings, and a matrimonial action, in multiple courts. This fragmentation coupled with differing standards of proof and rules of procedure can demoralize and inadvertently endanger victims and their children.

¹⁰ Alberta Council of Women's Shelters. Available at: <http://www.acws.ca/questions/stats.php>.

- The costs of being involved with the criminal justice and legal systems in money, time, work, privacy, and retaliation by the abuser can be daunting for victims.
- The lives of others (including children) may be at risk.
- Failure to obey a subpoena, or failure to testify against the abusive partner may be a product of the victim's judgment, that it is better not to aggravate the abuser by testifying.

Early intervention and a coordinated response to domestic violence:

- Provides the best path to protecting the victims and their children
- Prevents the escalation of a pattern of abuse
- Reduces the rate of domestic homicide and serious assaults
- Where possible, maintains family stability.

Understanding the Abuser

The primary motivation of an abuser is to maintain control over the victim. Although many still believe that anger is the cause, power and control over the victim is the prime objective of the abuser. Tactics that abusers employ may include isolation, threats, occasional indulgences, and demonstrations of omnipotence, degradation, and enforcement of trivial demands. Abusers may employ similar patterns of physical, sexual, financial and emotional coercion to control their victims. These tactics prevent victims from leaving abusive relationships. Control tactics may also include:¹¹

- Emotional abuse
- Threats/acts to kidnap, sexually abuse, or physically harm victim's children
- Controlling finances
- Sexually abusing victim
- Threats of suicide/homicide
- Harassment.

According to the National Judicial Institute on Domestic Violence, there are five central characteristics of domestic violence:

- Domestic violence is learned behavior
- Domestic violence typically involves repetitive behaviour; encompassing different types of abuse
- The batterer, not substance abuse, the victim, or the relationship, causes domestic violence
- Danger to the victim and children is likely to increase at the time of separation
- The victim's behaviour is often a way of ensuring survival.

Some abusers extend their controlling tactics to situations within the courtroom, before, during or after the proceedings. These may include:

- Physical assaults or threats of violence against the victim, those providing refuge, and others inside the courtroom
- Threats to take the children through custody/access
- Coercion to withdraw the charges or recant
- Following victim in or out of court
- Sending notes or "looks" during proceedings (an abuser can send threatening messages to the victim through body language, that will go unnoticed by all others present)
- Bringing family or friends to court to intimidate the victim
- Speeches about how the victim "made me do it"
- Statements of profound devotion or remorse to the victim and court
- Repeated requests for delays in proceedings

¹¹*Enhancing Judicial Skills in Domestic Violence Cases*, Presented by The National Judicial Institute on Domestic Violence, April 25-28, 2004, Sofitel Chicago Water Tower, Chicago, Illinois.

- Changing counsel or failure to follow through with appointments
- Intervening in the delivery of information from the court to the victim so that the victim will be unaware of when to appear
- Requests for mutual orders of protection as a way to continue control over the victim and manipulate the court
- Continually testing the limits of parenting time or support arrangements (e.g. arriving late or not appearing at appointed times, failing to make support payments)
- Threats and/or initiation of custody fights to gain leverage in negotiations over financial issues
- Initiating retaliatory litigation against the victim or others who support the victim
- Enlisting the aid of parent rights groups to verbally harass the victim (and sometimes courts) into compliance with demands
- Using any evidence of damage resulting from the abuse as evidence that the victim is an unfit parent.

It is important to remember that because domestic abuse takes many forms, only behaviour that is defined as criminal can trigger prosecution. On the other hand, the emotional or financial abuse frequent in most battering relationships will go unchallenged.

HOW TO ASSESS MUTUAL CLAIMS OF ABUSE

According to University of New Brunswick Professor, Linda C. Neilson,¹² careful scrutiny of past conduct and the power and control dynamics of the relationship are critical to accurate assessment when intimate partners make allegations of abuse against each other. She asserts that when male partners claim that female partners are also violent, this can be a reflection of several distinct realities, including:

- Women and men do engage in acts of violence, usually relatively minor acts of violence, during conflict in non-abusive relationships
- Such acts of violence tend to be far less dangerous than abusive violence
- While no violence can be condoned, female victim violence within an abusive relationship is more complicated and thus more difficult to understand
- Women who are victims of intimate-partner abuse do engage in violence and violent self-defence, violent retaliation, violent reaction to abuse, violent resistance
- Victims of abuse may even initiate violence in an effort to get imminent violence over with, as a reaction to past abuse, or to deflect violence against children
- The vast majority of victims of domestic violence are women
- Abusive violence causes more psychological and physical damage, is more likely to escalate, and is far more dangerous than non-threatening, isolated violence
- Domination, intimidation, degradation, and control are the essential elements of abusive violence

¹² Linda C. Neilson, "Assessing Mutual Partner-Abuse Claims In Child Custody and Access Case," *Family Court Review*, Vo. 42 No. 3, July 2004, 411-438.

- When domination and control are absent, it is questionable that what is being reported is abusive violence. It is more likely that what is being reported is a form of violence during conflict
- Although abuse victims can and do commit violent acts, the violence is not abusive because it is the abuser, not the victim, who is dominating, intimidating, degrading, and controlling.

When partners are abusive, they do not have to use violence to terrorize. Threats in the face of prior violence will suffice. Despite the absence of objective, observable violent action, patterns of abuse may continue. A victim of abuse will quickly learn to read signals from the abuser – certain words, or body language may easily convey threats of harm if understood in the context of that relationship.

In sum, Neilson states that the only way to assess mutual claims of intimate-partner violence is by careful consideration of context including:

- Indicators of domination and control
- Patterns of violent action
- Emotional abuse
- Social and cultural context
- Victim vulnerability
- Psychological (as well as physical) impact on victim.

In order to assess the existence of control, it is important to be able to recognize what control is.

CONTROL TACTICS

- Isolation
- Keeps victim focused on abuser
- Depletes victim's inner resources
- Occasionally indulges victim to ensure compliance
- Powerful and feared
- Threatens
- Enforces trivial demands

INDICATORS THAT SOMEONE IS BEING CONTROLLED

- Protective of partner
- Minimizes, denies abuse
- Minimizes, denies danger to self and/or children
- Hopeful, believes abuse will not happen again
- Views abuse as their fault, believes they provoked it
- Dependent upon approval from others
- May have witnessed abuse or been abused in childhood
- Looks to others or partner for direction and approval
- Focuses on positive aspects of partner

- Rationalizes or explains abuse in relation to partner’s problems or stresses
- Numb, flat affect
- Holds belief that partner is more important
- Views self as weak, dependent and needy of partner¹³

DOMESTIC TERRORIST

The following characteristics identify the “domestic terrorist”¹⁴ personality. According to experts, the “domestic terrorist” has a very high lethality index:

- Unpredictable outbursts
- Unpredictable physical violence (biting almost universal)
- Undermines partner’s sense of autonomy:
 - Controls sleep/wake cycle
 - Controls personal hygiene
 - Controls toilet routine/schedule
 - Controls eating patterns (deprivation)
- Sexual enslavement
- Sexual violence – bondage, clamping devices, strangulation, foreign object insertions (anal), forced sex with others

Police are encouraged to refer perpetrators of domestic violence to the National Domestic Violence Hotline at 1-800-799-SAFE (7233), 1-800-787-3224 (TDD), or www.ndvh.org/. They can provide you with helpful contact information.

Refer to section on Dominant Aggressor/Dual Charging for further explanation and indicators of control and the battering personality.

Appendix #1 - Includes a document entitled, “Signs to Look for in a Battering Personality.”

¹³ Violence Prevention Council of Durham Region, Durham Response to Woman Abuse (2000) available at: <http://www.durhamresponsetowomanabuse.com/protocol/approach.html>.

¹⁴ Dr. Marc Nesca, on Spousal Assault Risk Assessment.

Understanding the Victims of Domestic Violence

While often frustrating for professionals, the ambivalence, denial, and helplessness that often characterize abuse victims may be learned messages that have allowed the victim to survive the abuse. Victims of domestic violence may not behave like victims of other violent crimes. While some victims want prosecution to the fullest extent of the law, many do not.

In *Lavallee v. The Queen*¹⁵ Madame Justice Wilson stated that the effect of battering a spouse requires an expert to assist the court in understanding the unique nature of these offences:

“Expert evidence on the psychological effect of battering on wives and common law partners must, it seems to me, be both relevant and necessary in the context of the present case. How can the mental state of the appellant be appreciated without it? The average member of the public (or the jury) can be forgiven for asking: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called “battered wife syndrome.” We need help to understand it and help is available from trained professionals.”

In many cases, victims’ decisions to stay or leave an abusive relationship, or cooperate in prosecution are based on survival. Due to the complexities involved in these cases, leaving is a process, not an event. Factors victims consider may include:

- Fear
- Surviving escalations in violence that often follow separation
- Raising children alone in poverty
- Facing the potential loss of their children to abusive partners in custody battles
- Safety issues
- Complexity of relationship with abuser
- Challenges victims face having to provide for themselves and their children.

BARRIERS TO A VICTIM ESCAPING AN ABUSIVE RELATIONSHIP:

- Belief that staying is best for the children
- Lack of employment skills
- Financial dependency on abuser
- Inability to afford legal assistance with divorce, custody, or protection order proceedings
- Fear of court system intervention
- Isolation of victim from social or family connections

¹⁵ *Lavallee v. The Queen* [1990] 55 C.C.C. (3d) S.C.C.

- Victim is attempting to change in the hopes abuse will stop
- Abuser expresses remorse and promises to change
- Abuser has degraded victim to the point that victim believes statements and lacks self-confidence necessary to leave
- Religious, cultural constraints
- Lack of trust in the criminal justice system.

THE FOLLOWING LISTS COMMON SURVIVAL OR COPING STRATEGIES THAT VICTIMS MAY DISPLAY:

- Minimizing or denying the violence
- Taking responsibility for the violence
- Using alcohol or drugs as a numbing effect
- Self-defense
- Seeking help
- Remaining in the abusive relationship to avoid escalation of violence
- Initiating violence as a means of gaining some control.

FURTHERMORE, PROFESSIONALS NEED TO UNDERSTAND THAT FOR SOMEONE TO LEAVE AN ABUSIVE RELATIONSHIP THEY MAY HAVE TO:¹⁶

- Give up the denial and helplessness that have been part of her/his survival
- Acknowledge the extent, severity and danger of the abuse
- Begin feeling, thinking and acting in her/his own interests with clarity, strength and decisiveness
- Act in spite of the threats of harm to victim or children
- Take action to protect her/himself and her/his children
- Accept that the abusive partner may follow or find him/her
- Accept that leaving may place him/her and the children in further danger
- Ignore the threats of losing the children through custody
- Overcome the belief that abusive partner is all powerful and omnipotent
- Ignore constant phone calls from abuser crying and pleading
- Ignore the shock and disbelief of friends and colleagues who think abuser is a nice person
- Ignore the statements of people or professionals who subtly or blatantly blame the victim
- Overcome cultural, religious, political, and family messages pressuring victim to stay and work it out
- Ignore the sadness and insecurity of the children who miss the abusive parent and plead with the victim to take him/her home
- Accept that he/she will not give her/him money unless she/he returns
- Accept that she/he may have to request financial assistance
- Accept that often, at least temporarily, she/he has lost the home and her/his security
- Cope with all this and remain strong and decisive when she/he has been isolated from friends and family.

¹⁶ Violence Prevention Council of Durham Region, Durham Response to Woman Abuse (2000).

As a result, victims may leave and return many times during their process of working through these issues.

A victim's reluctance is often misunderstood by police, prosecutors, judges, and juries who come to believe that the victim does not care and that they should not bother to proceed or convict. Ironically, victims who are eager witnesses are sometimes disbelieved and suspected of being vindictive or of seeking an edge in a divorce or custody battle.

For the reasons above, police and prosecutors must always anticipate that the victim will become unavailable. However, early contact with victim advocates who provide information and support about domestic violence, the court process, and victim's role help to encourage cooperation. Working together, police and prosecutors can develop proof of the cases so that they can proceed to conviction without the victim's testimony. Other serious crime is regularly prosecuted without eyewitness testimony: murder cases for example.

RECATING VICTIM

Where practicable, the investigating officer should be asked to obtain the following information from the victim. Where the investigating officer is unavailable, the Crown prosecutor should conduct the interview (only in the presence of a peace officer or independent witness) in order to ascertain:

- Whether there is a history of an abusive relationship
- Whether there has been a recent separation
- Whether there is a history of harassment
- Whether there are divorce/child access/custody proceedings in progress
- Whether the accused has a psychiatric history
- Immigration status of victim and accused to the extent that whether a finding of guilt could affect Canadian residency for either party
- Whether the accused has ever threatened the victim or victim's children in any manner
- Whether there are serious financial difficulties facing the family unit
- Whether the accused is employed
- Whether the victim is financially dependent on the accused
- Whether the accused has a related criminal record
- Whether the accused has an alcohol or drug dependency
- Why the victim is recanting
- When and under what circumstances was the recantation made
- Whether the accused has used, or threatened to use a weapon against the victim and/or children
- Whether the accused has access to weapons.

The purpose of the interview is to:

- Assist in determining the genuineness of the recantation
- Provide insight into the motivation for the recantation
- Assess the victim's reliability as a witness
- Reassure and encourage the victim to testify as to what occurred
- Inform the victim about any relevant bail conditions imposed on the accused
- Confirm victim has been made aware of available community services
- Communicate the Crown's position with respect to the prosecution and possible sentence of the offender.

HELP FOR VICTIMS ESCAPING ABUSIVE RELATIONSHIPS

Individuals and families can get financial help to leave an abusive situation, set up a new household, and make a fresh start. Through Alberta Works, the Government of Alberta provides ongoing and one-time financial assistance to eligible Albertans.

- Alberta Works provides benefits to eligible people fleeing, or who have left, abusive situations. Benefits may help with the cost of:
 - Transportation for individuals and their families to escape their abuser
 - Emergency motel/hotel accommodation when
 - no shelters are available, or
 - community accommodations are not in place when a family leaves a shelter.Help with subsequent relocation to new accommodations within Alberta or Canada, rent, damage deposit and other needs may also be provided.
- Low-income Albertans can qualify for Income Support, an Alberta Works program that helps people who do not have the resources to meet their most basic needs. The Income Support program also provides health benefits, including dental care, prescription drugs, eye exams, eyeglasses, essential diabetic supplies and emergency ambulance services.
- Additional support of \$1,000 helps victims set up a new home in the community. The lump-sum benefit, which may be accessed more than once, is available to individuals who are eligible for Income Support.
- Income Support recipients who have recently left an abusive situation and need time to adjust to their new situation are not expected to pursue employment or training for up to three months. During this period, they may receive an additional \$50 monthly employment replacement benefit. Extensions can be made on a case-by-case basis.
- To access services available for Albertans escaping family violence, phone the Income Support Contact Centre 24 hours a day at 644-5135 in Edmonton or elsewhere toll-free at 1-866-644-5135, or visit an Alberta Human Resources and Employment service centre. You can also access their website at: <http://www3.gov.ab.ca/hre/isp/index.asp>.

- All Alberta Human Resources and Employment clients' information is protected and confidential.

Note: Cases can vary and applicants should check with their caseworkers about the benefits they are eligible to receive.

There is also help available to assist victims in finding the services they need. One such example is the new community service number – “211.” 211 is an easy to remember telephone number that connects people to a full range of non-emergency social, health and government services in the community. Twenty- four hours a day, seven days a week, Certified Information and Referral Specialists answer 211 calls, assess the needs of each caller, and link them to the best available information and services.

Starting in October 2005, Edmonton & Calgary will be holding the official launch of 211 to the general public. It is hoped that the general public will embrace this service and advocate for it all across the province. For more information, please visit www.211.ca.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #3 - Includes information regarding the introduction of “211,” a phone number that connects people to a full range of non-emergency social, health and government services.

Aboriginal Victims of Domestic Violence

It is very important for the police and Crown to note that there is tremendous within-group diversity in the Aboriginal culture. Aboriginal victims across Canada have different languages, traditions, and spiritual beliefs. Further complicating the issue of heterogeneity is the continuous migration between reserves and urban areas. A battered Aboriginal may have a different framework based on whether she/he grew up in an urban setting or on a reserve. There are also political and economical differences that must be considered.

Some Aboriginal victims have resided on the same reserve for their entire lives. If a battered individual leaves her/his home to go to a shelter, she/he is forced to leave both familiar surroundings and a support system.

Many victims residing on reserves live in such poverty that they do not have access to telephones, transportation, or childcare. In many cases, the remote areas in which they live do not even have telephone lines or a transportation system. Some battered Aboriginals do not speak English. All these factors severely impact the victim's help-seeking behaviour.

When dealing with individual victims of violence, it is important to understand that victims must deal with a multitude of issues. Health Canada provides the following examples:¹⁷

- Their resources may be very limited
- Their support system may be in the very community in which they live
- Their perpetrator could be an important member of the community
- The perpetrator may have possession of the house
- Suspicion about the justice system may discourage many Aboriginal people from seeing it as an option
- Victims are loath to put a perpetrator in a system that is viewed as racist
- Many victims in cases of spousal violence fear police will take their children
- In many instances, there are no culturally appropriate services.

Family violence is a significant problem for Aboriginal communities. It is important that police and the Crown recognize the special history and circumstances of Aboriginal people so that they can deliver culturally sensitive services.

¹⁷ Health Canada. *Family Violence in Aboriginal Communities: An Aboriginal Perspective*. From the National Clearinghouse on Family Violence, 1996.

Children Exposed to Family Violence

The development and emotional well being of children living with domestic violence are significantly compromised. The impact of directly or indirectly witnessing one's parent being emotionally and/or physically injured is intensified when another parent figure is responsible for the violence.¹⁸

The *Child, Youth and Family Enhancement Act* was proclaimed November 1, 2004. The definition of emotional injury in the *Child, Youth and Family Enhancement Act* includes exposure to domestic violence. In light of this, when police respond to a domestic violence situation and there are children present, consideration should be given to making a referral to Children's Services since it is recognized that exposure to domestic violence can place a child in need of intervention. It is important to note that the *Child, Youth and Family Enhancement Act* emphasizes providing intervention services that support the abused family members and prevent removing the children from abused family members custody, keeping in mind that child safety is of paramount concern.

Children in need of protection will be assessed individually, and if needed, intervention services will be provided. Detailed procedures as to how this will occur and plans to provide additional Children's Services resources have not yet been finalized.

SPECIAL CONSIDERATIONS FOR POLICE OFFICERS

Children living with domestic violence may experience physical harm in a direct manner or by accident due to their presence at the scene of a violent event. They are also at increased risk of experiencing neglect, and emotional, sexual, or physical abuse.¹⁹ Evidence shows that these experiences may influence victims' lives well into their teen and adult years.²⁰

Responding police officers should:

- Identify and interview all children in the home and document where they were during the incident.
- Determine if children are harmed or hurt.²¹
- Interview children old enough to provide a verbal interview alone, and in an age appropriate manner.
- Document the child's statements and demeanour and record all excited utterances.

¹⁸ *Children Exposed to Violence, A Handbook for Police Trainers to Increase Understanding and Improve Community Responses*, Linda L. Baker, Peter G. Jaffe, Steven J. Berkowitz, Miriam Berkman.

¹⁹ For more information on children exposed, see www.childtrauma.org and www.lfcc.on.ca.

²⁰ (Baker, Jaffe 2002).

²¹ It is important for police officers to find out if the children are physically hurt or in distress. Children may be hiding in another part of the house. They may be sleeping or pretending to be asleep. Children have likely learned that what they are witnessing is a secret that should not be discussed with others. Threats may have been made to ensure their silence on this occasion and/or in the past. Many children learn that keeping quiet and out of the way are good survival strategies.

- Reassure children to let them know someone cares.
- Address the child at eye level.
- Use simple, direct, age-appropriate language.
- Honour a child's loyalty to an abusive parent. Do not criticize or demean the abusive parent.
- Acknowledge a child's right not to speak. Do not coerce a child to talk if he/she is not comfortable doing so.
- Remember, children are affected by more than the criminal act.²²
- Take extreme care in not asking leading questions.
- Conduct videotape interview of child pursuant to s. 715.1 of the *Criminal Code*, when circumstances of offence warrant.

Communication with a child:

- Empowers the child
- Gives the child a sense of security
- Sets up a rapport between the child and police if there are more incidents in the future.

It is the intention of this section to provide guidance where children have only been exposed to violence in the home. If a child is also a victim of the violence warranting criminal charges, police should refer to their local child abuse protocol for direction.

RECOGNIZING INJURY, PHYSICAL AND SEXUAL CHILD ABUSE

Evidence suggests that children are harmed not only by their exposure to family violence, but as direct recipients of threats and abuse themselves. People who physically abuse partners commonly also physically abuse their children. Research indicates that between 49 and 70 percent of parents who physically abuse partners also physically abuse their children.²³ It has been estimated that the extent of overlap between woman abuse and child physical or sexual abuse is approximately 30 to 60 percent.

According to child expert Lydia D. Walker, the following lists are indicators that are helpful in identifying child physical and sexual abuse. This list is not all-inclusive, but is based on the experiences of one domestic violence consultant. Several indicators can be related to neglect, physical child abuse, and/or sexual child abuse; however, individual police officers and Crown prosecutors must rely on notes from training plus experience as guide.

²² The majority of domestic violence crimes occur within an ongoing pattern of psychological and physical abuse. The abuse often involves using children to control the adult victim. By the time police arrive, children have often been exposed to violence for a substantial length of time and may be experiencing the accumulated impacts of ongoing violence.

²³ Lundy Bancroft & Jay G. Silverman, *The Batterer as Parent. Addressing the Impact of Domestic Violence in Family Dynamics* 118-122 (2002) at 42-43.

SIGNS OF NEGLECT

- Pseudo-maturation
- Lack of supervision
- Indiscriminate affection/help seeking
- Unsuitable child-care arrangements
- Developmental delays
- Underweight
- Infants: failure to thrive
- Little distress in separation
- Clinging/dominating style for attention
- Ill fitting/non-seasonal clothing
- First there, last to leave
- Nutritional illness/severe lack of medical attention
- Lack of basic care

SIGNS OF PHYSICAL ABUSE

- Multiple plane bruising/other suspicious injury
- Spanking/slapping: bruising with hands
- Fingertip bruising (“restraint marks”)
- Fixed object injury
- Cigarette burns (cigars)
- Immersion/scalding: gloving, socking, “classic” lower body immersion burns
- Friction burns/drag marks
- Burns from cigarette lighters
- Pinching: crescent moon marks
- Developmental delays/short attention span
- Excessive self-control
- Lack of curiosity
- Unusual modesty/unusual clothes for cover
- Depressed/withdrawn vs. aggression/acting out
- Lack of caution in play
- Nightmares
- Bedwetting
- Unrealistic expectations by parent
- Fear of adults/flinch reactions
- Obsessive/compulsive behaviors
- Excessive concern about parent’s needs
- Temper tantrums; especially in children six and older
- Overly compliant
- Nervous disorders: tics
- Injury inconsistent with occurrence report
- Occurrence report developmentally impossible

- Public verbal abuse; rough/harsh public handling
- Regressive behavior vs. pseudo maturation
- Flat affect (usually sexual abuse, but...)

SIGNS OF SEXUAL ABUSE

HARD SIGNS

- Sexualized play
- Sexualized behavior
- VD/STD
- Child gives a sexual abuse report (false reports are so extremely rare, this is listed as a hard sign)

SOFT SIGNS

- Over-familiar affection
- Vaginal infections/anal itching
- Young boys: fear of bathroom
- Lack of privacy in the home
- Reports of nudity/partial nudity of the abuser
- Unusual behaviors around chores/checking on the kids
- Reports of child not wanting to be alone with the abuser
- Frequent urination (also seen in adult survivors)
- Explicit knowledge of sex
- Public masturbation in kids over 5
- Worry/fear for younger/other siblings
- Self-mutilation
- Suicidal ideation/attempts
- Bladder/yeast infections
- Sore throats/stomach aches
- Running away
- Sleeping in clothes
- Jealous father: no dating
- Use of words “slut,” “whore,” etc. towards daughter
- Holocaust eyes (flat affect)
- Wariness of physical contact
- Pain with walking/sitting
- Promiscuity/prostitution in teenagers
- Hoarding
- Pseudo-maturation/sexualized dress in clothing/make-up (check for gifts)
- Consistent visitation by a spouse abuser
- Bite marks on buttocks, inner thighs; assaults focused on genitals/breasts
- Perpetrator history of sexual abuse

Again, where evidence of crimes against children exists, police are to refer to their local protocol for interviewing and investigation guidelines.

RISK ASSESSMENT, RISK REDUCTION AND SAFETY PLANNING FOR CHILDREN

In domestic violence situations, children's safety is strongly linked to the safety and well being of the victimized parent. The safety of both children and adult victims is increased through the use of risk assessment tools.

Victim advocates within the police service or community often play important roles in risk assessment and safety planning. The main components in domestic violence safety plans are:²⁴

- How to leave safely
- Where to go to be safe
- Where to keep important papers and documents
- Which neighbors to tell about the violence so they can call police if necessary
- Teach children how to call the police
- How to protect self and children in dangerous situations
- Local telephone numbers for shelter, crisis center, police, child protection agency
- Importance of practicing and reviewing safety plan regularly with children
- Possible safety measures at home (e.g. locks, lights, rope ladders, smoke detectors and fire extinguishers, code words for children to be picked up by another adult, to call police or to get out of the house quickly)
- Inform school of pick-up permission for children if necessary
- Inform employer and co-workers of risk
- Other friends, neighbors, family members who can look after children and support the non-offending parent when stress/depression/anxiety levels are high.

Each intervener in the criminal justice system must ensure that the relevant information is obtained on each person who uses violence in his/her relationship, that the information is shared with other interveners who need the information, and that the information is incorporated into the decisions about how the case is handled.²⁵

To contact the **Child Abuse Hotline**, please call: 1-800-387-KIDS (5437), or after hours, please call: 1-800-638-0715.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

²⁴ *Children Exposed to Violence, A Handbook for Police Trainers to Increase Understanding and Improve Community Response*, Linda L. Baker, Peter G. Jaffe, Steven J. Berkowitz, Miriam Berkman, 2002.

²⁵ Metropolitan Nashville Police Department, (2000). *A Guide to Domestic Violence Risk Assessment, Risk Reduction and Safety Plan*. Nashville, Tennessee: Metropolitan Nashville Police Department.

Appendix #4 - Includes a document entitled “Reminders for Domestic Violence Work with Children.”

Appendix #5 – Includes a sample form that may be used by police to report children exposed to family violence. Because of the new *Child, Youth and Family Enhancement Act*, there may be a positive duty on police to report children exposed to domestic violence to Children’s Services.

Best Practices for Police Investigating Domestic Violence

Every response to a domestic call should include a substantive investigation of the incident that will involve the gathering of background information, the gathering of physical evidence including pictures, clothing, and statements from direct and indirect witnesses including children and neighbours. Victims of domestic violence should be treated with respect and dignity and be given all available assistance by police services in Alberta.

BEST PRACTICES

Best practices for police responding to domestic violence include:

- Developing and maintaining procedures for undertaking and managing investigations into domestic violence occurrences that address:
 - Communications and dispatch
 - Initial response
 - Enhanced investigative procedures
 - The mandatory laying of charges where there are reasonable grounds to do so, including cases where there is a breach of bail condition, probation, parole, or protection order
 - The use of a risk assessment tool.
 - Children exposed
 - High-risk cases and repeat offenders
 - Occurrences involving members of a police service
 - Post-arrest procedures
 - Support to victims
 - Safety planning.
- Ensuring that police service's response to domestic violence occurrences are monitored and evaluated.
- Ensuring that police service's personnel receive appropriate training in domestic violence.

COORDINATION AND COLLABORATION

Work in partnership with the following community service providers, systems, and agencies:

- Local Crown prosecutors' office
- Probation
- Victim's Services
- Children's Services
- Social Services

- Municipalities
- Women's shelters
- Community representatives responsible for issues related to domestic violence
- Other local service providers.

Establish a domestic violence coordinating committee with the above community service providers, systems and agencies, for the purposes of:

- Defining roles and responsibilities of organizations involved in providing services to victims
- The provision of assistance to victims and children in cases which do not proceed to court, or where no charges have been laid
- Establishing criteria for case and/or systems review
- Subject to privacy requirements, sharing case specific information among relevant member organizations to provide a coordinated response
- Monitoring and evaluating the responses by organizations
- Reviewing the availability of services to victims
- Risk assessment and safety planning
- Developing local community strategies and responses to address and prevent repeat victimization, including promoting and supporting follow-up with victims of domestic violence, and
- Developing initiatives/programs for prevention and early intervention.

Please view the Alberta Roundtable on Family Violence and Bullying website to compile a list of domestic violence resources in your community:

http://www.familyviolenceroundtable.gov.ab.ca/crisis_line.asp.

COMMUNICATIONS AND DISPATCH PERSONNEL

Best practices for police services responding to domestic violence include:

- Ensuring that persons who provide communications functions are trained regarding domestic violence occurrence calls for service.
- Requiring that all domestic violence occurrence calls be responded to as a priority call for service *even if the call is withdrawn*, including calls relating to alleged:
 - Breach of bail conditions
 - Breach of probation conditions
 - Breach of protection orders.
- Requiring that when a suspect has threatened violence and there is reason to believe that the suspect intends to go to the victim's location, the police will immediately go to the victim's location.
- Requiring communications personnel to attempt to obtain as much of the following information from the caller as is possible, and provide all this information to responding officers:

- Name?
- Address?
- Telephone number?
- Address where incident is occurring?
- Caller's relation to the incident (i.e.: Witness, victim)?
- Suspect's relationship to victim?
- Suspect's current location?
- Suspect's description?
- Has suspect any known mental illnesses? Suicidal threats? History of abuse/violence?
- Extent of injuries, if known?
- Whether the suspect or other residents of the household are under the influence of drugs or alcohol?
- Whether firearms or other weapons are known to be present at the scene or accessible to the suspect from some other location?
- Whether the suspect or anyone in the household has been issued or refused an authorization to acquire a firearm, Firearms License, or registration certificate?
- Whether the suspect is known to have access to firearms?
- Whether children or other persons are present in the household and their location within the dwelling?
- Whether there has been one or more previous domestic violence occurrence calls to the address?
- Nature of previous incidents?
- Whether weapons have been involved in the past?
- Whether the suspect, or anyone in the household, is subject to conditions of a:
 - Peace Bond?
 - Restraining Order?
 - Probation Order?
 - Emergency Protection Order?
 - Bail Order?
- What the caller said so the investigating officer can assess the content for evidentiary purposes and disclose it in the report.
- Require communications personnel to have an audiotape of 911 call available to investigating officer.

Due to the nature of information often provided in 911 communications, it is highly recommended that all domestic violence calls be taped and disclosed to the investigating officer and Crown prosecutor. 911 recordings will often obtain the following types of valuable evidence:

- Spontaneous utterances made by the suspect, victim or a child witness
- Name and address of an independent witness so police can interview and obtain a statement
- Confession by suspect (any statement against interest)
- Recording of crime in progress (threats, shouting, furniture breaking)
- Evidence of victim who was strangled/choked (hoarseness, loss of voice).

911 audio recordings can be admissible as original evidence – simply to prove the call was made. It discloses what was said, by whom, and the full dramatic effect of certain spoken words. It can also be used simply to refresh the witness’ memory; in either case, the hearsay rule is not offended.

More importantly, a 911 recording can be admitted as an exception to the hearsay rule for proof of the truth of its content. In which case the evidence can be admitted as a spontaneous utterance or Res Gestae – a traditional exception to the hearsay rule - as proof of the truth of the contents (and not merely to attack the witness’ credibility), or pursuant to *R. v. B. (K.G.)*, a principled exception to the hearsay rule - as proof of the truth of the contents (and not merely to attack the witness’ credibility).²⁶

To ensure that the proper information is taken, all communications and dispatch personnel should be provided with a checklist or reference sheet that sets out the above information.

The safety of domestic violence victims, whether the threat of violence is imminent or remote, should be the primary concern to 911 call-takers. The 911 responder should advise the victim to ensure her/his safety. For example, a victim could wait for officers at a neighbour’s house or remain on the 911 line.

INITIAL RESPONSE PROCEDURES

- Quickly separate the parties.
- Assist any party in obtaining medical assistance, if necessary.
- Ascertain if language is a barrier, and arrange to provide a translator when necessary. Children or family members should **not** be used as interpreters.
- Gather and preserve evidence in accordance with the police service’s investigative procedures, which should include making detailed notes of the actions and utterances of the parties; and a detailed occurrence report regardless of whether any charges were laid or an offence is alleged.²⁷
- Ensure that any children at the scene are provided with appropriate support/assistance in compliance with the *Child, Youth and Family Enhancement Act* - www.child.gov.ab.ca.
- All officers responding to a domestic violence occurrence should make detailed notes, including the actions and utterances of all parties involved.

²⁶ *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740. For a review of cases admitting out of court statements, see *R. v. W.T.V.* [2001] O.J. No. 4737 Ontario Superior Court. 911 tape admitted for the proof of the truth of its contents. Satisfied both the traditional exception to the hearsay rule of Res Gestae and the new Principled Approach. See also *R. v. Henry* [1983] B.C.J. No. 1001 (B.C.C.A.), *R. v. Dakin* [1995] O.J. 944, *R. v. Oliver* [1996] N.W.T.J. No. 69 (N.T.S.C.), *R. v. Collins* [1997] 118 C.C.C. (3d) 514 (B.C.C.A.), *People v. Buie* [1995] 86 N.U.2d 501, *R. v. Hartley* [2000] O.J. No. 5635 (Ont. C.J.), *R. v. Grand-Pierre* (1998) 124, C.C.C. (3d), *R. v. Mahoney* (1979), 11 C.R. (3d) 65 (Ont. C.A.), *R. v. U. (F.J.)*, *R. v. King* [1997] O.J. No. 5836, *R. v. Mohamed* [1997] O.J. No. 1287, *R. v. Campbell* [1997] O.J. No. 5837, *R. v. Letourneau and Tremblay* [1994] B.C.J. No. 265 (C.A.), *R. v. J.H.* [1996] O.J. No. 2332 (Prov. Ct.), *R. v. Pritchett* [1995] O.J. No. 3277 (G.D.) *R. v. S.H.* [1998] O.J. No. 613.

²⁷ Disconnected 911 call gives police the right to enter premises without warrant *R. v. Godoy* (1999) 131 C.C.C. (3d) 129 Affirming 115 C.C.C. (3d) 272 (SCC).

- A detailed occurrence report should be completed for every domestic violence occurrence regardless of whether any charges were laid or an offence alleged, and that information entered on the police service's information system for future reference.

USE OF DOMESTIC VIOLENCE REPORT FORM

It is recommended that whenever there are charges laid in a domestic violence occurrence, the investigating office use a standardized Domestic Violence Report Form that:²⁸

- Serves as an investigative checklist
- Identifies factors that need to be considered by police officers, supervisors and Crowns regarding possible bail opposition in domestic violence occurrence cases
- Identifies or allows for monitoring of follow-up steps regarding the completion of the investigation (e.g., photos of injuries within 24 hours, video taped statements, etc.)
- Provides Crowns with a quick/easy-to-read overview of the cases that supplements information set out in the Show Cause Report and Crown Brief
- Provides Children's Services with information in compliance with the *Child, Youth and Family Enhancement Act*
- Focuses on well-known lethality indicators present in many domestic homicide cases.

INTERVIEWING PROCEDURES

Method

- Interviews of the parties should be conducted in complete and total separation from each other.
- If required, using an interpreter outside the family, where practical.
- Complying with police agency procedures and considerations for interviewing child witnesses, including the appropriateness of interviewing the child.
- Officers should have the victim review and sign the officer's record of their statement, or any other statement that has been provided, including the date.

Parties

Interview the victim(s), suspects(s), and witnesses, including:

- Reporter to police communications
- Neighbours
- Family members
- Emergency personnel
- Medical personnel who treat the victim
- Children (where appropriate) Co-workers

²⁸ The Ministry of the Solicitor General, and the Ontario Provincial Police (O.P.P.) Behavioural Sciences Section, has developed a Domestic Violence Supplementary Report Form which is based on existing supplementary forms being used by a number of different police services across Ontario

- Service providers – newspaper, utilities, deliveries
- Bystanders
- Past relationships
- Any other person who observed or heard evidence of an offence.

Type of statement

- Where available, practical and appropriate, tape statements in accordance with the *R. v. KGB* guidelines.

Risk Assessment

For purposes of witness statements, risk assessments, and show cause hearings, officers should endeavour to obtain the following information:

- **Current** status of relationship?
- **History** of separations?
- During past separations, has the offender **stalked** or **harassed** the victims?
- **History** of **violence or abuse** in the relationship – physical, sexual, verbal, financial and emotional abuse?
- Has the abuse escalated during the past 12 months?
- Has the abuse required medical treatment?
- Has the offender ever hurt, injured or threatened to hurt the **victim, a family member, another person or animal**?
- Has the offender ever used **weapons** against the victim or **threatened** the use of weapons?
- Does the offender own a firearm or have plans of acquiring a **firearm**?
- Any **children** under the age of 18 who have witnessed the abuse or who have been abused by the offender?
- Has **Children’s Services** ever been involved with this family?
- Has the offender ever **abducted** or threatened to abduct the children?
- Offender **employment** - Has the offender’s employment history changed during the previous 12 months or become less stable?
- What is the offender’s current status in the **legal system**?
- Has the offender ever **violated** a court order, including no contact orders or peace bonds?
- Have **drugs or alcohol** ever been a problem for the offender?
- Does the offender have a history of **mental illness**?
- Has the offender ever idealized **homicide or suicide**?
- Other considerations:
 - Current **emotional crisis** or loss of **social support network**
 - History of **torturing or disfiguring** intimate partners
 - Sexual **sadism**
 - Extreme minimization or **denial** of assaultive history

COLLECTING EVIDENCE

Gather and document evidence as set out herein. At a minimum, this would include:

- Ascertaining whether the victim was physically assaulted
- Ascertaining whether the victim was sexually assaulted
- Determining whether any internal or external injuries occurred
- Ascertaining signs/symptoms of choking/strangulation
- Obtaining consent for release of medical information from victim
- With the victim's consent, photographing the victim's injuries and taking additional photographs within 24-48 hours of the initial occurrence when the injuries are more visibly apparent (if possible by a member of the same gender)
- Photographing the crime scene (i.e. overturned furniture or destroyed property), including the use of videotaping, where available and practical
- Seizing weapons
- Gathering any other evidence, including answering machine tapes, medical records, torn and/or blood stained clothing, or fingerprint evidence if the suspect has broken into the victim's residence
- Reviewing and preserving 911 audiotapes that record the call for service
- Using search warrants to obtain relevant evidence.

CRIMINAL HARASSMENT (STALKING)

In all domestic violence occurrences, officers should consider whether there is any evidence of criminal harassment, and should also follow the police service's procedures on criminal harassment investigations. The procedures should highlight:

- That stalking creates *psychological harm* such as fear and loss of control over the victim's life. It may also be a precursor to subsequent violent acts.
- That marriage or cohabitation does *not* prohibit a charge and conviction.
- The importance of safety planning and intervention for victims.
- Recognition of controlling behaviours/characteristics consistent with stalking.
- Methods of evidence gathering to support stalking charges.

The Criminal Harassment section contained within this Handbook includes information on the provisions of Section 264(1) of the *Criminal Code*, the advantages of using criminal harassment in domestic violence cases, examples of harassment, information specific to victims, etc. As well, it may be useful to view, "Criminal Harassment: A Handbook for Police and Crown Prosecutors" at: www.canada.justice.gc.ca/en/ps/fm/pub/harassment.

MANDATORY CHARGE POLICY

In all domestic violence occurrences an officer is to lay a charge where there are reasonable grounds to do so, including:

- Where a person has breached a condition of bail, parole, probation, a peace bond, or an Emergency Protection Order (*Protection Against Family Violence Act*) - www.child.gov.ab.ca
- For any offence committed under the *Criminal Code*, including obstruction of justice (i.e. dissuading the victim from testifying)
- When there is a contravention of a valid order under sections of the *Child, Youth and Family Enhancement Act*.

The following factors should not be determinant when making the decision to lay a charge(s):

- Marital status/cohabitation of the parties
- Disposition of previous police calls involving the same victim and suspect
- Verbal assurances by either party that the violence will cease
- The officer's concern about reprisals against the victim by the suspect
- Gender, race, ethnicity, disability, socioeconomic status or occupation of the victim and suspect.

Providing evidence exists to support the laying of a charge(s), the following factors should not be determinant when making the decision to lay a charge(s):

- The officer's belief that the victim will not cooperate
- Denial by either party that the violence occurred (providing evidence exists to support a charge).

Procedures should:

- Require that an officer explain to both the victim and the suspect that it is their duty to lay a charge when there are reasonable grounds to believe that an offence has been committed, and that only a Crown prosecutor can withdraw the charge.
- Address the use of warrants to enter a dwelling house for the purpose of arrest or apprehension in accordance with the relevant sections of the *Criminal Code*.
- Provide that if the suspect is not present when officers arrive, and reasonable grounds exist to lay a charge, a warrant for the arrest of the suspect should be obtained as soon as possible. Once obtained, a warrant should be entered on CPIC as soon as practicable and no later than within 24 hours. Every reasonable effort should be made to locate and apprehend the suspect.
- Ensure that all domestic violence related occurrences are appropriately flagged.

DUAL CHARGING AND ASSESSING MUTUAL CLAIMS OF ABUSE

Police should exercise great caution when contemplating dual charges and highlight the importance of determining:

- Who the principal excessive aggressor is (also referred to as primary or dominant aggressor)
- The difference between assault and defensive self-protection
- The recognition of abusive behaviours/characteristics
- The recognition of victim behaviours/characteristics
- The context of the relationship to assist in identifying abusive partner
- The appropriate party to arrest when dual charges are warranted
- Injuries consistent with victim
- Injuries consistent with abuser.

BAIL PROCEDURES

In all domestic violence occurrences officers will at minimum, comply with *R. v. Bleile* (2000) Alta. Q.B. C.R. 31 (5th) and obtain the following information prior to speaking to bail:

- Whether there is a history of violence
- Whether victim fears further violence and the basis of that fear
- The victim's opinion on the likelihood that the suspect will obey a term of release, especially a no contact order
- Whether the suspect has a history of alcohol or drug problems, or mental illness.

Officers should comply with *Victims of Serious Domestic Violence Notification & Protection Guideline, 1999*, Criminal Justice Division, Alberta Justice:

<http://www.solgps.gov.ab.ca/publications/default.aspx?id=394>.

Furthermore, officers should:

- Obtain the details of all previous domestic violence charges and convictions to be included in Police Report
- Obtain the "Risk Assessment" information outlined in "Interviewing Procedures"
- Assume responsibility for notifying and informing the victim as soon as possible about the release of the suspect, time and location of the bail hearing, bail conditions and the criminal justice process
- Where there has been a breach of bail, (or about to be a breach), comply with the police service's procedures relating to breach of bail.

Release from Custody

- Police should speak to the victim before deciding whether to release the suspect.
- In cases where the suspect has been arrested, the following release options are inappropriate due to an absence of conditions to protect victims:

- Summons (to Court).
- Appearance Notice.
- Promise to Appear.

When an accused is being released from custody, the following conditions should be considered:

- Abstaining from communicating, directly or indirectly, with the victim or other specified person(s)
- Abstaining from going within 200, 500 or 1000 meters of any specified places such as the victim's residence and place of work
- Abstaining from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription
- Abstaining from possessing firearms, and surrendering any license, registration certificate or authorization
- Reporting at specified times to a Peace Officer or other designated person
- Other conditions as appropriate to the individual case (consult the victim).

Procedures should include that the suspect be required to attend court within seven days of the initial occurrence, wherever possible.

FIREARMS

The procedures should provide that in all domestic violence occurrences the officers involved will:

- Follow the police service's procedures on responding to occurrences involving firearms, regardless of whether any charges are laid.
- Where violence has occurred, threats of violence have been made, or the risk assessment process indicates the potential for new or continued violence, determine if firearms are located in the residence or are available to the party making the threats.
- Where firearms are present, determine whether there is compliance with the sections of the *Criminal Code* and *Firearms Act* relating to safe storage of firearms.
- Where appropriate, perform seizure of weapons with a warrant in compliance with the *Criminal Code*.
- Providing grounds exist, perform seizure without a warrant in compliance with the *Criminal Code*. If exigent circumstances such as possible danger to the safety of any person make obtaining a warrant impracticable, the responding officer may conduct a warrantless search.
- Where appropriate, obtain *preventative* prohibition orders in compliance with the *Criminal Code*.
- Where appropriate, obtain prohibition as a condition of bail in compliance with the *Criminal Code*.
- Obtain a prohibition order for use and possession of regulated weapons if such person lives with or associates with a suspect who is the subject of prohibition order.

RISK ASSESSMENT AND SAFETY PLANNING

Officers should ensure that:

- Whenever a charge is laid in a domestic violence occurrence, the “Risk Assessment” provided in the “Interviewing Procedures” section will be completed prior to any decision to release or detain the suspect for a bail hearing.
- The completed “Risk Assessment” will be included with the Crown brief/show cause report.
- Officers should ensure that issues surrounding the victim’s safety are thoroughly addressed, including providing the victim with information on safety planning and assistance within the community.
- Where there is a risk of repeat victimization, the officer should warn the victim about the potential risk to the victim or any children, and assist them with completing the Safety Plans and Referrals contained in the Handbook.
- In extremely high-risk cases, referral should be made to Alberta High Risk Enhanced Supports Program (AHRES) under the Ministry of Children’s Services - www.child.gov.ab.ca.
- Where grounds for charges *do not* exist, police officers should contemplate applying for an Emergency Protection Order on behalf of the victim pursuant to the *Protection Against Family Violence Act (PAFVA)*. Alternately, police could provide referrals to other agencies listed as designated persons who may apply for an Emergency Protection Order on the victim’s behalf.

CHILDREN EXPOSED/AT RISK

Officers should address issues relating to children in accordance with the police service’s procedures on child abuse and neglect and the police service’s protocol with Children’s Services.

Procedures will require police officers to comply with the *Child, Youth and Family Enhancement Act*.

Procedures should require police officers to complete a standardized method of notification to the department of Children’s Services when complying with the *Child, Youth and Family Enhancement Act*.

For further information on children exposed see Children’s Services website at www.child.gov.ab.ca or the London Family Court Clinic website at www.lfcc.on.ca.

HIGH RISK CASES AND REPEAT OFFENDERS

The investigative supports that may be available to assist in cases determined to be high risk, or where there is a repeat offender with a history of domestic violence with the same or multiple victims, include:

- The use of physical surveillance
- Electronic interception
- Video and photographic surveillance
- Victim/witness protection services. In extremely high-risk cases, referral to the Alberta High Risk Enhanced Supports Program (AHRES) under the Ministry of Children's Services - www.child.gov.ab.ca.

Additionally, officers should:

- Obtain the details of all previous domestic violence charges and convictions to be included in the Police Report
- Conduct Risk Assessment and Safety Planning as outlined above and in the Handbook
- Assist Crown prosecutors with gathering documentation when Dangerous Offender, Long Term Offender, or Ss. 810.1 or 810.2 applications are contemplated pursuant to the *Criminal Code of Canada*.

In cases involving high risk offenders, or where there is a repeat offender, the offender should be entered into the "SIP" category on CPIC as soon as possible, and no later than within 24 hours.

SUPPORT TO VICTIMS

Officers who respond to domestic violence occurrences should provide assistance to the victim, including:

- Assisting the victim in obtaining medical assistance, if necessary.
- Remaining at the scene until they are satisfied there is no further immediate threat to the victim.
- Addressing any special needs of the victim (i.e. dealing with communication barriers).
- Addressing the needs of children exposed to domestic violence occurrences, (whether actually witnessing or not), including encouraging the child's primary caregiver to consider obtaining assistance for the child from a counselor.
- Attending to the residence of the victim to ensure peaceful entry when the victim or suspect returns to take possession of personal belongings if concerns for the victim's safety exist. If either party contests property removal, the officers should advise the parties of the need to seek a civil remedy.
- Arranging for transportation to a shelter or place of safety, if necessary, with the location remaining confidential to the suspect and third parties.
- Providing information to the victim on services that are available, and offer immediate contact with victim services.
- Providing a localized pamphlet on domestic violence that includes information on local resources to assist victims.

TRAINING

Training should be approved by the departments of the Solicitor General and Public Security and Justice and Attorney General to satisfy the key elements outlined in the curriculum described below:

- The dynamics of abusive relationships including the effects of physical assault and psychological abuse
- The initial police response to domestic violence occurrences, including officer safety
- Interviewing procedures, including child witnesses
- Collection, care and handling of evidence
- Search, seizure and warrants
- Firearms seizures and legislation
- Mandatory charge and primary aggressor policy
- Choking/Strangulation investigations
- Court orders (i.e. Restraining orders, peace bonds, Emergency Protection Orders), judicial interim release orders, other relevant legislation and probation
- Victim assistance and local victim services, as well as victims with special needs
- Risk factors for further violence and homicide
- Risk assessment
- Procedures relating to post-arrest
- Strategies for addressing repeat victimization and high-risk cases
- Safety planning
- Issues relating to children who witness violence
- How to establish domestic violence working groups/collaborate with the community
- Encourage first responders to participate in cross-sector training.

MONITORING AND SUPERVISION

Every police service should designate a domestic violence coordinator who will be responsible for:

- Monitoring the response to, and investigation of, domestic violence occurrences, including compliance with the police service's procedures by supervisors, officers and other members
- Monitoring and evaluating follow-up to domestic violence cases
- Liaising with the Crown prosecutor, Probation and Parole Services, Victim's Services, Children's Services and other local services and community representatives responsible for responding to issues related to domestic violence occurrences
- Informing the public and media about the police service's domestic violence occurrences procedures
- Ensuring that statistical data are kept on domestic violence occurrences and provided to the Ministry of the Solicitor General in the form designated by the Ministry.

Appendix #1 - Includes a document entitled, “Signs to Look for in a Battering Personality.”

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies’ practice guidelines.

Appendix #5 – Includes a sample form that may be used by police to report children exposed to family violence. Because of the new *Child, Youth and Family Enhancement Act*, there may be a positive duty on police to report children exposed to domestic violence to Children’s Services.

Appendix #6 - Includes an “Information Sheet on Sworn Videotaped Statements in Domestic Violence Occurrences.”

Appendix #7 - Includes a “Domestic History Questionnaire,” recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Appendix #8 - Includes a sample “Domestic Violence Investigation” form that can be utilized by police agencies when responding to a domestic violence incident.

Gathering and Documenting Evidence

When gathering and documenting evidence, police officers should follow these procedures:

➤ **DOCUMENT:**

- Victim's, suspect's, and child's condition and demeanour
- Torn clothing
- Smearred make-up
- Whether the victim is pregnant
- Disarray in house
- Suspect's symptoms of alcohol or controlled substance use
- Ask victim and suspect if they have pain even if there are no visible injuries
- Determine whether the victim was physically assaulted and whether any internal or external injuries occurred and noting their response (including where possible on a diagram). Be sure to look for and document:

➤ **WITH RESPECT TO VICTIM:**

- Signs/symptoms of strangulation/choking (refer to Strangulation/Choking section)
- Injuries under hair
- Injuries behind ears
- Bikini area injuries

➤ **WITH RESPECT TO SUSPECT:**

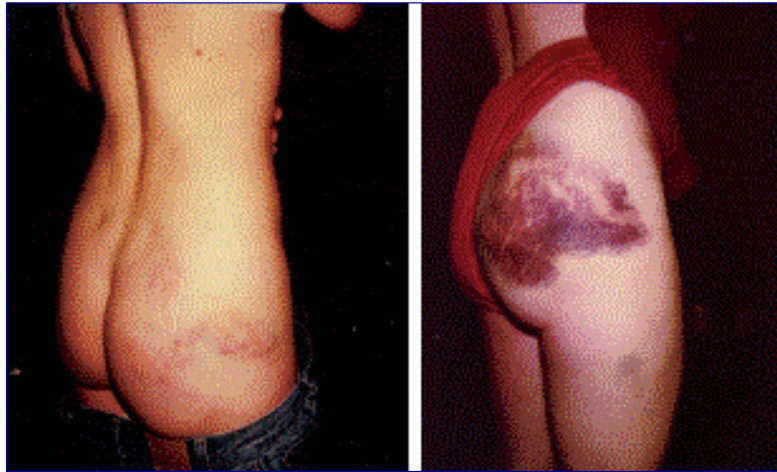
- Offensive injuries (e.g. scraped knuckles)
- Injuries inflicted in self-defense by victim
- Document the size of the victim and the suspect in relation to each other. This will help to determine the dominant aggressor.
- In apparent 'mutual combat' situations, try to determine who was the dominant aggressor (dual arrests are discouraged, when appropriate, but not prohibited – refer to section on Dominant Aggressor/Dual Charging)

➤ **PHOTOGRAPH:**

- Crime scene (e.g., overturned furniture or destroyed property, blood stains)
- With the victim's consent, the victim's injuries at the time of the occurrence
- With the victim's consent, the victim's injuries within 24-48 hours of the initial occurrence when the injuries are more visibly apparent (if possible by a member of the same gender; consideration should be given to using Polaroid photographs when appropriate)
- Suspect's injuries (e.g., offensive injuries such as scraped knuckles or injuries depicting self-defence actions of victim such as scratch/bite marks to hands)

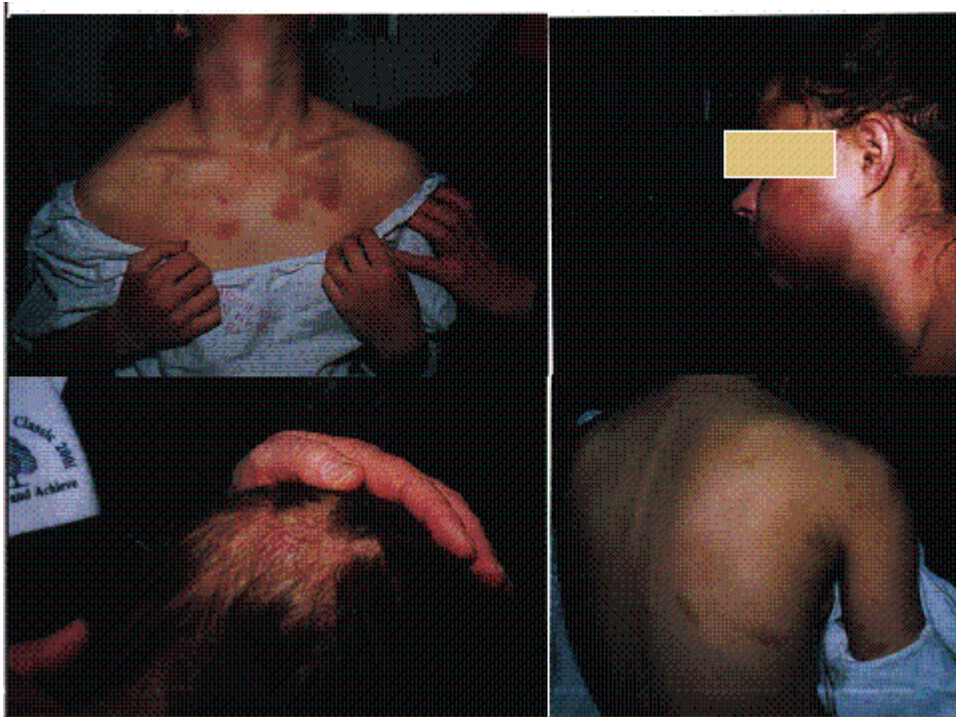
This victim sustained serious structural injuries to the left side of her face requiring surgical reconstruction. The first photograph taken the day of the offence does not reflect the serious harm. Below, the photograph taken a few days after the offence is a much better reflection of the trauma actually sustained.





Courtesy San Diego Domestic Violence Unit

Left: Taken first day of assault Right: 4 days after assault



Photograph all signs of injuries

- **GATHER ANY OTHER EVIDENCE, INCLUDING:**
 - Voice message tapes
 - Torn and/or blood stained clothing from suspect and victim
 - Damaged telephone
 - Weapons
 - Anything used as weapon
 - Fingerprint evidence if the suspect has broken into the victim's residence
 - Seize firearms/weapons.

- **DETERMINE WHETHER:**
 - The suspect has any guns, or any access to other firearms or other weapons
 - The suspect has a licence, registration certificate or authorization, or a document issued under the *Criminal Code* provisions
 - The suspect ever had a licence, registration certificate or authorization for a firearm revoked.

- **OBTAIN MEDICAL INFORMATION:**
 - Victim's consent to release of medical information
 - Hospital/Emergency Room records
 - Sexual Assault Response Report
 - Victim's spontaneous utterances made to medical staff.

- **OBTAIN AND DISCLOSE 911 TAPES THAT RECORD THE CALL FOR SERVICE.**

- **OBTAIN AND DOCUMENT THE NAMES AND DATES OF BIRTH OF ALL CHILDREN PRESENT, OR WHO NORMALLY RESIDE, IN THE HOME. INCLUDE INFORMATION ON THEIR WHEREABOUTS AFTER THE INCIDENT. NOTE THAT SUSPECTED CHILD ABUSE MUST BE CROSS-REPORTED.**

- **CHECK FOR THE EXISTENCE OF ANY RESTRAINING ORDERS, EMERGENCY PROTECTION ORDERS, PEACE BONDS, PROBATION ORDERS ETC. AGAINST THE SUSPECT.**

- **BE SURE TO OBTAIN SEARCH WARRANTS WHEN REQUIRED TO OBTAIN EVIDENCE.**

- **WHERE THE VICTIM IS BEING STALKED/HARASSED, INVESTIGATIVE TECHNIQUES TO GATHER CORROBORATIVE EVIDENCE MIGHT INCLUDE THE FOLLOWING:**
 - Photograph any items vandalized, damaged or written on
 - Check for fingerprints on vandalized items or other objects sent to or left for the victim

- Obtain telephone and cellular phone records of the victim and suspect, which may provide evidence of calls
- Have the victim obtain a telephone answering machine and retain recorded messages
- Interview any potential witnesses, such as neighbours, family members, friends and co-workers
- Research the suspect’s whereabouts during times of alleged acts to rebut or verify “alibi defences”
- In serious cases, consider surveillance, which may include static surveillance of the victim’s residence or other locations where harassment is occurring, mobile surveillance of the victim at points of vulnerability (such as times when they are travelling between home and work) to gather evidence that the suspect is following the victim, and surveillance of the suspect.

➤ **SEIZE ALL PHYSICAL EVIDENCE; DO NOT LEAVE THIS EVIDENCE WITH THE VICTIM. COMMON SOURCES OF EVIDENCE INCLUDE THE FOLLOWING:**

- Taped phone messages (record all relevant voice mail messages)
- Letters, notes, documents, photographs, diaries and any other record or item made by the suspect regarding the victim
- Documents containing the signature and handwriting or hand printing of the suspect; computer hard drives and computer disks containing, for example, e-mail messages and poems by the suspect that concern the victim or were sent to the victim
- Hard copies of e-mail messages from the suspect to the victim.

RISK ASSESSMENT

Risk factors that will assist police officers, Crown prosecutors and victims in domestic violence occurrences have been identified in a number of studies.²⁹

²⁹ For a comprehensive review of the existing Risk Assessment tools, see:

1. *Brief Spousal Assault Form for the Evaluation of Risk* (B-SAFER). This tool, developed by P. Randall Kropp, Ph.D., Stephen D. Hart, Ph.D., and Henrik Belfrage is a checklist or guide for assessing risk for spousal assault in criminal and civil justice (i.e. forensic) settings. The B-SAFER is intended to help people exercise their professional discretion when conducting risk assessments; it is not a replacement for professional discretion. Its purpose is to introduce a systematic, standardized, and practically useful framework for gathering and considering information when making decisions about violence risk. It draws directly from the scientific and professional literatures on spousal violence risk assessment and victim safety planning.
2. *Ontario Domestic Assault Risk Assessment* (ODARA). ODARA is a general violence-screening tool dealing with recidivism. It does not concern itself specifically with the question of lethality. The form contains 13 questions where “yes” answers are given a one-point score. If a person scores between 7 and 13, there is a 70% risk that the individual may commit another assault. This tool may be of great value as a general violence screening to raise “red flags” for the potential of a victim being at risk of future violence.
3. *Danger Assessment Instrument*. DA–2 developed by Jacquelyn C. Campbell, Ph.D., R.N. of the John Hopkins University School of Nursing, a leading expert and researcher in the United States. Her instrument first asks the victim to record specific examples of abuse on a calendar. The instrument then poses 20 questions on lethality requiring a “yes/no” answer. It establishes a pattern of frequency and severity of the violence during the past year, and serves as an important safety-planning tool, especially for victims who often minimize their level of risk.

For purposes of witness statements, risk assessments, and show cause hearings, officers should endeavour to obtain the following information:

- **Current** status of relationship?
- **History** of separations?
- During past separations, has the offender **stalked** or **harassed** the victims?
- **History of violence or abuse** in the relationship – physical, sexual, verbal, financial and emotional abuse?
- Has the abuse escalated during the past 12 months?
- Has the abuse required medical treatment?
- Has the offender ever hurt, injured or threatened to hurt the **victim, a family member, another person or animal**?
- Has the offender ever used **weapons** against the victim or **threatened** the use of weapons?
- Does the offender own a firearm or have plans of acquiring a **firearm**?
- Any **children** under the age of 18 who have witnessed the abuse or who have been abused by the offender?
- Has **Children’s Services** ever been involved with this family?
- Has the offender ever **abducted** or threatened to abduct the children?
- Offender **employment** - Has the offender’s employment history changed during the previous 12 months or become less stable?
- What is the offender’s current status in the **legal system**?
- Has the offender ever **violated** a court order, including no contact orders or peace bonds?
- Have **drugs or alcohol** ever been a problem for the offender?
- Does the offender have a history of **mental illness**?
- Has the offender ever idealized **homicide or suicide**?
- Other considerations:
 - Current **emotional crisis** or loss of **social support network**
 - History of **torturing or disfiguring** intimate partners
 - Sexual **sadism**
 - Extreme minimization or **denial** of assaultive history.

-
4. *Spousal Assault Risk Assessment Guide (SARA)*. SARA is a clinical checklist of risk factors for spousal assault. The instrument is a two-page form with 20 questions that are rated 0–2. Like the above checklists, no specific information is recorded to source the answers.
 5. Initial Screening Tool and Comprehensive Risk Assessment Interview Guide (Durham Region). A 21-question screening tool was created for all family court personnel to use in their initial contact with a family. If domestic violence was identified, then a comprehensive risk assessment interview guide covering 25 areas was available to aid community experts in assessing for further risk and conducting appropriate safety planning.
 6. Domestic History Form (Huron County). The Crown Attorney’s office in Huron County in Ontario is currently using the Assessing Dangerousness in Domestic Cases form to ensure that information on risk assessment has evidentiary value in domestic violence proceedings. For more information, visit: www.bcifv.org.

Appendix #6 - Includes an “Information Sheet on Sworn Videotaped Statements in Domestic Violence Occurrences.”

Appendix #7 - Includes a “Domestic History Questionnaire,” recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Appendix #8 - Includes a sample “Domestic Violence Investigation” form that can be utilized by police agencies when responding to a domestic violence incident.

Investigating Criminal Harassment

Criminal harassment (“stalking”) has been a crime in Canada since 1993. In Canada, the primary motivation for stalking another person relates to a desire to control a former partner. Therefore, in many cases, it is an extension of domestic violence. Indeed, a significant factor in the swift enactment of section 264 was the increasing concern among criminal justice personnel that existing *Criminal Code* provisions did not adequately capture “stalking” conduct, which was emerging as a new form of violence against women.

The psychological effect of stalking on victims can produce an intense and prolonged fear. This fear usually includes an increasing fear of the escalation of the frequency and nature of the conduct (for example, from non-violent to life-threatening) and is accompanied by a feeling of loss of control over the victim’s life. Although stalking in and of itself is harmful to victims, it may also be a precursor to subsequent violent acts. Victims experience intimidation, psychological distress and emotional distress.

Criminal Code of Canada Section 264 (1) - No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

- a. The conduct mentioned in subsection (1) consists of:
 - i. Repeatedly following from place to place the other person or anyone known to them;
 - ii. Repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
 - iii. Besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
 - iv. Engaging in threatening conduct directed at the other person or any member of their family.

Despite its purpose and the best intentions of police and prosecutors, criminal harassment continues to be overlooked in many domestic violence cases. This oversight can have tragic consequences, particularly for victims who have left abusive relationships.³⁰

³⁰ Stats from the Domestic Violence Death Review Committee “Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002.”

ADVANTAGES IN THE USE OF CRIMINAL HARASSMENT IN DOMESTIC VIOLENCE CASES

- Marriage or cohabitation is not a bar to a conviction under s. 264.³¹
- Evidence of pre-charge conduct and similar fact evidence is relevant to prove two elements of the offence:³²
 - Whether the victim had a reasonable fear for her/his safety, and
 - Whether the accused knew or was reckless as to whether his/her conduct harassed the victim.
- One incident/threat, considered together with the offender's past conduct towards the victim, could constitute threatening conduct.³³
- The maximum sentence for criminal harassment is now 10 years (when proceeding by indictment) making it possible:
 - To argue that criminal harassment fits the criteria of a "serious personal injury offence" for the purpose of recognizance orders under s. 810.2 of the *Criminal Code*, and
 - For bringing Long Term Offender or Dangerous Offender applications under Part 24 of the *Criminal Code*. See "Sentencing" section for more information on these applications.
- S. 231(6) of the *Criminal Code* makes murder committed in the course of criminally harassing the victim a first-degree murder offence, irrespective of whether it was planned and deliberate. The relevant inquiry breaks down into four parts:
 - At the time of the murder, was the accused engaged in any conduct that would constitute criminal harassment, as set out in section 264(2)?
 - If so, did the accused know that the victim was harassed or was the accused reckless as to whether or not the victim was harassed by such conduct?
 - Did the accused have any lawful authority for such conduct?
 - Did any such conduct cause the victim, reasonably in all the circumstances, to fear for their safety or the safety of anyone known to them?

Every responding professional should be adept at recognizing stalking behaviours and take the necessary steps to protect the victims with adequate safety planning and intervention. In many cases, this may only be achieved through collaboration with victims, police, Crown, judges, social agencies, treatment and correctional services. Remember, because an abuser's primary motivation is power and control over the victim, continued attempts to control often occur and intensify after separation.

³¹ *R. v. Browning* (1995), 42 C.R. (4TH) 170 (Ont. Ct.Prov.Ct.).

³² *R. v. Ryback* (1996), 105 C.C.C. (3d) 240 (B.C.C.A.), leave to appeal to S.C.C. refused, [1996] S.C.C.A. No. 135 (QL). Also, *R. v. S.B.*, [1996] O.J. No. 1187 (Gen. Div.) (QL) held that in domestic violence cases, evidence of pre-charge conduct is frequently admissible to provide narrative context or background to the charges before the court.

³³ *R. v. Kosikar* (1999), 138 C.C.C. (3D) 217 (Ont. C.A.), leave to appeal to S.C.C. refused (2000), [1999] S.C.C.A. No. 549 (QL).

The prohibited conduct can be one, all, or any combination of the following behaviours:

- Repeatedly following from place to place the victim, or anyone known to them
- Repeatedly communicating with, either directly or indirectly, the victim or anyone known to them
- Besetting or watching the dwelling-house, or place where the victim, or anyone known to them, resides, works, carries on business or happens to be
- Engaging in threatening conduct directed at the victim or any member of their family.

Some examples of continued attempts to control through harassment may include:

- Physical assaults or threats against those providing refuge to the victim
- Threats to take the children through custody/access
- Coercion to withdraw the charges or recant
- Threatening messages to the victim through body language that will go unnoticed by all others present
- Engaging family or friends to intimidate the victim
- Repeated requests to meet or speak with abuser
- Intervening in the delivery of information from the court to the victim so that the victim will be unaware of when to appear
- Requests for mutual orders of protection as a way to continue control over the victim and manipulate the court
- Continually testing the limits of parenting time or support arrangements (e.g. arriving late or not appearing at appointed times, failing to make support payments)
- Threats and/or initiation of custody fights to gain leverage in negotiations over financial issues
- Initiating retaliatory litigation against the victim or others who support the victim
- Enlisting the aid of parent rights groups to verbally harass the victim (and sometimes courts) into compliance with demands
- Using any evidence of damage resulting from the abuse as evidence that the victim is an unfit parent.

The following sections 1-13 are taken from Justice Canada's "Criminal Harassment: A Handbook for Police and Crown Prosecutors" (2004), also available online at <http://canada.justice.gc.ca>.³⁴

1. VICTIM INTERVIEW

- Obtain a detailed chronology of all relevant incidents, including words uttered or gestures made by the suspect and conversations and other communications with the suspect.
- Determine whether and how the victim has directly or indirectly, through family or friends, indicated to the suspect that any contact is unwelcome.
- Ascertain where and when the conduct occurred, as these factors can affect the victim's fear.

³⁴ Justice Canada. "Criminal Harassment: A Handbook for Police and Crown Prosecutors," March 2004.

- Ascertain whether the incident(s) involved others or occurred in the presence of others (such as family, friends, co-workers and/or neighbours).
- Obtain background information on any previous relationship with the suspect (such as whether there have been any previous incidents of domestic violence).
- Obtain information about the impact that the suspect's conduct has had on the victim. Has the conduct caused the victim to fear for their safety or that of someone known to them and if so, how?
- Has the victim taken any security or preventative measures, such as getting an unlisted telephone number, or changing their residential or work address?
- Has the victim sought medical treatment or counselling?
- Where the victim and suspect had a prior intimate relationship involving children, are they currently involved in a custody/access legal action?
- Determine what, if any, custody or access terms and conditions apply.
- Is the suspect subject to any peace bonds; civil restraining orders; recognizance, bail or probation conditions; or weapons or firearms prohibition orders? If so, can the victim provide a copy of the order(s) and/or the relevant details?
- Does the suspect have any guns, or any access to other firearms or other weapons? Does the suspect have a license, registration certificate or authorization, or a document issued under the *Criminal Code* provisions? Has the suspect ever had a license, registration certificate or authorization for a firearm revoked?

2. ADVICE TO THE VICTIM

- That the potential threat remains, even if they have reported the incident to police and/or have obtained a restraining order.
- They have a primary role to play in ensuring their own safety and that the victim may be required to alter their lifestyle and usual routines, schedules, transportation routes and places regularly frequented.
- **Not** to initiate contact with the suspect, or agree to such contact.
- Maintain a log of all contact (date, time, nature and summary of contact) with the suspect, including drive-bys and all unusual events, no matter how trivial they seem or whether they can be definitively attributed to the suspect.
- Retain for police all notes, gifts, telephone answering machine tapes and messages, and electronic mail and postings, and any other evidence related to the investigation.
- Not to handle or open any items received from the suspect, in order to prevent further distress to him or herself and to ensure that they do not contaminate the evidence for purposes of forensic analysis.
- To use available telephone services that may help police trace telephone calls. Such pay-per-use services may include "last call return" and "name that number" (which enables the victim to obtain the name and locality associated with a given telephone number).
- Consider subscribing to other telephone services, including call screening and call display.
- Inform relatives, neighbours, friends, co-workers, employers, property managers and doormen of the on-going harassment and, if possible, provide them with a photograph of the suspect.
- To carry a copy of any criminal or civil protection/restraining order at all times.

3. VICTIM WELFARE

Take appropriate action to increase the victim's security, such as the following:

- Inform the victim about the importance of security measures, such as making safety or contingency plans; carrying a cellular phone; installing better locks, improved lighting and a security system; getting a guard dog; and identifying safe places, including police stations, domestic violence shelters and busy public areas.
- Have a panic alarm installed, either privately or through local victim protection programs.
- Flag the victim's address on police databases (such as premise history on CAD systems).
- Request special attention from area patrols, parade briefings, and notify the watch commander.
- If the suspect does not have any firearms, apply for a preventative prohibition order under section 111 of the *Criminal Code*. If the suspect does have firearms, seize the firearms pursuant to section 117.04 of the *Criminal Code*;
- Relocate the victim when the threat level is high or, in extreme cases, suggest that the victim consider seeking a new identity.
- Address the special needs of victims who face particular barriers. Cultural, communication, mobility, age and other barriers can increase the victim's risk.
- Help the victim protect their children. Children's safety and emotional health are affected, whether or not they witness the threats or violence.
- Help the victim contact victim services for support and assistance as soon as practicable after the complaint has been made. Victim service workers play a significant role in helping victims to identify risks and to develop and implement a personal safety plan for themselves and their children.
- Provide the victim with an occurrence report or incident number, and advise the victim to quote that number when making future complaints or inquiries. Provide the name of one officer who will be responsible for coordinating the investigation, even if other officers become involved.
- Victims and police need to be aware of dramatic moments and highest risk times, such as the termination of a relationship; the arrest of the suspect; court dates, custody proceedings; and release or escape from custody.

4. COLLECTING EVIDENCE – INFORMATION TO INVESTIGATE AND DOCUMENT

Ask the victim about, and query all relevant databases for, information on the suspect. Search under known aliases as well. Databases queried should include CPIC, CFRO, SIP, FIP, local and provincial information systems, and available probation information (for summary conviction offence details not captured by CNI/Level II).

Where applicable, immigration and refugee authorities may have relevant information. These queries should include searches for criminal records, prior contact with police and contact with police in communities where the suspect may have previously lived. If the criminal record indicates similar charges determine the identity of the victim in those cases and the nature of their relationship with the accused. These queries should cover the following:

- The nature, frequency, and specific details of threats and actual violence against the victim or someone known to the victim (note whether they are increasing in frequency and intensity)
- Any prior threats against the victim or someone known to the victim
- Any actual pursuit or following of the victim or someone known to the victim
- Any history of violence (including sexual assault) against the victim or someone known to the victim
- Any violations of civil restraining orders, peace bonds, recognizances, or bail or probation conditions
- Any information on the suspect's tendency toward emotional outbursts or rage
- Other incidents involving threatening, violence or pursuit, including cruelty to animals
- Homicidal or suicidal behaviour or threats
- Major stress factors, such as loss of employment or termination of a relationship
- Vandalism to the victim's property
- Intense jealousy, including sexual jealousy
- A history of mental illness
- Substance abuse problems.

In the case of former intimates involving children, include any history of involvement with child protection authorities.

Determine possession of or interest in weapons or access to weapons (search CPIC including CFRO and FIP). Determine the following, for example:

- Whether there are any weapons prohibition orders flowing from conviction or discharge, as a condition of bail or recognizance, or in preventative prohibition orders.
- The type of firearms documentation the person has (for example, does the suspect have restricted firearms, and how many firearms does the suspect have?).
- Whether authorities have ever refused or revoked a license, registration certificate or authorization (or Firearms Acquisition Certificate, permit or registration certificate under the former firearms provisions of the *Criminal Code*).

Any information discovered should be entered into the FIP database. This would include any conduct that gives rise to concerns about violence, including criminally harassing behaviour. If the information is not entered in FIP, then Chief Firearms Officers (CFOs) will not be advised. They will not know whether to consider revoking existing licenses and will not have this information when considering new applications. This type of information is crucial when CFOs are deciding whether to issue or revoke a license.

5. ADDITIONAL INVESTIGATIVE TECHNIQUES

Investigative techniques to gather corroborative evidence might include the following:

- Photograph any items vandalized, damaged or written on
- Check for fingerprints on vandalized items or other objects sent to or left for the victim

- Obtain telephone and cellular phone records of the victim and suspect, which may provide evidence of calls
- Have the victim obtain a telephone answering machine and retain recorded messages
- Interview any potential witnesses, such as neighbours, family members, friends and co-workers
- Research the suspect's whereabouts during times of alleged acts to rebut or verify "alibi defenses"
- In serious cases, consider surveillance, which may include static surveillance of the victim's residence or other locations where harassment is occurring, mobile surveillance of the victim at points of vulnerability (such as times when they are travelling between home and work) to gather evidence that the suspect is following the victim, and surveillance of the suspect.

6. PHYSICAL EVIDENCE

Seize all physical evidence; do not leave this evidence with the victim. Common sources of evidence include the following:

- Taped phone messages (record all relevant voice mail messages)
- Letters, notes, documents, photographs, diaries and any other record or item made by the suspect regarding the victim
- Documents containing the signature and handwriting or hand printing of the suspect
- Computer hard drives and computer disks containing, for example, e-mail messages and poems by the suspect that concern the victim or were sent to the victim
- Hard copies of e-mail messages from the suspect to the victim.

7. SEARCH WARRANTS

If necessary, seek advice from experts to assess the type of stalking behaviour in question, in order to determine what collateral material might be included in the warrant, and whether to seek a public safety warrant under s. 117.04 of the *Criminal Code* or a weapons search warrant under s. 487. Where reasonable grounds exist, consider executing search warrants of the suspect's residence, vehicle and any recreational property to seek the following:

- Photographs of the victim
- Photographs, diagrams or drawings of the victim's home or workplace
- Writings, logs or diaries kept by the suspect that describe stalking activities or thoughts or fantasies about the victim or other victims, including information contained in computer files or on diskettes
- Personal items belonging to the victim
- Video or audio tapes that might contain information concerning the stalking, such as surveillance footage
- Any collateral material—including books, journals, or other materials and electronic documentation or data—describing stalking techniques or containing subject matter dealing with stalking, harassment or violence
- Any equipment that appears to have been used to "stalk" the victim, such as cameras, binoculars, video recorders, computer hard drives and computer disks

- Clothing worn by the suspect during the stalking episodes
- Firearms, weapons, knives and ammunition belonging to the suspect.

Note that firearms and weapons are treated separately under the *Criminal Code*, as shown by the following examples:

- **Section 117.02** authorizes a warrantless search for weapons, except in a dwelling house, where an offence has been committed and the grounds for obtaining a warrant exist but, because of exigent circumstances, it is not practicable to obtain the warrant.
- **Section 117.03** allows police to seize firearms and other items if they find someone in possession of such an item without proper documentation.
- **Subsection 117.04(1)** enables police to apply to a justice for a warrant to search for and seize any weapon (including firearms), prohibited device, ammunition, prohibited ammunition or explosive substance, as well as any licenses, registration certificates or authorizations held by or in the possession of the suspect, if there are reasonable grounds to believe that continued possession of weapons by the suspect poses a risk to public safety.
- **Subsection 117.04(2)** authorizes such a search and seizure without a warrant in exigent circumstances. If police do not find any documents relating to seized weapons, all such documents held by the suspect at that time are automatically revoked.

8. “EXPERT” ASSISTANCE

Investigators may wish to seek the assistance of experts in this area, who may include forensic psychologists and psychiatrists, criminal police threat specialists, computer forensic specialists and firearms investigation specialists. Expert assistance can include the following:

- Risk assessment
- Risk management strategies
- Assistance in obtaining search warrants, public safety warrants, or weapons prohibition orders
- Interview strategies
- Intervention strategies
- Expert evidence
- Determination of characteristics and traits of an unidentified or unknown suspect (suspect profiling).

9. INTERVENTION STRATEGIES

- **Face-to-face deterrence.** Warning the alleged offender shows the victim that the police have taken their complaint seriously, and informs the offender that the behaviour is inappropriate. It also gives the offender an opportunity to explain their conduct at an early stage, so that police can make more informed case management decisions.

- **Peace Bonds, and Emergency Protection Orders** should be considered when the victim fears for their safety and the suspect poses a risk of physical violence, but there is insufficient evidence to support a charge. Peace bonds and civil protection orders are not substitutes for criminal charges. Charges should be laid where there is evidence to support the charges.
- **An application for an order under s. 810.2** should be considered where there is fear that the suspect will commit a “serious personal injury offence.” Note that the definition of “serious personal injury offence” in s. 752 includes “severe psychological damage.” More extensive conditions are available for a recognizance under s. 810.2 than under s. 810, including a condition that prohibits the defendant from being in possession of firearms or ammunition, and a condition that requires the offender to report to police or a correctional authority. Section 810.2 has been particularly useful in cases where prior incidents of physical harm resulted in a sentence that is now finished, and the accused has contacted the victim again.
- **Prohibition against possessing weapons.** Where appropriate, obtain a weapons prohibition order as a preventive measure.
 - a) If the suspect does not currently possess weapons and police want to prevent the suspect from obtaining them in the future, police can apply to a provincial court judge for an order under section 111 of the *Criminal Code* prohibiting the person from possessing weapons where they have reasonable grounds to believe that it is not in the interests of public safety for the person to possess weapons. This prohibition may last up to five years.
 - b) If the suspect possesses weapons and police have seized them, there will be a disposition hearing (provided the Return to a Justice was made immediately after the seizure and the Application for Disposition was made within 30 days of the seizure). At the hearing, the judge may impose a weapons prohibition order lasting up to five years.
 - c) Consider, as well, an application under section 117.011 of the *Criminal Code*. When a person is prohibited from possessing weapons, this provision is designed to limit their access to weapons belonging to someone with whom they live or associate. Accordingly, even if the suspect is already prohibited by a court order from possessing weapons for up to five years, if the suspect lives with another person who is not prohibited from possessing weapons and who has several firearms, an application can be brought to a provincial court judge for an order against this other person to restrict the suspect’s access to the firearms.

10. **ARREST AND CHARGES**

A strong and consistent response to criminal harassment requires that all allegations of criminal harassment be taken seriously. If there are reasonable and probable grounds to believe that the suspect has committed the offence of criminal harassment, arrest and charge(s) should likely result in all but the most exceptional circumstances (keeping in mind that different

considerations apply in determining whether to make an arrest versus whether to lay charges). Arrest will often be necessary under subsection 495(2)(iii) in order to prevent the continuation or repetition of the criminal harassment, either by having the suspect enter into an undertaking to abide by certain conditions, or by seeking to have the suspect detained in custody.

Where one or more of the incidents giving rise to the complaint of criminal harassment can be construed as a single criminal offence other than criminal harassment, consider laying both the separate charge and the inclusive count of criminal harassment. Examples of other criminal offences include the following:

- Intimidation (section 423)
- Uttering threats (section 264.1)
- Mischief (section 430)
- Indecent or harassing telephone calls (section 372)
- Trespassing at night (section 177)
- Assault (section 265)
- Assault with a weapon or causing bodily harm (section 267)
- Aggravated assault (section 268)
- Aggravated sexual assault (section 273)
- First degree murder (subsection 231(6))
- Failure to comply with a condition of undertaking or recognizance (subsection 145(3))
- Disobeying court order (section 127)
- Breach of recognizance (section 811)
- Failure to comply with a probation order (section 733.1).

Consideration should also be given to laying charges relating to serious incidents in the past.

An accused who has outstanding charges against them and (a) has contravened, or was about to contravene, their form of release, or (b) has committed an indictable offence after having been released in any of the manners described in subsection 524(8), should be arrested under section 524, as well as under the provisions related to the breaches.

Being arrested under section 524 gives the accused notice that any previous forms of release may be cancelled.

11. CODING OR SCORING FILES/INCIDENTS

Many police agencies collect statistical information on the occurrence of criminal harassment incidents. The Royal Canadian Mounted Police collect statistical information on the incidence of crimes using the Operational Statistical Reporting (OSR) system. Police agencies using the OSR system of coding or scoring files for incidents of criminal harassment should follow the OSR tables, as follows:

- Code: AC41
- Nature of Event: criminal harassment or stalking crimes
- Effective Date: 1993-08-01

Officers using systems other than the OSR system should consult the appropriate people in their agencies to determine the appropriate coding to use in reporting incidents of criminal harassment.

12. RELEASE FROM CUSTODY

Given the nature of criminally harassing conduct, when an officer in charge determines that it is appropriate to release the accused pursuant to section 499 or subsection 503(2.1) of the *Criminal Code*, such a release should normally be made subject to the suspect entering into an undertaking prohibiting contact with, or proximity to, the complainant or other witnesses. If possible, the police should speak to the victim before deciding whether to release the suspect; such a discussion will help the officer assess the risk to the victim and determine which conditions might decrease that risk if the suspect is released. The following undertakings should be considered:

- Abstaining from communicating, directly or indirectly, with the victim or other specified person
- Abstaining from going within 200, 500 or 1000 meters of any specified places, such as the victim's residence and place of work
- Abstaining from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription
- Abstaining from possessing firearms, and surrendering any license, registration certificate or authorization
- Reporting at specified times to a peace officer or other designated person.

Where the accused is released on a recognizance, forward the Report to Crown Counsel as soon as possible so that the Crown prosecutor can address any application by the accused to change bail conditions before the first appearance.

Advise the victim of the fact of the release and any release conditions.

13. REPORT TO CROWN COUNSEL

The Report to Crown Counsel must clearly address and document the key elements of the offence.

- Include information on the prohibited conduct.
- Document reasons why the victim reasonably fears for his/her physical, emotional or psychological safety. Include all historical information that has contributed to the fear, such as details of previous incidents of domestic abuse.
- Details of changes the victim has made in response to the fear. For example, note whether the victim has done any of the following:

- Moved to a new location or obtained a new phone number
 - Recorded all telephone conversations and messages
 - Told friends, family, co-workers or building security of the harassment and given photos of the suspect to these persons
 - Arranged escorts to their car and work site
 - Changed their work schedule or route to work
 - Stopped visiting places previously frequented
 - Taken a self-defense course
 - Installed a security system
 - Acquired a guard dog
 - Received counseling or other psychotherapy
 - Altered their behaviour in any other ways
- Include evidence of the suspect's intent to harass the victim, or of the suspect's recklessness as to whether the victim was harassed.
 - Address any steps the accused has taken since the incident to address emotional, attitudinal or other problems. What factors in the accused's life tend to show either stability or instability (for example, place to live, family support, job changes, and stability of employment)?
 - Include all available information necessary for a bail application hearing relating to a detention order or to pre-trial release conditions. This information should specifically address the risk to the victim if the accused is released. Consider recommending appropriate or necessary conditions that the Crown should seek at a pre-trial release hearing.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Dominant Aggressor / Dual Charging

Dual arrests may occur for a variety of reasons. Police responding to family violence calls may be confronted with sharply conflicting accounts of what transpired, with each party claiming to be the victim. The victim may have used justifiable force against the abuser in self-defence. A false cross-complaint may be made by the abuser. Both parties may exhibit some injury. The police may fear that failure to arrest both parties may result in civil liability.

Incidents of dual charges in domestic cases have been recognized as inappropriate in most cases (increasingly over the last two years). Domestic violence Crown prosecutors, community groups, Alberta Solicitor General and Public Security (for police and corrections) and Alberta Justice and Attorney General (for the Crown) have identified this issue.

The following issues are some of the problems associated with dual charges:

- The true victims are further victimized
- There is a decreased chance of victims seeking further help
- If victims don't seek further assistance then it may place them and their children at risk of emotional, psychological and/or physical harm
- In some jurisdictions, victims can't access Victim Services or Victims Assistance Programs and/or other community agencies
- Dual charges severely decrease the ability to prosecute (there is no reasonable likelihood of conviction when both parties are charged)
- There is an increased liability for police services
- There is an increased potential for eventual homicide by the abuser
- There is a (total) lack of offender accountability
- It could bring the administration of justice into disrepute.

Consequences of dual arrest include:

- They are always prosecuted and almost never successful
- Children may need temporary placement or care
- The aggressor gains more power, continues to be a threat in the home
- It leaves the victim with other serious issues
 - They are NOT protected
 - They experience the fright of being arrested
 - They may NOT call police again when in danger
 - They get a criminal record.

It is common for abusers to try to convince police officers that they were the victims and were injured by their partners, or that the violence was mutual. In these cases, every attempt should be made to identify the dominant (primary) aggressor. The term "dominant aggressor" or

“predominant aggressor” refers to the individual who was the principle excessive aggressor rather than the individual who initiated the violence.

Police must have reasonable and probable grounds to lay charges. They must evaluate to determine:

- Who is the primary aggressor (dominant aggressor)?
- Is this self-defence?

HOW TO ASSESS MUTUAL CLAIMS OF ABUSE

According to University of New Brunswick Professor, Linda C. Neilson,³⁵ careful scrutiny of past conduct and the power and control dynamics of the relationship are critical to accurate assessment when intimate partners make allegations of abuse against each other. She claims that when male partners claim that female partners were also violent, this can be a reflection of the following several distinct realities:

- Women and men do engage in acts of violence, usually relatively minor acts of violence, during conflict in non-abusive relationships.
- Such acts of violence tend to be far less dangerous than abusive violence.
- While no violence can be condoned, female victim violence within an abusive relationship is more complicated and thus more difficult to understand.
- Women who are victims of intimate-partner abuse do engage in violence and violent self-defence, violent retaliation, violent reaction to abuse, violent resistance.
- Victims of abuse may even initiate violence in an effort to get imminent violence over with or as a reaction to past abuse.
- The vast majority of victims of domestic violence are women.
- Abusive violence causes more psychological and physical damage, is more likely to escalate, and is far more dangerous than non-threatening, isolated violence.
- Domination, intimidation, degradation, and control are the essential elements of abusive violence.
- When domination and control are absent, it is questionable that what is being reported is abusive violence - it is more likely that what is being reported is a form of violence during conflict.
- Although abuse victims can and do commit violent acts, the violence is not abusive because it is the abuser, not the victim, who is dominating, intimidating, degrading, and controlling.

³⁵ Linda C. Neilson, “Assessing Mutual Partner-Abuse Claims In Child Custody and Access Case,” *Family Court Review*, Vo. 42 No. 3, July 2004, 411-438.

When partners are abusive, they do not have to use violence to terrorize. Threats in the face of prior violence will suffice. Despite the absence of objective, observable violent action, patterns of abuse may continue. A victim of abuse will quickly learn to read signals from the abuser – certain words, or body language may easily convey threats of harm if understood in the context of that relationship.

In sum, Neilson states that the only way to assess mutual claims of intimate-partner violence is by careful consideration of context, including:

- Indicators of domination and control
- Patterns of violent action
- Emotional abuse
- Social and cultural context
- Victim vulnerability
- Psychological (as well as physical) impact on victim.

In order to assess the existence of control, it is important to be able to recognize what control is.

CONTROL TACTICS

- Isolation
- Keeps victim focused on abuser
- Depletes victim's inner resources
- Occasionally indulges victim to ensure compliance
- Powerful and feared
- Threatens
- Enforces trivial demands

INDICATORS THAT SOMEONE IS BEING CONTROLLED

- Protective of partner
- Minimizes, denies abuse
- Minimizes, denies danger to self and/or children
- Hopeful, believes abuse will not happen again
- Views abuse as their fault, believes they provoked it
- Dependent upon approval from others
- May have witnessed abuse or been abused in childhood
- Looks to others or partner for direction and approval
- Focuses on positive aspects of partner
- Rationalizes or explains abuse in relation to partner's problems or stresses
- Numb, flat affect
- Holds belief that partner is more important
- Views self as weak, dependent and needy of partner

SIGNS TO LOOK FOR IN A BATTERING PERSONALITY

There are actions and behaviours that involve physical violence, but that can be distinguished from patterns of abuse. When partners are abusive, they do not have to use violence to terrorize. Threats in the face of prior violence will suffice. Despite the absence of objective, observable violent action, patterns of abuse may continue. A victim of abuse will quickly learn to read signals from the abuser – certain words, or body language may easily convey threats of harm if understood in the context of that relationship. Victims may retaliate, or initiate violence, based on the context of their experience.

The following checklist may assist in determining the dominant (primary) aggressor:³⁶

- Jealousy
- Controlling behaviour
- Quick involvement
- Unrealistic expectations
- Isolation
- Blames others
- Hypersensitivity
- Cruelty to animals and or children
- “Playful” use of force in sex
- Verbal abuse
- Rigid sex roles
- Explosiveness and sudden mood changes
- History of abuse/battering (What does the paper trail show? Are there medical records from past incidents? What do police records show? What information does the dispatcher have? Has the victim been to a shelter or obtained assistance in the past because of the abuse? Are protective orders on file?)
- Threats of violence
- Destruction of property
- Any force during an argument
- Fear (Who looks and appears scared?)
- Body language (Who has an aggressive stance? What is the relative size of the persons involved?)
- Expresses ownership - assertion of proprietary interest in family members
- Speaks for partner
- Statements of neighbours and witnesses (What are the witnesses telling you about what happened? What do neighbours know about this and past incidents?)
- Excited utterances (Spontaneous declarations) (What statements are adults and children blurting out to you while still upset and under stress of the incident? Is there a “911 call”? What is their emotional state?)

³⁶ Walker, Lydia D. “Signs to Look for in a Battering Personality.” Getting a Firm Foundation (Training handout: 1981).

- Crime Scene (What objects are damaged? Who is upset that the objects are broken? Whose belongings have been destroyed?)
- Injuries (Who has injuries? What caused the injuries? Have weapons been used or threatened? Are any of these defensive injuries? What is the likelihood of future injuries to each person?)
- Evidence of substance abuse (Is there evidence that alcohol or other drugs have been used? Are liquor bottles or drug paraphernalia present?)
- The comparative extent of inflicted injuries or serious threats creating a fear of physical injury.

DOMESTIC TERRORIST

The following characteristics identify the “domestic terrorist”³⁷ personality. According to experts, the “domestic terrorist” has a very high lethality index:

- Unpredictable outbursts
- Unpredictable physical violence (biting almost universal)
- Undermines partner’s sense of autonomy:
 - Controls sleep/wake cycle
 - Controls personal hygiene
 - Controls eating patterns (deprivation)
 - Controls toilet routine/schedules
- Sexual enslavement
- Sexual violence – bondage, clamping devices, strangulation, foreign object insertions (anal), forced sex with others.

The presence of these characteristics in a suspect should be considered very high risk. A complete and thorough investigation and follow up, including risk assessment and safety planning is crucial.

INJURIES IDENTIFYING DOMINANT AGGRESSOR

There are typical injuries that are strong indicators (red flags) of the injuries having been made by the other person acting in self-defence. They include:

- Bite/scratch marks
- Injuries to genital area
- Offensive injuries – scraped/cut knuckles (see photographs below).

In a physical attack, females are more likely to scratch their aggressor as a way to deflect attack or try to escape injury. Scratches are a common injury to a male aggressor when attempting to choke or strangle a female. A female may claw the male’s hands or face to escape serious injury or death.

³⁷ Dr. Marc Nesca, on Spousal Assault Risk Assessment.

Bites to the chest occur when the aggressor is holding the victim down, straddling or in a bear hug. Bite marks on the arms occur when the victim is being held in a chokehold or arm lock. These are “defensive injuries.”



Offender has offensive injuries to his knuckles after using his fists to punch the victim.

INJURIES TO VICTIM CONSISTENT WITH ABUSE

Victims of domestic violence sustain physical injuries to the body including broken bones, bruises, burns, choking, bites and sexual assault. Most injuries are inflicted on the head, neck, chest, abdomen and breasts. Injuries occur on the hands and arms, which are used to deflect the blows.



Severe trauma to back of hands and arms from attempts to deflect blows.

INJURIES ON VICTIM:

- Injuries to face, neck, throat, chest, abdomen, genitals
- Spiral fractures
- Evidence of sexual assault
- Chronic pain or repeated injuries
- Injuries during pregnancy, vaginal bleeding, threatened abortion, spontaneous abortion
- Multiple injuries in various stages of healing including contusions, abrasions, and minor lacerations
- Bruises on back of arms, legs, or hands
- Bruises on back of buttocks and lower back because women typically curl into a fetal position to escape injury
- Bruising/swelling inside mouth and under lips
- “Bikini” injuries – sophisticated batterers will leave marks where no one else can see them
- Head injuries hidden under hairline
- Injuries behind the ears
- Hair loss – bald spots
- Symptoms of being choked: hoarseness, nausea, throat pain, loss of consciousness, involuntary urination/defecation, uncontrollable shaking, scratches, abrasions, scrapes to

neck, scrapes to chin by lowering to protect, petechiae around eyes and in orbital region, blood red eyes, ligature marks, and swelling of neck.³⁸



Bald spot from hair pulled out

³⁸Strack, Gael B. and McClane, Dr. George. "How to Improve Investigation Your Investigation and Prosecution of Strangulation Cases." Edited by David C. James, Deputy San Diego Attorney (October 1998, updated May, 1999) 1-16. According to the Strack and McClane study, where over 300 strangulation cases were reviewed, most victims of strangulation lack sufficient physical evidence of being strangled because they either had no visible injury (50%) or their injuries were too minor to photograph (35%). Significant visible injuries, such as red marks, bruises, or rope burns, were found in 15 percent of the cases. While these injuries were significant enough to photograph, the majority of these photographs were unusable due to a lack of technical expertise on the part of first responders in close-up photography, suggesting a need for police officer training. Victims sought medical attention in only 3 percent of the cases, primarily due to persistent pain, voice changes, or trouble swallowing.

Look for Injuries from the Sophisticated Batterer

- ⌘ Leaves no marks
- ⌘ Hits in places where it is difficult to leave or see marks
- ⌘ Hits in places where you won't look



Courtesy San Diego Domestic Violence Unit

Injury from breast being twisted by abuser

OTHER SIGNS CONSISTENT WITH ABUSE - VICTIM'S BEHAVIOURAL AND EMOTIONAL CUES:

- Nervous or inappropriate laughter or smiling
- Signs of anxiety, crying, sighing
- Defensiveness/anger
- Lack of eye contact or fearful eye contact
- Substantial delay between onset of injury and reporting
- Suicidal ideation or suicide attempt
- An overly attentive or aggressive partner
- Describes the alleged "accident" in a hesitant, embarrassed or evasive manner
- Minimizes the seriousness of an injury.

Domestic violence victims often report other symptoms resulting from the stresses associated with abuse including the following:

- Headache
- Musculoskeletal pain
- Fatigue, decreased concentration
- Insomnia
- Chest pain/palpitations
- Hyperventilation
- Gastrointestinal disorders/appetite disturbances
- Depression/anxiety
- Sexual dysfunction/gynaecologic problems
- Drug abuse/addiction

Dual Charge does not mean dual arrest. The basic purpose of arrest is:

- To ensure person will be available to court
- To prevent continuation of the offence
- To secure the person so that an offence(s) may be investigated

If the above reasons for arrest have been satisfied then arrest should not be continued or initiated. The 2nd charge being considered does not have to be made immediately but deserves a thorough investigation and consultation with a supervisor or Spousal Violence detective.

If a (primary) dominant aggressor is identified, that person should be arrested and charged. Police officers should continue the investigation and through consultation (with a DVI trained supervisor) determine if a charge against the other person is warranted. All of the arrest/charging decisions need not be made at the same time.

Appendix #1 - Includes a document entitled, "Signs to Look for in a Battering Personality."

Strangulation / Choking

Historically, “choking” was minimized and rarely prosecuted as a serious offence because victims will minimize the level of violence and uninformed officers and prosecutors may fail to recognize it. With proper training and education, we can all improve our documentation, investigation, and prosecution of strangulation cases with immediate results.

Strangulation is one of the most lethal forms of domestic violence. When perpetrators use strangulation to silence their victims, this is a form of power and control. This form of power and control has a devastating psychological effect on victims and a potentially fatal outcome. Ten percent of violent deaths in the U.S. each year are due to strangulation, six females to every male.³⁹

It is suggested that police and Crown prosecutors use the term “strangle” as opposed to the word “choke.” “Strangle” means to obstruct seriously or fatally the normal breathing of a person. “Choke” means having the windpipe blocked entirely or partly by some foreign object like food. Police officers are encouraged to investigate all strangulation cases as attempted homicides or aggravated assault cases.

WHAT YOU NEED TO KNOW ABOUT STRANGULATION/CHOKING

- Only eleven pounds of pressure placed on both carotid arteries for ten seconds is necessary to cause unconsciousness. However, if pressure is released immediately, consciousness will be regained within ten seconds. To completely close off the trachea, three times as much pressure (33 lbs.) is required. Brain death will occur in 4 to 5 minutes, if strangulation persists.
- Victims may have no visible injuries whatsoever, with only transient symptoms — yet because of underlying brain damage by lack of oxygen during the strangling, victims have died as long as several weeks later.
- Because of unforeseen consequences of injuries from a strangulation attempt that may appear minor to the untrained, police officers at the scene should radio for medics for a medical evaluation of all victims who report being strangled.

LOOK FOR SYMPTOMS (AS OPPOSED TO INJURIES)

- Voice changes occur in up to 50 percent of victims
- Hoarseness or complete loss of voice
- Swallowing changes
- Breathing changes
- Difficulty breathing

³⁹ Strack, Gael B. and McClane, Dr. George. “How to Improve Investigation Your Investigation and Prosecution of Strangulation Cases.” Edited by David C. James, Deputy San Diego Attorney (October 1998, updated May, 1999) 1-16.

- Mental changes, restlessness, and combativeness due to temporary brain anoxia and/or severe stress reaction
- Involuntary urination and defecation
- Visible injuries to the neck include scratches, abrasions, and scrapes
- Redness to the neck may be fleeting, but may demonstrate a detectable pattern:
- These marks may or may not darken to become a bruise
- Bruises may not appear for hours or even days
- Chin abrasions, redness or bruising as the victim lowers the chin in an instinctive effort to protect the neck
- Injuries inside mouth – bruising or swelling inside lips
- The tiny red spots (petechiae) due to ruptured capillaries—the smallest blood vessels in the body—sometimes may be found under the eyelids, around the eyes, face, and neck:
 - Tend to be most pronounced in ligature strangulation
- Blood red eyes due to capillary rupture in the white portion of the eyes suggests a particularly vigorous struggle between the victim and assailant
- Ligature marks:
 - Ligature marks are a clue that the hyoid bone may be broken
 - As a general rule, on a post-mortem exam, if a hyoid bone is fractured the death will be a homicide from strangulation until proven otherwise
 - However, because the two halves of the hyoid do not fuse until age 30, the hyoid may not break in younger victims who die as the result of strangulation
 - One third of manual strangulation victims have fractured hyoids
- Lung damage due to vomit inhaled by the victim during strangulation
- Swelling of the neck may be caused by any one or combination of the following:
 - Internal bleeding, injury of any of the underlying neck structures, or fracture of the larynx allowing air to escape into the tissues of the neck.

INVESTIGATING STRANGULATION

- Take full body photographs of the victim, and close-ups of the face and neck area, including the front, back, and sides of the neck and chest area.
- Take follow-up photographs 24, 48, or 72 hours later (or as long as visible injuries are present).
- Identify the dominant/primary-aggressor. It is crucial to be aware that depending on the method of strangulation being used, the suspect may be the only individual with visible injuries.⁴⁰

⁴⁰ Frequently, in attempted strangulation cases there are claims of mutual combat or self-inflicted injuries. Because victims fear for their lives, they may protect themselves by trying to get perpetrators to release their holds by either pushing them back, biting them, scratching their faces, or pulling their hair.



Top left photograph reveals no sign of physical injuries shortly after police arrival, notwithstanding that the victim had been strangled to unconsciousness three times (bottom left photograph reveals redness to the chin from lowering to protect her neck). Suspect then forced his hand down the victim's throat attempting to suffocate her (photographs on the right display bruising to the inside of lips). Due to lack of visible injuries on victim, and scratches and bite marks on suspect's hands inflicted by victim in self-defence, appropriate charges were not initially laid. Four months after this occurrence, the suspect shot and killed the couple's two-year old son and himself.⁴¹

- Encourage the victim to seek medical attention.
- Police officers should note their experience and training in domestic violence cases and strangulation training in their report.⁴²
- Obtain copies of your 911 tapes. At least 50 percent of strangulation victims experience voice changes.
- Tape-record your follow-up investigations wherever possible.⁴³
- Conduct follow-up:
 - Ask the victim to describe and demonstrate how he/she was strangled.
 - Take photographs of the victim's injuries.
 - Document whether victim was strangled with 1 or 2 hands? Forearm? Objects?
 - If an object was used to strangle the victim, locate, photograph, and impound the object.

⁴¹ Cole Harder murder/suicide December 1, 2002, Camrose, Alberta.

⁴² For example: "Based on my experience and training, I know that strangulation can cause serious injury. Unconsciousness can occur within seconds. Death can occur within minutes. The symptoms and injuries in this case are consistent with someone being strangled. I strongly encouraged the victim to seek medical attention."

⁴³ As a result of the strangulation training and application of the follow-up questions, San Diego Police detectives noted that in approximately 8 out of 10 cases victims reported changes in their voices. Based on this anecdotal evidence, it is important to tape record or videotape your follow-up investigations in order to document voice changes for later evaluation by medical experts.

- Determine if the suspect was wearing any jewelry, such as rings or watches. Look for pattern evidence.
- If an object was used, how did it get there? Determine if the suspect brought the object with him to the crime scene. This information may be used to show premeditation.
- What did the suspect say when he/she was strangling the victim? Use quotes.
- Describe the suspect's demeanor and facial expression.
- Was the victim shaken simultaneously while being strangled?
- Was the victim thrown against the wall, floor, or ground? Describe surface.
- How long did the suspect strangle the victim?
- How many times and how many different methods were used to strangle the victim?
- How much pressure or how hard was the grip?
- Did the victim have difficulty breathing or hyperventilate?
- Any complaint of pain to the throat?
- Any trouble swallowing?
- Any voice changes? Complaint of a hoarse or raspy voice?
- Any coughing?
- Did the victim feel dizzy, faint, or lose consciousness?
- What did the victim think was going to happen? (e.g. Did he/she think he/she was going to die?)
- Did the victim urinate or defecate as a result of being strangled?
- Was the victim pregnant at the time?
- Did the victim feel nauseated or vomit?
- Is there any visible injury, however minor? If so, take photograph and follow-up photos.
- Any prior incidents of strangulation?
- Any pre-existing injuries?
- Were injuries shown to anyone? Any subsequent photos taken?
- Did the victim attempt to protect her or himself? Describe.
- Any medical treatment recommended or obtained? If so, obtain medical release.
- Any witnesses?

Appendix #9 - Includes the "Strangulation Documentation Form," complete with diagrams.

Appendix #10 - Includes a document entitled the "Domestic Violence Strangulation Investigation" form.

Appendix #11 - Includes a document entitled, "Questioning the Expert in Strangulation Cases."

Assessing Risk for Further Violence

Current research links certain types of behaviour or “indicators” with an increased risk of domestic violence. Risk assessment checklists may assist in a variety of areas, including:

- Raising “red flags” as to the potential for a victim being at risk of future violence
- Assessing the level of risk and danger the victim may be exposed to
- Collecting evidence for those engaged in the criminal justice system
- Providing evidence for the bail hearing
- Alerting the Crown and the Court that a psychological assessment of dangerousness by a professional is in order
- Providing evidence at sentencing
- Assisting victim to develop a safety plan.

It is crucial to determine how the specific incident of violence relates to the **overall history and context of violence in the relationship**. Dangerousness is situational. It is not so much assessing the individual that is important, but assessing that individual in the context of the immediate overall situation. Once factors associated with dangerousness have been identified, it is also necessary to intervene in a meaningful way to prevent further violence. The best person to assess risk is generally the investigating police officer.

RISK ASSESSMENT

Risk factors that will assist police officers, Crown prosecutors and victims in domestic violence occurrences have been identified in a number of studies.⁴⁴

⁴⁴ For a comprehensive review of the existing Risk Assessment tools, see:

1. *Brief Spousal Assault Form for the Evaluation of Risk* (B-SAFER). This tool, developed by P. Randall Kropp, Ph.D., Stephen D. Hart, Ph.D., and Henrik Belfrage is a checklist or guide for assessing risk for spousal assault in criminal and civil justice (i.e. forensic) settings. The B-SAFER is intended to help people exercise their professional discretion when conducting risk assessments; it is not a replacement for professional discretion. Its purpose is to introduce a systematic, standardized, and practically useful framework for gathering and considering information when making decisions about violence risk. It draws directly from the scientific and professional literatures on spousal violence risk assessment and victim safety planning.
2. *Ontario Domestic Assault Risk Assessment* (ODARA). ODARA is a general violence-screening tool dealing with recidivism. It does not concern itself specifically with the question of lethality. The form contains 13 questions where “yes” answers are given a one-point score. If a person scores between 7 and 13, there is a 70% risk that the individual may commit another assault. This tool may be of great value as a general violence screening to raise “red flags” for the potential of a victim being at risk of future violence.
3. *Danger Assessment Instrument*. DA-2 developed by Jacquelyn C. Campbell, Ph.D., R.N. of the John Hopkins University School of Nursing, a leading expert and researcher in the United States. Her instrument first asks the victim to record specific examples of abuse on a calendar. The instrument then poses 20 questions on lethality requiring a “yes/no” answer. It establishes a pattern of frequency and severity of the violence during the past year, and serves as an important safety-planning tool, especially for victims who often minimize their level of risk.

For purposes of witness statements, risk assessments, and show cause hearings, officers should endeavour to obtain the following information:

- **Current** status of relationship?
- **History** of separations?
- During past separations, has the offender **stalked** or **harassed** the victims?
- **History of violence or abuse** in the relationship – physical, sexual, verbal, financial and emotional abuse?
- Has the abuse escalated during the past 12 months?
- Has the abuse required medical treatment?
- Has the offender ever hurt, injured or threatened to hurt the **victim, a family member**, another person or **animal**?
- Has the offender ever used **weapons** against the victim or **threatened** the use of weapons?
- Does the offender own a firearm or have plans of acquiring a **firearm**?
- Any **children** under the age of 18 who have witnessed the abuse or who have been abused by the offender?
- Has **Children’s Services** ever been involved with this family?
- Has the offender ever **abducted** or threatened to abduct the children?
- Offender **employment** - Has the offender’s employment history changed during the previous 12 months or become less stable?
- What is the offender’s current status in the **legal system**?
- Has the offender ever **violated** a court order, including no contact orders or peace bonds?
- Have **drugs or alcohol** ever been a problem for the offender?
- Does the offender have a history of **mental illness**?
- Has the offender ever idealized **homicide or suicide**?
- Other considerations:
 - Current **emotional crisis** or loss of **social support network**
 - History of **torturing or disfiguring** intimate partners
 - Sexual **sadism**
 - Extreme minimization or **denial** of assaultive history.

-
4. *Spousal Assault Risk Assessment Guide (SARA)*. SARA is a clinical checklist of risk factors for spousal assault. The instrument is a two-page form with 20 questions that are rated 0–2. Like the above checklists, no specific information is recorded to source the answers.
 5. Initial Screening Tool and Comprehensive Risk Assessment Interview Guide (Durham Region). A 21-question screening tool was created for all family court personnel to use in their initial contact with a family. If domestic violence was identified, then a comprehensive risk assessment interview guide covering 25 areas was available to aid community experts in assessing for further risk and conducting appropriate safety planning.
 6. Domestic History Form (Huron County). The Crown Attorney’s office in Huron County in Ontario is currently using the Assessing Dangerousness in Domestic Cases form to ensure that information on risk assessment has evidentiary value in domestic violence proceedings. For more information, visit: www.bcifv.org.

When a file has been flagged based on risk factoring, a Crown prosecutor should be assigned responsibility for the file. A Crown prosecutor should be assigned to the case at the earliest opportunity and, where practicable, should remain assigned to the case until its conclusion. In cases with a higher risk of violence (flagged files), the victim should also be provided with the name of the Crown prosecutor who is specifically assigned the file. Reasonable efforts should be made to accomplish this. If the assigned Crown prosecutor is changed, the victim should be notified.

It is preferable that the assigned Crown prosecutor should interview the victim prior to the trial or preliminary hearing. The victim should be referred to a victim assistance program where available if the police have not already done so. Where a change of Crown prosecutor is necessary, arrangements should be made to have the newly assigned Crown prosecutor review the file and then meet with the victim.⁴⁵

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #7 - Includes a "Domestic History Questionnaire," recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

⁴⁵ Valverde, M., L. MacLeod and K. Johnson, eds. Crown Policy Manual, Ontario Attorney General - Appendix A of Wife Assault and the Canadian Criminal Justice System (1995).

Primary Risk Factors for Homicide

In Alberta, and in various other jurisdictions throughout Canada and the United States, killings have continued to occur between intimate and ex-intimate partners, and sometimes their children and other family members. These tragedies serve as reminders of why domestic violence needs to be taken more seriously and how much more work still needs to be done to address the complexities of preventing these deaths.

In the Fekete case in Red Deer (murder/suicide 2003) and the Cole Harder case in Camrose (murder/suicide 2003), primary risk factors for homicide were present. In 2004, domestic violence murder/suicides occurred in Sundre, Airdrie, and Bonnyville. Again, primary risk factors were present. Friends, family, and the police were aware that each of these situations was potentially explosive, but may not have had the proper tools to assess risk and prevent harm.

There is a growing recognition that these deaths are preventable and studies have been done both in Canada and the United States to seek a better understanding of how and why domestic homicides occur.

In a recent studies done by the Domestic Violence Death Review Committee in Ontario (“DVDRC”), information was collected to establish the context of the deaths, including the history, circumstances, and conduct of the abusers/perpetrators, the history and circumstances of the victims and their families, as well as community and systemic responses. The purpose was to determine the primary risk factors in those cases and identify possible points of intervention, with the goal of preventing similar deaths in the future.⁴⁶

The DVDRC found that many domestic homicides may have been prevented if the criminal justice system, doctors, clergy, counsellors, lawyers, co-workers, families, friends, and neighbours had better engaged the victim in risk assessment and safety planning and taken appropriate action when they recognized risk in a perpetrator’s behaviour. In the 2004 DVDRC report, it was determined that eight of the nine incidents of domestic violence were predictable and preventable with the benefit of hindsight and the analysis of well-known risk factors. In all homicides reviewed, seven or more risk factors were clearly identifiable in the history of the family circumstances.⁴⁷

The best person to assess risk is generally the investigating police officer.

⁴⁶ Ontario. Domestic Violence Death Review Committee. “Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002.” Available at:

http://www.mpss.jus.gov.on.ca/english/publications/comm_safety/DVDRC_Report_2003.pdf.

⁴⁷ Ontario. Domestic Violence Death Review Committee. “Annual Report to the Chief Coroner: 2004.” Available at: http://www.mpss.jus.gov.on.ca/english/publications/comm_safety/DVDRC_2004.pdf.

PRIMARY RISK FACTORS FOR HOMICIDE IDENTIFIED BY THE DVDRC ARE:

- Prior history of domestic violence
- Pending or actual separation or estrangement⁴⁸
- Escalation of violence
- Threats to kill
- Threats of suicide or attempted suicide
- Obsessive behaviour
- Possession of or access to firearms
- Excessive alcohol and/or drug abuse
- Depression or other acute mental health or psychological problems
- Common-law unions
- Isolation of victim
- Child custody and access issues
- New partner in victim's life
- Perpetrator's unemployment
- Presence of stepchildren in the home (i.e. children that have not been sired by the abuser)
- Forced sexual acts or assaults during sex
- Hostage taking
- Destruction of victim's property
- Violence against family pets
- Extreme minimization or denial of spousal assault history
- Attempts to isolate the victim
- Controls most or all of victim's daily activities
- Assaulted victim while pregnant
- Chokes victim
- Young age
- Perpetrator witnessed domestic violence as child

Every effort has to be made to collect information on these cases to enhance collaboration amongst different service providers and to permit proper assessment and intervention with high-risk domestic violence cases. This has the potential to save lives if the information helps victims to engage in effective safety planning and if perpetrators are challenged by the community to find alternatives to their threatening behaviour.

Cautions are noted regarding the use of risk assessment tools adapted for use at different stages of the justice system, to evaluate the likelihood of repeated violence. For example, assessments are only relevant for a specific period of time, and decisions based on their results need to be re-evaluated later in the justice process. Further, service providers should remember that violence could occur even in the absence of identified risk markers.

⁴⁸ The factor of actual or pending separation of the involved persons was present in 82 percent of the deaths reviewed by the Report to the Ontario Coroner's Office by the Domestic Violence Death Review Committee, 2004.

The work of the DVDRC Committee is ongoing and the Risk Assessment Tools are a work in progress. It is recommended to keep abreast of any advancement made in future studies.

It is recommended that risk assessment be followed by victim safety planning, which is discussed in the following section.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #7 - Includes a "Domestic History Questionnaire," recommended by the DVDRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Safety Planning for Victims

While victims cannot always avoid violent incidents, in order to increase safety, they should be given a list of safety strategies. Furthermore, it is helpful to work through a safety plan with victims. It is also a good idea to refer victims to shelter staff or other safety-planning experts about additional safety planning to meet the needs of a given situation.⁴⁹ Women's shelters provide a wide range of family violence services, including outreach programs, crises lines, and training on family violence-related topics. Some shelters have also been trained in conducting danger assessments.

Victim advocates within the police service or community often play important roles in risk assessment and safety planning. The main components in domestic violence safety plans are:

- How to leave safely
- Where to go to be safe
- Where to keep important papers and documents
- Which neighbors to tell about the violence so they can call police if necessary
- Teach children how to call the police
- How to protect self and children in dangerous situations
- Local telephone numbers for shelter, crisis center, police, child protection agency
- Importance of practicing and reviewing safety plan regularly with children
- Possible safety measures at home (e.g. locks, lights, rope ladders, smoke detectors and fire extinguishers, code words for children to be picked up by another adult, to call police or to get out of the house quickly)
- Inform school of pick-up permission for children if necessary
- Inform employer and co-workers of risk
- Other friends, neighbors, family members who can look after children and help support the non-offending parent when stress/depression/anxiety levels are high.

Each intervener in the criminal justice system must ensure that the relevant information is obtained on each person who uses violence in his/her relationship, that the information is shared with other interveners who need the information, and that the information is incorporated into the decisions about how the case is handled.

It is also important to:

- Ensure perpetrator is no longer a threat in the current situation
- Carry out risk assessment with the victim to determine risk of the current situation
- Listen to victim's assessment of risk and offer feedback
- Discuss safety planning
- Make referrals for more comprehensive risk assessment and safety planning.

⁴⁹ Ontario, Ministry of the Solicitor General, Policing Services Division, A Guide to the Domestic Violence Supplementary Report Form (Toronto: 2000).

Victims should also be informed about:

- Victim Impact Statements
- Financial Benefits Program, and
- Requesting Restitution Programs.

Information about these programs is available at <http://www.solgps.gov.ab.ca/victim/default.aspx>.

FOLLOW UP TO ENSURE VICTIM RISK IS BEING MINIMIZED

Police are in the best position to follow up with victims. The greater the risk, the more closely the police should monitor victims' safety. Conditions imposed as a result of a bail hearing should be entered on the Canadian Police Information Centre (CPIC) using the probation category currently used for entry of restraining orders, conditions on probation, and firearms prohibitions.⁵⁰

Police services should also be aware of "Spousal Assaults" or "Other Family Violence" caution flags, which, as of January 1997, may now appear on the Criminal Record Synopsis when checking the CPIC system. Police services should ensure that the new sections of fingerprint form C-216 allowing for the flagging of convictions for a number of offences, including these new "Spousal Assaults" and "Other Family Violence," are used where applicable. This tool provides police services with immediate recognition that a subject they may be dealing with or responding to a complaint about has had previous convictions for spousal assaults or family violence. It is also information that can be immediately relayed to the Crown prosecutor on bail applications.

THE ALBERTA HIGH RISK ENHANCED SUPPORTS PROGRAM – FOR EXTREMELY HIGH RISK CASES

The Alberta High Risk Enhanced Supports (AHRES) Program is designed to assist persons who are escaping high-risk relationship violence. The program builds on and enhances the work of community based family violence service providers such as police agencies and women's shelters. The program is under the umbrella of the Office for the Prevention of Family Violence & Bullying, Alberta Children's Services and was formerly know as New Identities for Victims of Abuse (NIVA).

Although the secure name change process is still a component of the AHRES Program, AHRES provides access to a broader range of services along a threat management continuum. Working in cooperation with community and cross sector partners, the program assists individuals and when necessary their children, by providing them with various protective measures until a threat assessment is completed. The threat assessment assists in determining available options to best support client safety.

⁵⁰ Alberta Justice Domestic Violence Registry.

A number of steps are undertaken when considering a person for involvement in the AHRES program and the process is initiated only after a partnering agency, the police, women's shelter or Human Resources Development Skills Canada (HRDSC) makes a referral to program staff. Referrals to the program are made by community service providers once they determine all local efforts to stabilize client safety have been exhausted and there is need for specialized support.

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies' practice guidelines.

Appendix #12 - Includes a schedule of Emergency Women's Shelters in Alberta, as provided by the Alberta Council of Women's Shelters:
<http://www.acws.ca/home.php>.

Appendix #13 - Includes a document entitled, "Emergency Help for Albertans Fleeing Abuse," which can help direct victims to safety during an after hours crises situation.

Appendix #14 - Includes a list of agencies to assist victims of crime, as provided by the Ministry of the Solicitor General and Public Security.

Show Cause Hearings

According to the Alberta Queen's Bench decision of *R. v. Bleile*, in cases of domestic violence, the Crown cannot address bail without the following specific background information:⁵¹

- Whether there is a history of violence
- Whether complainant fears further violence and the basis of that fear
- The complainant's opinion on the likelihood that accused will obey a term of release, especially a no contact order
- Whether the accused has a history of alcohol or drug problems or mental illness.

Therefore, as stated in the Alberta Crown Attorneys' Bulletin released July 14, 2004, "bail applications relating to spousal or intimate partner abuse can no longer be allowed to proceed without the Crown having the background information outlined above."

In *R. v. Bleile* Justice Martin said at page 278:

"The proper administration of justice requires that the judge determining bail understand the circumstances of the offence and the background of the offender in order to decide whether the offender is likely to resort to further violence or intimidation if released. That information can only be produced at a bail hearing if it has been elicited during the investigation and passed on to the Crown prosecutors' office, and from the Crown to the court. Unfortunately, that is not being done in all cases. As a consequence, some decisions as to release of persons charged with assaulting their partners are not as informed as they should be. Sadly, Canadian legal history has been punctuated with cases where offenders charged with spousal assault have been released on bail and thereafter visited even greater violence on the victim."

This case highlights the importance of gathering the appropriate information at the first instance and ensuring that it is available for speaking to bail.

Use bail hearings and sentencing hearings as opportunities to disclose history of abuse, dynamics of relationship and impact on victims and children. Obtain details of all past police reports involving domestic violence occurrences involving the accused. Use 911 recordings and photographs to show the extent of fear and suffering caused by the accused's actions, and to deflect claims by reluctant/recanting victims.

The following Risk Assessment captures all of the information required to conduct bail hearings in compliance with *R. v. Biele*, and will assist police and Crown with necessary information gathering:

⁵¹ *R. v. Bleile*, (2000) 31 C.R. (5th) (Alta. Q.B.).

- **Current** status of relationship?
- **History** of separations?
- During past separations, has the offender **stalked** or **harassed** the victims?
- **History of violence or abuse** in the relationship – physical, sexual, verbal, financial and emotional abuse?
- Has the abuse escalated during the past 12 months?
- Has the abuse required medical treatment?
- Has the offender ever hurt, injured or threatened to hurt the **victim, a family member, another person or animal**?
- Has the offender ever used **weapons** against the victim or **threatened** the use of weapons?
- Does the offender own a firearm or have plans of acquiring a **firearm**?
- Any **children** under the age of 18 who have witnessed the abuse or who have been abused by the offender?
- Has **Children’s Services** ever been involved with this family?
- Has the offender ever **abducted** or threatened to abduct the children?
- Offender **employment** - Has the offender’s employment history changed during the previous 12 months or become less stable?
- What is the offender’s current status in the **legal system**?
- Has the offender ever **violated** a court order, including no contact orders or peace bonds?
- Have **drugs or alcohol** ever been a problem for the offender?
- Does the offender have a history of **mental illness**?
- Has the offender ever idealized **homicide or suicide**?
- Other considerations:
 - Current **emotional crisis** or loss of **social support network**
 - History of **torturing or disfiguring** intimate partners
 - Sexual **sadism**
 - Extreme minimization or **denial** of assaultive history.

Procedures should include that the suspect be required to attend court within seven days of the initial occurrence, wherever possible.

WHEN AN ACCUSED IS RELEASED FROM CUSTODY – CROWN PROSECUTORS

Crown prosecutors should:

- As far as practicable, give victims the opportunity to make their wishes known regarding the terms of any orders of protection, conditions of pretrial release, contemplated plea agreements and recommendations for conditions of probation
- Take reasonable efforts to ensure that information is current
- Where violence has occurred, threats of violence have been made, or the risk assessment process indicates the potential for new or continued violence, determine if firearms are located in the residence or are available to the party making the threats

- Consider the following release options inappropriate due to an absence of conditions to protect victims:
 - Summons (to court)
 - Appearance Notice
 - Promise to Appear (unless accompanied by a Form 11.1 Release by Officer in Charge, containing appropriate conditions).

When the accused is being released from custody, the following conditions should be considered:

- Abstaining from communicating, directly or indirectly, with the victim or other specified person(s)
- Abstaining from going within 200, 500 or 1000 meters of a specified place such as the victim's residence and/or place of work
- Abstaining from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription
- Where appropriate, obtain a prohibition order for use and possession of regulated weapons in compliance with the *Criminal Code*, and surrendering any licence, registration certificate or authorization
- Pursuant to s. 117.011(1), obtain a prohibition order for use and possession of regulated weapons if such person lives with or associates with an accused that is the subject of prohibition order
- Reporting at specified times to a Peace Officer or other designated person
- Other conditions as appropriate to the individual case
- Orders for protection should be clear, specific and tailored to the individual circumstances of the case, protect the safety and interests of children in the household, and specify locations in addition to the victim's primary residence, such as the homes of family members.

Appendix #15 - Includes guidelines issued by Alberta Justice in 1999 regarding bail notification for victims of domestic violence.

Best Practices for Crown Prosecutors

Addressing Victim's Issues

THE UNIQUE NATURE OF DOMESTIC VIOLENCE

Victims of domestic violence face different problems from those of other victims of violent crimes. Legitimate survival and safety strategies employed by victims (such as unwillingness to give information, resistance to testifying, recanting all or part of previous statements) may come into conflict with the goals or needs of the legal system.

Crown prosecutors should be committed to understanding the unique dynamics of an abusive relationship including the cycle of violence and the particular social, economic and psychological problems faced by the victim. To respond effectively, Crown prosecutors should approach domestic violence cases with the following factors in mind:

Domestic violence:

- Is a serious crime
- Is an abuse of trust
- Takes many forms, although only behaviour that is “criminal” can trigger prosecution
- Can have devastating effect upon the victim, families, and children who witness or live with the consequences of that violence
- Is likely to become more frequent and more serious the longer it continues, and
- Can result in death.

Historically, the legal system has become involved only after:

- The pattern of abuse is well established
- The level of physical injury has become serious, or
- The violence has spread beyond the intimate relationship or family.

In some cases, victims of domestic violence:

- Continue to live with their abuser
- Are financially, emotionally, and psychologically dependent on their abuser
- Experience continuing threats to their safety
- Find it difficult to give evidence in court because of the complex nature of domestic violence
- Have difficult decisions to make that will affect their lives and the lives of those close to them (particularly those who may have suffered over a considerable period of time)
- May blame themselves or feel that agencies blame them
- Do not make complaints of domestic violence in a timely fashion or at all for fear of reprisals, intimidation, or a number of other factors

- May fear reporting offences, especially if they are disabled people or elderly and the abuser is also the caregiver.
- A victim's first contact with law enforcement or the courts rarely happens after the first or second domestic violence incident.
- A victim may be involved in a criminal proceeding, a civil matter, custody, support and visitation proceedings, and a matrimonial action, in multiple courts. This fragmentation coupled with differing standards of proof and rules of procedure can demoralize and inadvertently endanger victims and their children
- The costs of being involved with the criminal justice and legal systems in terms of money, time, work, privacy, and retaliation by the abuser can be daunting for victims.
- The lives of others (including children) may be at risk.
- Failure to obey a subpoena, or failure to testify against the abusive partner *may* be a product of the victim's judgment, that it is better *not* to aggravate the abuser by testifying.

Early intervention and a coordinated response to domestic violence:

- Provides the best path to protecting victims and their children
- Prevents the escalation of a pattern of abuse
- Reduces the rate of domestic homicide and serious assaults, and
- Where possible, maintain family stability.

Prosecutors can use a variety of approaches in their dealings with victims to help restore some of what the victim has lost and help end the battering, namely:

1. **EARLY CONTACT WITH VICTIM:**

View the victim's request to have the charges dropped as an opportunity to make early contact and establish rapport and provide information respecting:

- Steps in the criminal justice process
- Community resources
- Safety planning
- Shelters
- Public assistance/victim services units
- Victim Impact Statements, the Financial Benefits Program, and restitution
- Social service agencies.

2. **SHIFT TRADITIONAL THINKING:**

- Shift focus to the accused
- Ask why the batterer batters, not why the victim stays.

3. VICTIM CONSULTATION/EDUCATION:

- Conduct victim interview in presence of a police witness
- Engage the victim in a discussion about keeping him/her safe, and how that might be achieved with or without criminal prosecution
- Often times, the victim will cooperate once it is explained that jail is not necessarily the outcome and treatment and counseling for the abuser can be ordered
- Make it clear that the goal is to stop the violence in the victim's life
- Give the victim opportunity to express her/his desired outcome
- Allow the victim input on appropriate offender treatment disposition
- Connect the victim with local service agencies
- Let the victim know that their reluctance is normal and understood.

4. PREPARE TO RUN ABSENT VICTIM PROSECUTIONS AND EVIDENCE BASED PROSECUTIONS USING:⁵²

- Crime scene photos
- Photos of victim's injuries
- Photos of suspect's wounds inflicted by victim in self-defense
- 911 recordings⁵³
- Independent witnesses
- Spontaneous utterances of victim, suspect
- Confessions
- Medical records/reports
- Sexual Assault Response Team (SART) report
- Expert testimony
- Out of court statements – exception to hearsay rules, Res Gestae and principled approach (Sworn statements or (KGB)).⁵⁴

⁵² In *R. v. Lafferty* [1999] N.W.T.J. No. 66 (Tab 11), the Northwest Territories Supreme Court heard an appeal from a spouse convicted of assault against his spouse. At trial, defence counsel had asked the trial judge to draw an adverse inference against the Crown from its failure to call the complainant as a witness in the proceedings. The appeal court upheld the trial judge's decision stating that there was ample evidence upon which the trial judge could reasonably convict the accused of all charges, without hearing evidence from the victim.

⁵³ 911 recordings will often contain valuable evidence such as spontaneous utterances made by the suspect, victim or a child witness, independent witnesses, confessions, recording of crime in progress (threats, shouting, furniture breaking) and evidence of victim who was strangled/choked (hoarseness, loss of voice). More importantly, a 911 recording can be admitted as an exception to the hearsay rule for proof of the truth of its content. In which case the victim's prior out of court statement can be admitted as a spontaneous utterance or Res Gestae as proof of the truth of the contents (and not merely to attack the witness' credibility), or pursuant to *R. v. B. (K.G.)*.

⁵⁴ *R. v. Esford*. [2003] O.J. No. 1412 CRWN/2003-107 (C.J.). Six out of court statements made by domestic assault/threatening complainant, who later disappeared, admitted into evidence under traditional Res Gestae exception to hearsay rule and also found to be necessary and reliable under principled exception.

5. SIMILAR FACT EVIDENCE

- In many domestic violence cases, there is a possibility of the Crown introducing similar fact evidence, either by way of similar acts of domestic violence by the accused towards the same victim or towards another victim. This can include external similar fact – acts not alleged in the Indictment, or internal similar fact – acts alleged in the Indictment.

6. EVIDENCE OF PRIOR CONDUCT

- Victims of abuse who engage in violent resistance tend to be left with little or no protection. In part this has been because the dynamics of partner abuse have been poorly understood; in part it has been because evidentiary rules seemed to preclude admission of evidence of prior bad conduct. This made it difficult for courts to consider the nature and the meaning of violent action in the context of the power and control dynamics of the relationship. As discussed earlier, abusive violence can only be understood in context. Two recent Canadian Court of Appeal decisions, *R. v. F.D.S.*⁵⁵ and *R. v. C. (D.A.R.)*⁵⁶ make it clear that courts may consider evidence of past conduct and the dynamics of the relationship in domestic violence cases. This broadened access to information may enhance judicial assessments in partner-abuse cases.

7. USE EXPERT WITNESS AT TRIAL

- When necessary, expert testimony should be used to explain the victim’s absence or hostility.⁵⁷ It is also useful in strangulation cases. Even when the victim has not obtained medical treatment, it is important to use medical experts at trial in order to inform the jury and the judge about the seriousness of strangulation. Jurors and Judges need to know that strangulation can cause unconsciousness within seconds and death within minutes. They also need to know that symptoms (as opposed to physical signs) are important evidence of strangulation, and that victims can die from strangulation without a single mark. (Refer to Strangulation/Choking section for further information on strangulation).

8. EFFECTIVE ADVOCACY PRACTICES IN DOMESTIC VIOLENCE CASES

- Use Bail Hearings and Sentencing Hearings as opportunities to disclose history of abuse, dynamics of relationship and impact on victims and children. Obtain details of all past police reports involving domestic violence occurrences involving the accused. Use 911 recordings and photographs to show the extent of fear and suffering caused by the accused’s actions, and to deflect claims by reluctant/recanting victims.
- To explain domestic violence, prosecutors can inform triers of fact by eliciting certain information from victim witnesses. Simply asking the victim in direct examination why she/he stays in the relationship can satisfy questions a reasonable jury would have, as long as the questioning is properly constructed: For example: “For those of us who have never

⁵⁵ *R. v. F. (D.S.)* 132 C.C.C. (3d) 97 (1998) (Ont. C.A.).

⁵⁶ *R. v. C. (D.A.R.)* 170 C.C.C. (3d) 64 (P.E.I. C..A.).

⁵⁷ *R v. Lavallee* (1990) 55 C.C.C. (3d) 97.

experienced violence in a relationship, we wonder why you would not have left by now? Can you explain what keeps you in this relationship?”

- Asking a victim how she/he felt when they were being assaulted can result in an answer that clearly defines the victim’s perspective and in particular, the degree of fear that she/he may have of the abusive partner.
- A trier of fact can get a good glimpse of how violent and enraged the accused can be if the victim witness is asked to explain what he/she looked like and said during the attack.
- Closing and/or sentencing submissions could include quoting for the court Madam Justice Wilson’s remarks about battered women from *R. v. Lavallee*. This should send a clear message that battered victims do stay in abusive relationships and it should not be a factor used to minimize, excuse, or deny the violent behavior.
- Sentencing submissions should include the details of all prior domestic violence convictions that reveal an accused’s propensity for abusing intimate partners and his/her response to treatment in the past.

9. SOME OTHER MEASURES OF SUCCESS IN DOMESTIC VIOLENCE PROSECUTIONS

- The victim feels that the criminal justice system is available to them if and when they need to use it in the future
- Victim is informed about criminal justice system
- Victim is connected with necessary community services
- Victim is made aware that treatment is available for abusive partner
- Victim is given information on what domestic violence is, typical battering personality, risk factors for further violence and lethality, and risks of exposing children to domestic violence
- Victim and children have safety plans in place
- Victims recognize that the Crown has special training and knowledge in the area of domestic violence

Appendix #2 - Includes a comprehensive Safety Planning document recommended by the Ontario Solicitor General that can be easily incorporated into local responding agencies’ practice guidelines.

Appendix #5 – Includes a sample form that may be used by police to report children exposed to family violence. Because of the new *Child, Youth and Family Enhancement Act*, there may be a positive duty on police to report children exposed to domestic violence to Children’s Services.

Appendix #7 - Includes a “Domestic History Questionnaire,” recommended by the DVDRRC. This form is a generic collection of questions that captures well-recognized lethality indicators and can assist proper risk assessment.

Review of Civil Orders Used in Domestic Violence Cases

EMERGENCY PROTECTION ORDER (EPO)

What is an EPO?

- An EPO is a civil order available under the *Protection Against Family Violence Act* that the police or the claimant (victim) may apply for to provide immediate protection to the abused person.
- An EPO contains provisions similar to restraining orders such as no contact provisions, removal of respondent and personal belongings, removal of weapons, but also may contain a provision for exclusive occupation of the family home.

Applying for an EPO

- Applications for EPOs are made either to a Provincial Court judge or to a presiding Justice of the Peace (JP). Applications to a JP are often done over the phone by the police.
- EPOs can be applied for 24 hours a day, 7 days a week.
- To apply for an EPO, there must be “family violence,” as defined under the *Act*.
- The violence must be between family members, including adult interdependent partnerships, but not dating relationships (unless they are parents of one or more children). Obtaining an EPO usually requires that family members reside together, except if they have had a child together.
- The order must be necessary by “reason of seriousness or urgency” for the protection of the claimant.
- In Edmonton, the Edmonton Protection Order Program (780-422-9222) can provide information about options, complete a risk assessment and help claimants who wish to apply for an EPO. Calgary Legal Guidance has a similar program to assist victims (403-716-6484).

Steps Police Should Follow When Applying for an EPO

1. Gather information:
 - Ask the risk assessment questions contained within the “Best Practices for Police Investigating Domestic Violence” section.
 - Use EPO Intake Sheet and fill it out.
 - These are a part of your notes on the incident, refer to sheet when speaking to the J.P. over the phone.
 - In the “Nature of Family Violence” section, include all the information you know about his family, including unreported incidents.
2. Locate the nearest fax machine to your location. This can be a house, business, etc. When the EPO is granted, a copy will be faxed to you by the J.P.

3. You will be giving sworn testimony, if you want to swear on the Bible, find one. You may also affirm. The complainant may also be asked questions by the J.P.
4. If available, fill out an EPO Consent Form and have the complainant sign it.
5. Phone the J.P. and request an EPO. Make sure to provide a telephone number where you can be reached, and the J.P. will call you back.
 - This facilitates the set up of the transcriptional recording of your evidence.
6. Once granted and faxed to you, make three (3) copies of the EPO.
 - Serve a copy on the subject (respondent). If he/she is in the residence, have him/her removed.
 - If respondent is not there, make arrangements for personal service of the copy of the EPO.
 - Give a copy to the complainant (claimant) for their records.
 - Keep a copy to submit to your report/records management unit.
7. Complete an Affidavit of Service (after respondent is served), and have it sworn by a Commissioner of Oaths.
8. Fax (or hand deliver) a copy of the EPO and Affidavit of Service to CPIC. Include the police case #.
9. Take a copy of the EPO and Affidavit of Service to the Queen's Bench within 24 hours.
10. Fax a copy of:
 - Your police report
 - EPO
 - Affidavit of service.
11. Advise the complainant of the following:
 - There must be a review of the EPO by a Queen's Bench Justice, within seven working days of the order being granted.
 - At the review, the Queen's Bench Justice will determine if the EPO should be made into a Queen's Bench Protection Order (QBPO). The QBPO can be granted for up to one year.

Warning – These steps contain abbreviated segments of the *Protection Against Family Violence Act*. The *Act* itself is more detailed, but the above steps should be sufficient for most cases. If in doubt, direct your questions to the Justice of the Peace at the time of your application.

Cost of an EPO

- There is no cost to the claimant in obtaining an EPO.

Notifying the Respondent

- The police must serve EPOs on the respondent, unless the judge or JP orders otherwise.

EPO Review

- A review in Court of Queen's Bench is scheduled within 7 working days of the EPO being granted. The time for the review will appear on the Emergency Protection Order.
- It is a good idea to have legal assistance during the review. Free legal assistance may be available for the review for both claimants and respondents.
- In Edmonton, legal assistance is provided to claimants through the Edmonton Protection Order Program (through the Family Law Office of Legal Aid (780-422-9222). In Calgary, assistance to claimants is provided through Calgary Legal Guidance (403-716-6484). In the rest of the province, private lawyers on Legal Aid rosters provide assistance to claimants.
- If respondents have questions about the meaning and effect of an EPO or they would like a lawyer to represent them at the review hearing, they can contact the Atlas Call Center, a project of Legal Aid, at 1-866-845-3425 (toll free). Duty counsel will be appointed through Legal Aid for the review.
- At the review, the Court may:
 - Direct that an oral hearing be held
 - Confirm the EPO
 - Make a new Queen's Bench protection order
 - Revoke the EPO.
- The Queen's Bench clerk's office will often provide information to the police regarding what happened at the review hearing.

Breach of an EPO

- A breach of an EPO or a Queen's Bench Protection Order may elicit either criminal charges or civil contempt proceedings. Section 127 (disobeying a court order) is an indictable offence that may be used as a criminal remedy. Where police decide to proceed civilly, the order will include a provision authorizing police, on a breach of any of the terms, to arrest and bring the respondent before a Queen's Bench justice at the earliest time (the next available chambers appearance) to show why the respondent should not be held in contempt of court and face one of the associated penalties.

Information Regarding the Court Procedure

- There is a Court Procedure Booklet available at Court of Queen's Bench locations or online to assist people in the review of EPOs. Contact the Family Law Information Center in Calgary (403-297-6600) or in Edmonton (780-415-0404) or online at www.albertacourts.ab.ca/familylaw/ropo.htm for assistance.

QUEEN'S BENCH PROTECTION ORDER (QBPO)

What is a QBPO?

- A QBPO is an order under the *Protection Against Family Violence Act*. Following a review of an EPO, a Court of Queen's Bench (QB) justice can determine whether to revoke the EPO, direct that an oral hearing be held, confirm the EPO, or make a new order. Any protection order coming out of the review is called a QBPO.
- A QBPO can contain the same provisions as an EPO, plus the following:
 - Reimbursement for losses
 - Temporary possession of property
 - Restraining disposition of property
 - Posting of bond to ensure compliance
 - Counseling for respondent or other family members.
- A QBPO may be in force for up to one year. It may be extended for further one-year periods.

Applying for a QBPO

- There are two ways to obtain a QBPO: through review of an EPO or by application directly to the Court of Queen's Bench.
- Legal assistance may be useful. Calgary Legal Guidance has a program to provide information about options, do risk assessments and help claimants who want to apply for a protection order (403-716-6484).

Cost of a QBPO

- There is no cost to the claimant in obtaining a QBPO.

Notifying the Respondent

- QBPO applications directed to the Court of Queen's Bench require that notice be given to the respondent.
- Service of a QBPO is the responsibility of the claimant.

Notifying the Police

- Claimants are advised to forward a certified copy of the QBPO, affidavit of service and statement of description to the police for entry on CPIC.

Breach of a QBPO

- A protection order is an order of the court. A breach of the order can attract either criminal or civil remedies. Section 127 of the *Criminal Code* states that any person who, without reasonable excuse, disobeys a court order is guilty of an indictable offence and is liable to imprisonment for up to two years.

- Furthermore, the Court of Queen's Bench has the power to punish and cite in contempt those who disobey an order of the court, including an order made under the *Protection Against Family Violence Act*. The punishment could include a fine or imprisonment.
- Neither remedy applies to the breach of that part of an order that requires money to be paid. In such a situation, the obligation would be enforced using the Maintenance Enforcement Program.
- If your partner does not comply with the order, call the police. If you have a lawyer, call that person as well.

Information Regarding the Court Procedure

- There is a Court Procedure Booklet available at all QB locations and online to assist people in making an application for a QBPO. Contact the Family Law Information Center in Calgary (403-297-6600) or in Edmonton (780-415-0404) or online at www.albertacourts.ab.ca/familylaw/ropo.htm for assistance.

RESTRAINING ORDER

What is a Restraining Order?

- A restraining order is a civil order made by the Court of Queen's Bench that limits the conduct or contact by a person against whom the order is made. These orders can also limit contact with children.
- Restraining orders are often used in cases of domestic violence.
- Restraining orders are made independent of any other action but can be joined to another action for the purposes of filing the order in that action.

Applying for a Restraining Order

- When an unrepresented party is making the application, the form of order will be the sample order in the Family Law Practice Note in the Rules of Court.
- Restraining orders are applied for during normal court hours.
- In order to obtain a restraining order, the applicant must file a sworn affidavit (custodial parent's affidavit will suffice for the children in their care).
- Restraining orders can be obtained without police assistance.
- Restraining orders can be obtained without the assistance of a lawyer, though the assistance of a lawyer may be helpful (especially in stalking cases where the history is involved and a more lengthy affidavit is appropriate).
- Legal Aid may provide a lawyer to apply for a restraining order (provided their eligibility guidelines are met). These eligibility guidelines include evaluation of income and the facts of the case. In Calgary, Calgary Legal Guidance may assist with obtaining a restraining order (403-716-6484).

Cost of a Restraining order

- There are no filing fees if the order is being applied for on its own.

Notifying the Respondent

- Restraining orders are not enforceable until the respondent has notice of the order.
- An ex parte restraining order is one made without notice to the respondent. This is only available if the court is of the view that there are good reasons for not notifying the respondent, such as imminent harm to the applicant. If there is counsel for the respondent, it is usually considered appropriate to give notice to them, though it may be short notice depending on the circumstances.
- The respondent must be served with the ex parte restraining order, which will provide information about the review date.

Notifying the Police

- Police are not served notice of the application but should be served with a certified copy of the order, as this will be entered on CPIC.

Restraining Order Review

- An ex parte order (one made without notice to the respondent) can be obtained in the chambers of a Queen's Bench Court Justice and will be scheduled for review by the court, normally within two to three weeks, to obtain a confirming order. A confirming order is an order that simply states that the ex parte order (and the terms therein) are confirmed and will have effect until the date stated in the confirming order. Usually this will be up to one year but longer ones (even permanent) have been granted.
- Once reviewed by the Court of Queen's Bench, the applicant should forward a certified copy of the confirmed order, affidavit of service and statement of description to the police to allow them to update CPIC.
- A certified copy of the order should always be given to the applicant(s).

Breach of a Restraining Order

- Breach of a restraining order is not a criminal offence. However, the order will usually include a provision ordering police, on a breach of any of the terms, to arrest and bring the respondent before a Queen's Bench justice at the earliest time (the next available chambers appearance). The applicant (or applicant's lawyer if that lawyer is still on record) will be given notice, if possible, and the respondent will appear to show why he should not be held in contempt of court and face one of the associated penalties. The applicant can respond to this if present.
- Restraining orders are not enforceable until the respondent has notice of the order. On a breach, this may be done by serving a copy of the order on the respondent and providing a reasonable amount of time for the respondent to comply. Thereafter, failure to comply is a breach.

- On the basis of case law prior to the decision in *Clement v. The Queen* (1981) 61 CCC (2d) 449 (S.C.C.), the generally accepted legal view was that the power of the Court to punish for contempt *exempted* the breach of a Restraining Order from constituting an offence under Section 127 of the *Criminal Code*.
- Some police departments questioned the power of the Court of Queen's Bench to issue Restraining Orders and direct immediate arrest and return before the Court for breach thereof. The *Clement* decision necessitates a reconsideration and clarification of policy in this area.

Procedure:

1. Breaches of restraining orders will ordinarily be dealt with by way of contempt proceedings and no charge should be laid under Section 127 of the *Criminal Code*.

If an offence is committed in the course of, but over and above a bare breach of the order, e.g., a sexual assault or other assault causing bodily harm, or significant property damage, etc., the appropriate charge should be laid as an additional matter over and above the contempt proceeding outlined.

2. Discretion rests with the Chief Crown Prosecutor to withdraw such additional charge if in his judgment the matter has been adequately addressed by the Queen's Bench justice by way of finding the offender in contempt of court.

Information Regarding the Court Procedure

- Court Procedure Booklets are available at the Court of Queen's Bench and online to assist people in getting an ex parte restraining order in a family law situation. Contact the Family Law Information Center in Calgary (403-297-6600) or in Edmonton (780-415-0404) or online at www.albertacourts.ab.ca/familylaw/ropo.htm for assistance.

PEACE BOND

What is a Peace Bond?

- Pursuant to Section 810(1) of the *Criminal Code*, an information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or common-law partner or child, or will damage his or her property.
- If the justice or the summary conviction court is satisfied by the evidence adduced that the applicant has reasonable grounds for his or her fears, he or she can order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance, including conditions as the court considers desirable for securing the good conduct of the defendant.

- The justice or the summary conviction court is to consider whether it is desirable, in the interest of the safety of the informant, to add a radius restriction prohibiting the defendant from being at or within a distance of the informant or informant's spouse, common-law partner or child and prohibiting the defendant from communicating, in whole or in part, directly or indirectly, with the informant, informant's spouse or common-law partner or child.
- Before making an order, the justice or summary conviction court is to also consider whether it is desirable, in the interests of the safety of the defendant or any other person, to include a condition that the defendant be prohibited from possessing any weapons for any period specified in the recognizance.

Applying for a Peace Bond

- A peace bond can be obtained without assistance from the police or a lawyer (though this is seldom done). In Edmonton, the Victims Assistance Program (John Howard Society) provides assistance to individuals who wish to obtain a peace bond in family violence situations. They can be reached at 780-422-0721.
- Complainants will often report an incident to the police and indicate why they are worried about their safety and get a file number from the police (though this is not necessary).
- The complainant will go to the local criminal court during regular court hours to arrange an appearance before a Provincial Court judge.

Cost of a Peace Bond

- A peace bond can be obtained at no cost.

Notifying the Respondent

- The judge will take evidence from the complainant under oath. If the judge considers that a case has been made to compel the other party to attend before the court, a court date will be set and a summons will be served on the other party.
- If a summons is issued, the Crown prosecutors' office will also get a copy of the information.
- In Edmonton and Calgary, it may be possible to have a presiding Justice of the Peace, rather than a Provincial Court judge, consider issuing the summons.
- If, at the court appearance, the other party disputes the issuance of the peace bond, the matter will be set down for a hearing. A Crown prosecutor will be in court to conduct the hearing.
- At the hearing, the complainant will give evidence and may be cross-examined.
- If the other party does not show up, normally a warrant or personal service of summons is requested. In some cases, the judge may hear evidence and, if satisfied, issue a peace bond.
- If a hearing is required, it can take several months for this process.

Breach of a Peace Bond

- Anyone found to be in breach of a peace bond could be charged and convicted of an offence pursuant to s. 811 of the *Criminal Code*.

To read some frequently asked questions regarding the *Protection Against Family Violence Act*, please refer to: <http://www.law-faqs.org/ab/pafva.htm> or <http://www.violetnet.org/info/pafva2.htm>.

Appendix #16 – Contains EPO-related forms, including: an EPO Intake Sheet, an EPO form, an Affidavit of Service, an Order for Substitutional Service of the EPO, an Application for a Warrant Permitting Entry, and a Warrant Permitting Entry.

Firearms

Access to firearms and weapons is a primary risk factor in domestic violence. Therefore, police and prosecutors should be familiar with the following sections of the *Criminal Code*:

SEIZURE WITH A WARRANT

Police are able to use the normal search warrant provision in s. 487 to obtain a warrant to search any place for firearms or devices that have been used in an offence, which are the subject matter of an offence or which are intended to be used to commit an offence.

- **When there are no reasonable grounds to believe that an offence has been committed**

The police are allowed to apply for a warrant under s. 117.04 (1) to seize firearms or other regulated items or registration or licensing documents, which have been issued for those items if they believe it is not desirable to the safety of any person that he/she possesses those items.

SEIZURE WITHOUT A WARRANT

- **Place other than dwelling house**

Section 117.02 permits a police officer to search any place other than a dwelling house where the officer has reasonable grounds to obtain a warrant but cannot do so because of exigent circumstances. A search under this section is undertaken to find evidence of an offence.

- **Dwelling house**

Section 117.04(2) allows the warrantless search of any place including a dwelling house for public safety reasons if the exigent circumstances that make obtaining a warrant impracticable specifically relate to the safety of any person.

SEIZURE

Section 117.03 allows a police officer to seize a firearm or other regulated item from a person who fails on demand to produce the documentation that authorizes the possession of the item. This section does not authorize a search. A demand can be made under the section only if the officer finds the person in possession of the firearm or other regulated item.

DISPOSITION OF SEIZED ITEMS

If firearms or other regulated items have been seized, they will either be held for court because a charge has been laid and they will be required as evidence, or they will have to be disposed of. In cases where charges will not be laid, the procedure by which seized firearms may be disposed of depends upon the circumstances of their seizure.

If a firearm was seized pursuant to a warrant issued under s. 487 of the *Criminal Code*, the usual report to a justice will be required under s. 490 and the procedure for disposition as provided in that section will be followed.

If a firearm was seized for public safety reasons under s. 117.04, whether the seizure was with warrant or not, a report to a justice must be prepared and the seized items must be listed. The report should also set out the reasons why a warrant was not obtained if the seizure was a warrantless one. A police officer must also apply to the justice within 30 days of the seizure for an order for the disposition of seized items. If this is not done, the items must be returned to the person from whom it was seized.

If the item has been seized under s. 117.03 because the possessor could not produce valid documentation, a peace officer must wait 14 days from the date of the seizure to allow the possessor to produce the required documentation. If the documents are produced within that time, the item will be returned. If not, the officer must make an application to a justice for an order of disposition.

Section 490 of the *Criminal Code* which sets out a procedure for the return of seized items has no application to any item which has been tendered as an exhibit in a criminal trial; *R. v. Spindloe*, [20010 S.J. No. 262 (Sask. C.A.).

PREVENTATIVE PROHIBITION ORDERS

There are two types of hearings that may lead to a preventative prohibition order.

Under s. 111 of the *Criminal Code* a police officer or firearms officer may apply to court for an order that would prohibit a person from possessing a firearm or other regulated item. If a court determines that it is not desirable in the interests of the safety of the respondent or any other person that the respondent possess firearms the court shall prohibit the respondent from possessing any or all of the following items:

- Firearms
- Cross-bows
- Prohibited weapons
- Restricted weapons
- Prohibited devices
- Any kind of ammunition
- Explosive substances

If the circumstances change, a person may apply under s. 112 to have a prohibition order made under s. 111 revoked.

A court may also make a prohibition order under s. 117.05 of the *Criminal Code*. This section applies when police have seized weapons or documents but there has been no criminal conviction that would allow a court to impose an order under either s. 109 or s. 110. A section 117.05 hearing will be required if a police officer has seized a firearm or other regulated item for public safety reasons and applies to a justice for directions on how the item should be disposed.

The strict rules of evidence applicable in criminal proceedings do not apply in these kinds of hearings. Thus, hearsay evidence is admissible; *R. v. Zeolkowski* (1989), 50 C.C.C. (3d) 566 (S.C.C.).

PROHIBITION ORDERS

There are various situations in which a court is either required to make, or required to consider making, an order that prohibits a person from possessing a firearm or other regulated item.

MANDATORY ORDERS UNDER SECTION 109 OF THE CRIMINAL CODE

If an accused is convicted of:

- an indictable offence punishable by a maximum term of imprisonment of 10 years in which violence was used, threatened, or attempted
- an offence under s. 85, 95(1), 99(1), 100(1), 102(1), 103(1), or s. 264
- a drug trafficking offence contrary to the *Controlled Drugs and Substances Act* or
- any offence involving a firearm or other regulated item that the offender was prohibited by court order from possessing

the court must impose a minimum 10-year prohibition order under s. 109. This order applies to all firearms and other regulated items.

DISCRETIONARY PROHIBITION ORDERS UNDER S. 110

A court is obligated to consider making an order of prohibition under s. 110 when an accused is convicted of:

- A summary conviction offence involving actual, threatened or attempted violence
- An indictable offence of the same nature with a maximum sentence of less than ten years
- Any offence involving a firearm or other regulated item where the person was not already the subject of a prohibition order.

The court must consider whether it is desirable, in the interests of the safety of any person, to make such an order. If the person has been convicted of an offence as described in s. 110(1) and the court does not make a prohibition order or the court makes an order of prohibition that does not prohibit possession of all classes of firearms or other regulated items, the court is obligated to state reasons for not making the order or making an incomplete order.

There is no minimum period of prohibition under this section.

OTHER TYPES OF PROHIBITION ORDERS

A) PROHIBITION AS A CONDITION OF BAIL

Section 515(4.1) of the *Criminal Code* obligates a court to at least consider whether to prohibit an accused person from possessing any firearm or other regulated item if that person is released on bail after being charged with any offence involving actual or threatened violence, a drug trafficking offence or any offence involving a firearm, cross-bow or other regulated item. If the court does not believe the safety of any person would be threatened if a prohibition order were not made, it may decline to make a prohibition order. However, it must state the reasons for not making a prohibition order.

If the court does make an order of prohibition as part of a bail order, the court must specify how the items the accused possesses, but which are subject to the prohibition order, are to be disposed of. The court must also specify the method by which the accused is to surrender all licenses, authorizations and registration certificates.

B) PROHIBITION AS A CONDITION OF PROBATION

Section 732.1(3) allows a court to impose a condition of probation that prohibits a person from owning or carrying a weapon.

C) PROHIBITION UNDER A RECOGNIZANCE

When a court is considering what conditions to impose on a person who is being ordered into a recognizance under s. 810, s. 810.01 or s. 810.2, it must consider whether to prohibit the person from possessing firearms or other regulated items. If the court does not impose that condition, it must state why.

- **What if the suspect is residing with someone other than partner where there are firearms?**

D) LIMITATIONS ON ACCESS ORDERS

Consider, as well, an application under section 117.011 of the *Criminal Code*. When a person is prohibited from possessing weapons, this provision is designed to limit their access to weapons belonging to someone with whom they live or associate. Accordingly, even if the suspect is already prohibited by a court order from possessing weapons for up to five years, if the suspect lives with another person who is not prohibited from possessing weapons and who has several firearms, an application can be brought to a provincial court judge for an order against this other person to restrict the suspect's access to the firearms. While these orders must be minimally intrusive, they are still an important preventive measure that may require the other person to either add to the storage security requirements already in place or to store the firearms at another location for a period of time.

FOR ADDITIONAL INFORMATION CALL:

- National Weapons Enforcement Support Team (NWEST)
- 1-800-731-4000 ext. 2053

Sentencing Domestic Violence Cases

Section 718.2 of the *Criminal Code* mandates that the court shall consider abusing the offender's spouse or common-law partner or child, to be an aggravating factor, and increase the sentence accordingly and mandates that if the offender abuses a position of trust in committing the offence, it too shall be deemed an aggravating factor.

The Alberta Court of Appeal decision in *R. v. Highway, Brown and Umpherville*⁵⁸ is the leading sentencing authority in domestic violence cases. The court recognized that the phenomenon of "repeated beatings of a wife by a husband" is a serious problem in our society and that the courts have an opportunity, by their sentencing policy, to denounce wife-beating in clear terms and to attempt to deter its recurrence on the part of the offender as well as other men.

The court went on to say that the sentencing court must examine circumstances peculiar to the relationship between the parties and that when a man assaults his wife or other female partner, his violence toward her constitutes a breach of a position of trust and is an aggravating factor. Such an assault constitutes an abuse of power and control and the vulnerability of women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape. The paramount considerations must be general deterrence and denunciation. Rehabilitation and individual deterrence are of secondary importance.

The court must consider whether:

- The assault is relatively minor in nature
- The assault is an isolated incident
- There are circumstances that make it desirable that the sentence not be counter-productive to the possibility that the family relationship will be preserved.

Use Bail Hearings and Sentencing Hearings as opportunities to disclose history of abuse, dynamics of relationship and impact on victims and children. Obtain details of all past police reports involving domestic violence occurrences involving the accused. Use 911 recordings and photographs to show the extent of fear and suffering caused by the accused's actions, and to deflect claims by reluctant/recanting victims.

Be sure to detail for the court the following:

- Total number of prior assault related convictions
- Total number of prior domestic violence convictions
- Total number of prior convictions for assaulting same victim
- Details of past domestic assaults
- Dispositions for related offences
- Responses to court ordered sentences in past

⁵⁸ *R. v. Highway, Brown and Umpherville* (1992) 73 C.C.C. (3d) 242 (AB CA).

AGGRAVATING FACTORS (NOT EXHAUSTIVE)

- History of spousal abuse
- Previously assaulted same victim
- Criminal record for violence or related convictions
- Spouse or common law spouse - breach of trust
- Serious injuries to complainant
- Planned or pre-meditated
- Use of weapon
- Children witnessed the assault or were present when the assault occurred
- Offence occurred in the sanctity of home
- Degradation of victim
- Separate acts occurring over a period of time
- No remorse
- Home invasion⁵⁹
- Intoxicated at time of offence

MITIGATING FACTORS

- Early guilty plea
- Youthfulness of accused
- No previous violence on record
- Remorseful accused

LONG TERM OFFENDER AND DANGEROUS OFFENDER APPLICATIONS

It is strongly recommended that Crown prosecutors consider applying for Long Term Offender and/or Dangerous Offender designations for offenders with a history of serious domestic violence.

DANGEROUS OFFENDER APPLICATIONS

If a Crown prosecutor believes that an individual may be an appropriate candidate for proceedings under the Dangerous Offender (DO) provisions of the *Criminal Code of Canada*, the accused must be convicted following trial or guilty plea of a "serious personal injury offence." In addition, Crowns and the police should be aware that recent case law has indicated that a certain level of harm must have occurred in the commission of the crime for the court to consider a Dangerous Offender application.

⁵⁹ In *R. v. Nadolnick*. Of significance is the Court's use of *R. v. Matwiy*, despite the fact that not all of the prerequisites to a home invasion robbery were evident.

A "SERIOUS PERSONAL INJURY OFFENCE" IS DEFINED IN THE CANADIAN CRIMINAL CODE AS (SEC. 752):

752. (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

LONG-TERM OFFENDER APPLICATIONS⁶⁰

An application for a finding that an offender is a Long-Term Offender (LTO) can be brought as a stand-alone application (after conviction) or, having not met the standard for a Dangerous Offender designation, a Dangerous Offender application can be changed to a Long-Term Offender application. This process, however, does not work in the reverse direction and a stand-alone Long-Term Offender application cannot result in a Dangerous Offender finding. The application to have the offender declared a Long-Term Offender is heard by judge alone.

As in the Dangerous Offender application, an assessment of the offender's psychological state and behavioural patterns is required. The assessment process is the same and the final report would be substantially the same as in a Dangerous Offender application assessment. However, where the DO assessment report would comment upon the potential dangerousness of the offender in the future, the LTO assessment report should comment upon the possibility of eventual control of the offender in the community after a period of federal incarceration. After such an assessment has been presented to the court, the court may find an offender to be a Long-Term Offender if the court is satisfied that:

Section 753.1 (1) (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

(b) there is a substantial risk that the offender will re-offend; and

(c) there is a reasonable possibility of eventual control of the risk in the community.

⁶⁰ For an excellent resource on high-risk offenders, please refer to: Solicitor General Canada. "High Risk Offenders: A Handbook for Criminal Justice Professionals," May 2001.

The *Criminal Code* goes on to define the concept of "substantial risk" for the court.

Long-Term Offender orders are primarily about management of risk and protection of society, with less emphasis on rehabilitation of the offender. Unlike breaches of probation (which are a dual process offence), breaches of Long-Term Offender orders carry a maximum sentence of ten years incarceration (s. 753.3(1)). This difference demonstrates that Parliament regarded breach of Long-Term Offender order conditions as being more serious than breach of probation. The Alberta Court of Appeal has held that the protection of society is the paramount goal when sentencing an offender who has breached a condition of his/her Long-Term Offender order. **If the condition breached is connected to the offender's risk of re-offending, it will call for a more significant sentence.**⁶¹

ALBERTA JUSTICE NATIONAL FLAGGING PROGRAM

Alberta implemented a "flagging system" in 1995 to enhance public safety by targeting high-risk violent offenders. Through the flagging system, case information is made available to other Crown prosecutors and law enforcement agencies about high-risk violent/dangerous offenders before crucial decisions are made with regard to appropriate charges and prosecution strategies, including commencing a Dangerous Offender Application.

As of 2004, in excess of 2000 offenders have been identified, profiled, and are currently being tracked. All of their names have been listed in JOIN on a developed program. Each week JOIN produces a list of those offenders who have again been charged with a new offence that has been entered on the tracking system. If the new offence is a serious personal injury offence, the Crown prosecutors' office responsible for the new offence is notified that file material has been developed for that offender.

If a Crown prosecutor believes an accused should be flagged, or considered for a Dangerous Offender or Long Term Offender designation, contact the National Flagging Coordinator, Alberta Justice, at (780) 427-6064.

⁶¹ *R. v. H.P.W.* [2003] A.J. No. 479.

DOMESTIC VIOLENCE CASE LAW

SEPARATION OF THE PARTIES:

R. v. Lee, 2004 ABCA 46. Sentences should reflect the need to deter violence during the period following separation or termination of a relationship.

R. v. Evans (1997), 196 A.R. 207. Sentences imposed for offences occurring after separation of the parties must still consider the need to deter violence as “this period is characterized by a reluctance on the part of the abuser to give up control over the person.”

CONTROL DYNAMIC:

R. v. Harris [1993] A.M. No. 814. The important thing to analyse in domestic violence cases is the control dynamic. Sentencing principles in *R. v. Brown* will apply regardless of the fact that a complainant is in a new relationship.

DETERRENCE AND ISOLATED ACTS OF VIOLENCE:

R. v. Ollenberger [1994] A.J. No. 153. It is as necessary to deter isolated instances of spousal assault as it is to deter repeated instances. A sentencing judge faced with a first assault has no way of knowing whether it will be an isolated incident, or whether it will turn out to be the first of many.

“The message which this court wishes to send out, however, is that domestic violence is a serious problem, and that it will not be tolerated by this court. We are prepared to do everything within our power to help society to deal with this social problem. The only way we can do this is to impose sentences on those convicted of domestic assaults, which will deter them and others from committing such offences. Those sentences must also denounce domestic violence and express the condemnation of such conduct by society” (at par. 33).

INAPPROPRIATENESS OF CONDITIONAL SENTENCE ORDERS IN DOMESTIC VIOLENCE CASES:

R. v. Hunter (1998) ABCA 125 C.C.C. (3d) 121. In cases of spousal assault, the aims of deterrence and denunciation usually would not be met by the imposition of a conditional sentence.

Appendix #17 - Includes a Sentencing Checklist for adults.

Appendix #18 - Includes an example of a Probation Order specific to family violence.

Appendix #19 - Includes information for victims of crime regarding Victim Impact Statements.

Information for Victims of Crime

VICTIM IMPACT STATEMENT

Under section 722 of the *Criminal Code of Canada*, a Victim Impact Statement allows victims of domestic violence to express in writing to a judge how being a victim of crime has affected them and their family.

The Victim Impact Statement should describe the harm done, the loss suffered by the victim, and the emotional impact that they have experienced.

Information or evidence regarding the offence should already have been included in the witness statement provided to police and should not be included on the victim impact statement. The statement should not contain criticisms of the offender or recommendations as to the severity of punishment.

Once completed, the statement will be provided to the court and will be considered by the judge at the time the offender is sentenced.

A victim may be cross-examined in court on the contents of his/her statement.

FINANCIAL BENEFITS PROGRAM

The Financial Benefits Program assists direct victims of violent crime in Alberta, who have suffered physical and emotional injury, by providing one-time payments based on the injuries they received. Victims make their own decisions on the use of the money depending on their own individual priorities. Victims usually do not need to submit anything else to the program except a completed application form.

There is an application deadline of 2 years from the date of the incident. Eligibility is not dependent on an offender being convicted or charged. For information on how to apply, contact Financial Benefits at (780) 427-7217, or the victim service program in your community.

RESTITUTION

If a victim has suffered financial loss as a result of a crime, they may have the right to seek restitution from the offender. Restitution is a way for the offender to repay the victim for the loss that they have suffered. Restitution may be ordered by the court as a result of:

- **Damage, destruction, and loss of property:** restitution order will not exceed the value of property and will be reduced by the value of any property that has been returned.
- **Bodily harm:** the restitution order will cover monetary loss including income or support.

- **Expenses incurred in moving out of the offender’s house:** the restitution order will cover any reasonable expenses.
- **Losses incurred by unknowingly purchasing or lending money on stolen property:** where the property has been returned to its lawful owner, the restitution order will cover the loss you have incurred. The order will not exceed the original amount you paid or the amount outstanding on a loan.

Information about restitution and a Request for Restitution form is available from the police. Once the victim has completed the form and established the amount of restitution that they are seeking, they should return the form to the police as quickly as possible. The form is then given to the Crown prosecutor who may make application to the court for a Restitution Order.

CONTACT INFORMATION

Alberta Solicitor General and Public Security helps communities assist victims of crime. Victims of crime who want further information or feel they have not been treated fairly can contact:

Victims Programs
Telephone: (780) 427-3460
Fax: (780) 422-4213

For more information on applying for benefits for injuries suffered as a result of crime contact:
Financial Benefits Program
Telephone: (780) 427-7217
Fax: (780) 422-4213

Alberta Solicitor General and Public Security
10th Floor, J.E. Brownlee Bldg.
10365 – 97 Street, Edmonton, AB T5J 3W7

See also “Victims of Family Violence – Information and Rights”
www.solgps.gov.ab.ca/tips/families.aspx?id=3149

Appendix #14 - Includes a list of agencies to assist victims of crime, as provided by Alberta Solicitor General and Public Security.

Appendix #19 - Includes information for victims of crime regarding Victim Impact Statements.

Elder Abuse⁶²

Elder abuse is the maltreatment of an older person by someone they know and trust, most often a close family member. It is a breach of trust in highest sense. It is chronic in nature and usually occurs within in the home.

The problem of elder abuse has only recently come to public attention. While there are few statistics on the incidence and prevalence of elder abuse, Statistics Canada's 1999 General Social Survey on Victimization suggests that 7% of seniors have experienced some form of emotional or financial abuse in the five-year period preceding the survey. The survey indicated that an adult child, caregiver or spouse usually perpetrates the abuse.

COMMON TYPES OF ABUSE

PSYCHOLOGICAL ABUSE

Psychological abuse includes behaviours such as:

- Threatening to use violence
- Threatening to abandon them
- Intentionally frightening them
- Making them fear that they will not receive the food or care they need
- Lying to them
- Failing to check allegations of abuse against them
- Insulting, swearing, yelling, or name calling
- Making them uncertain about themselves and their abilities (lowering their self esteem)
- Making derogative or slanderous statements about them to others
- Ignoring or excluding the person
- Socially isolating them from meaningful events or activities, or failing to let them have visitors
- Withholding important information that they have a right to know
- Demeaning them because of the language they speak
- Repeatedly raising the issue of death with them
- Telling them that they are too much trouble, or criticizing them
- Treating them like servants or children.

⁶² We would like to acknowledge the Edmonton Elder Abuse Intervention Teams for their valuable input into this section.

FINANCIAL ABUSE

Financial abuse includes behaviours such as:

- Misusing a power of attorney
- Persuading, tricking, or threatening the older adult out of money, property, or possessions (and this includes attempts to do any of these)
- Cashing pension or other cheques without authorization
- Use of the older adult's money for purposes other than what was intended by the older adult.

Financial abuse also includes unduly pressuring older adults to:

- Move from, sell or relinquish their home or other personal property
- Make or change a will
- Sign legal documents that they do not fully understand
- Change or keep their marital status
- Give money to relatives or caregivers
- Engage in paid work to bring in extra money
- Care for children or grandchildren.

FRAUDS AND SCAMS

Frauds and scams relating to seniors are generally not addressed by any specific response to elder abuse in this province. These are for the most part crimes perpetrated by strangers who target vulnerable individuals, which sadly often includes seniors. These crimes are best handled by specialized units, front line police officers or where appropriate, Alberta Government Services. Government Services is responsible for compliance and enforcement of the *Fair Trading Act*.

The Consumer Information Centre 1-877-427-4088

Information is available online, at <http://www3.gov.ab.ca/gs/services/consumer/>

NEGLECT

Neglect entails failing to provide:

- Adequate nutrition, clothing and other necessities
- Adequate personal care, e.g. failing to turn a bedridden older adult frequently
- Safe and comfortable conditions
- A clean environment
- Prerequisites for personal cleanliness
- Sufficient bathroom space for privacy
- Sufficient space for personal privacy
- Transportation to necessary appointments

- (At least occasional) outings.

It may also include:

- Leaving incapacitated older adults alone too long or failing to remain with those who need help
- Abandonment.

SELF NEGLECT

Self-neglect refers to a person's inability to provide care and support to him or herself. Self-neglect can happen as a result of an individual's choice of lifestyle, or the person may:

- Be depressed
- Have poor health
- Have cognitive (memory or decision-making) problems
- Be physically unable to care for self.

PHYSICAL ABUSE

Physical abuse may include, for example:

- Beating the person
- Punching
- Burning or scalding
- Pushing or shoving
- Hitting with a hand or instrument or slapping
- Rough handling or physical coercion
- Stabbing
- Tripping
- Spitting.

Physical abuse against older adults may also include:

- Tying them to furniture
- Using or misusing physical restraints
- Restraining them through the use of alcohol, tranquilizers or other medication
- Forcing them to remain in beds or chairs
- Forcing them to remain in rooms (including locking them in).

SEXUAL ABUSE

Sexual abuse is any kind of sexual behaviour directed towards an older adult without the person's full knowledge and consent. It includes sexual assault, sexual harassment, and rape. Sexual abuse can happen to mentally capable seniors by their spouse, partner, a family member or trusted people in their lives. It can also happen to mentally incapable older adults.

VIOLATION OF RIGHTS

Common examples of rights violations include:

- Withholding information
- Mail censorship (going through their mail)
- Denying the person privacy
- Denying the person visitors
- Restricting the person's liberty and freedom.

MEDICATION ABUSE

As with anyone on medication, a senior may not be self-managing their drugs properly (self-neglect) for a number of reasons:

- Confusion – what, when and how much to take
- Unable to afford required medications / selling them to allow for other needs
- Giving them to other family members
- Self-adjusting dosage and frequency.

When a caregiver (most often a family member) is assisting with dispensation, has access to a senior's medication, or has influence into prescriptions being obtained, abuse may occur:

- Caregivers may over or under medicate in order gain relief from the stress or burden they are under
- Medications may be use improperly as a restraint
- Over / under medication of the senior to cause confusion in order to gain advantage or control (change will, sign cheques, move them into care facilities, obtain legal power)
- Theft of the medication for self-use or resale.

OTHER FORMS OF ABUSE

There are other forms of abuse or neglect that are recognized. Spiritual abuse or neglect may include:

- Using their religious or spiritual beliefs to exploit, manipulate, dominate or control them
- Ridiculing their beliefs
- Preventing them from engaging in spiritual or religious practices

- Acting in a disrespectful way toward their spirituality.

PROTECTION FOR PERSONS IN CARE ACT

In January 1998, Alberta enacted legislation relating to mandatory reporting of abuse occurring in publicly funded care facilities:

“Every individual or service provider who has reasonable and probable grounds to believe and believes that there is or has been abuse against a client shall report that abuse to the Minister of Seniors and Community Supports or a police service...”

Alberta Seniors and Community Supports operates a direct reporting line. * The complaints are subsequently assigned to a contracted investigator who responds to the complaint and conducts an investigation. It is not the intention of the *Act* to find guilt or innocence, but to better protect the health, safety and well being of adults in care. Therefore, recommendations are made to the facility involved and are also sent to the complainant. Complaints received by a police service may be forwarded on to the department of Seniors and Community Supports.

*** To report abuse call: 1-888-357-9339**

POLICE RESPONSE TO COMPLAINTS OF ELDER ABUSE

It is vital that police officers (and other responders) recognize that seniors seldom report when they are being abused. There are numerous reasons for this, many of which we are familiar with from our experience with family violence and many that are unique to seniors, including:

- Love for the abuser - a close family member who needs help
- Hope for change / belief things will get better
- Fear of losing relationships with family members, especially grandchildren
- Fear of being institutionalized
- Fear of losing a present or future caregiver
- Unable to report due to physical frailty or cognitive impairment
- Overwhelming sense of hopelessness - the abuse has often be going on for many years
- Shame - the abuse is usually a guarded family secret
- Guilt - seniors tend to blames themselves
- Unaware of resources or a lack of faith in “the system” to help or protect them.

When seniors do report problems, they will often hold back incident details. They rarely name the abuse or give a full history of problems. Calls are often dealt with by the police superficially – “guest refusing to leave,” “trouble with drunk relative” or “family argument.”

Reports of abuse against seniors most often come from a third party – a neighbour, a family member, or a professional the senior has come into contact with. These reports may be difficult to evaluate for a lack of detailed information. Police may be reluctant to respond, preferring to have the reporter urge the senior to call them directly.

Whenever a concern for the wellbeing of an older person is reported, the police (or other responders) should take the complaint seriously and every effort should be made to meet with the senior promptly. Delayed Response, Community Station Reporting and Wait Listing may not be appropriate. Extra effort will be required in drawing our information from the senior victim and collateral information should be sought out as soon as possible.

CRIMINAL INVESTIGATIONS OF ELDER ABUSE

Where abuse appears to be criminal, a full and thorough investigation is required.

When violence is involved, the dynamics are similar to spousal violence. The decision to lay charges is not left with the complainant. The perpetrator is almost always a close family relative (son, son-in-law, daughter, spouse, etc.). The cycle of violence is the same and the same principles apply respecting the police response.

Where elder abuse is not spousal, the abuse is usually related to financial or material advantage (as opposed to power and control), which amount to a breach of trust.

The majority of elder abuse cases involve financial or material abuse. When property crimes are occurring, charges should be laid where possible. A cycle of abuse similar to the cycle of violence is occurring and the same principles apply.

As with spousal victims, seniors will be reluctant to press charges. Be prepared to explain your role, the role of the justice system and the zero tolerance policy of this province.

Gathering corroborating evidence in cases of crimes committed against seniors is as important as it is in case of spousal violence. Many seniors are going to have difficulty in court due to frailty, cognitive impairments, intimidation by the system and fear of facing their abuser. Some seniors will not be able to attend court or give evidence, and the investigation should be conducted with this in mind. Police should:

- Consider doing videotaped interviews with older victims and witnesses. Courts are allowing these to be used as evidence under some circumstances and hopefully they will become more accepting in the future.
- Photograph injuries, property damage, crime scenes, etc. Photographs will greatly aid a victim who has difficulty remembering or giving descriptions.
- Seek out witnesses who can provide corroboration or details – a neighbour who heard arguing, a family member who saw the injury or someone who received a disclosure.
- Review 911 / complaint-line recordings and secure copies for evidence as needed.
- Obtain copies of all medical records, and have all related witnesses identified.
- Attempt to videotape interviews with the suspect.

- Consider making a polygraph request, where appropriate.

It is important to remember our roles and authorities under the law. Police officers only need reasonable and probable grounds to lay a charge. By laying charges where appropriate, the offender is held accountable for his actions, and court ordered protection is available for the victim. The accused has the opportunity to take responsibility for his wrongdoing and receive rehabilitative services that may not otherwise be available to him.

The Crown's test of "reasonable likelihood of conviction" should not be weighed fully until the day of trial. The ability of a victim or other witness to give evidence may well improve during the time period between the offence and the trial date. Once the abuse has stopped, many seniors become less frail. Their memory may improve and they may regain the courage to face their abuser. Services to support the senior should be utilized, including court preparation programs. New evidence may be developed even after the preliminary hearing and right up until the day of trial (providing reasonable disclosure is provided to the defense).

Relationship Between Animal (Pet) Abuse and Family Violence

According to the American Humane Association, the correlation between animal abuse, family violence, and other forms of community violence has been well established.⁶³ Child and animal protection professionals have recognized this link, noting that abuse of both children and animals is connected in a self-perpetuating cycle of violence. When animals in the home are abused or neglected, it is a warning sign that others in the household may not be safe. In addition, children who witness animal abuse are at a greater risk of becoming abusers themselves.

In a 2001 collaborative study⁶⁴ (the Calgary Humane Society, YWCA Family Violence Prevention Centre, researcher Sue C. McIntosh, supported by RESOLVE Alberta) of 100 women in shelters who owned pets:

- 25% delayed leaving an abusive situation out of fear of what would happen to their pet. (In an earlier Hamilton, ON study, the number was 48%).
- 56% reported that their abuser either threatened to and/or actually hurt their pet (61% in Hamilton).
- 21% were aware that their abuser had abused animals as a child or adolescent.⁶⁵

Of those women with both children and pets, who stated their partner had abused their pet:

- 65% reported that their children were aware that their pets were being abused.
- 65% believed that their children were impacted by the abuse of their pets.
- 59% talked with their children about their pets being hurt or threatened, but only 19% discussed the impact of such abuse with anyone else.

For many victims of domestic violence, their relationship to their pet is the strongest positive connection with another living being. In abusive relationships, pets are often targeted by the abusive partner and threatened or killed in order to exert power and maintain control over the victim. In part, such behaviour could occur out of jealousy. It could also occur as a cruel attempt to inflict hurt on the victim. Taken together, these findings indicate that companion animals play important roles in violent relationships. Through animal cruelty, abusers:

- Demonstrate their power
- Teach submission
- Isolate victim(s) from a network of support
- Express rage at self-determined action by victim(s) and their children
- Perpetuate the context of terror
- Launch a pre-emptive strike against a victim leaving
- Punish and terrorize by stalking and executing an animal

⁶³ American Humane Association Fact Sheet, "Understanding the Link Between Animal Abuse and Family Violence," 2003.

⁶⁴ McIntosh, Sue C.

⁶⁵ The statistics above and below are taken from Alberta SPCA "Animal Cruelty and Family Violence – A Resource Book for Albertans," 2005.

- Force the victim to become involved in the abuse
- Confirm their power.

WHAT ARE THE LAWS PROTECTING ANIMALS?⁶⁶

Animal protection is covered under both provincial legislation and the *Criminal Code of Canada*. Alberta's *Animal Protection Act* Section 2(1) protects animals from distress due to neglect or abuse. The *Criminal Code* Sections 444 to 447 refer to wilful acts of cruelty or neglect, either by an animal's owner or someone else. Parliament has been considering amendments to the *Criminal Code* since 1999, but as of August 2005, none have been passed. The law has remained virtually unchanged since 1892. Alberta's *Animal Protection Act* was recently amended; the amendments allow charges to be laid against anyone who abuses an animal, not just the owner or person responsible for the animal. It also provides protection to those who report animal abuse.

In some cases of domestic violence where there is animal abuse in addition to spousal or child abuse, the animal abuse may be easier to prove or more readily reported by a victim or witness.

WHAT CAN I DO ABOUT SUSPECTED ANIMAL ABUSE?

If you believe that animal abuse is occurring in a family, you should call the appropriate SPCA or humane society in your area. Outside of regular hours, call your local police or the Alberta SPCA's toll free number (1-800-455-9003) to get recorded instructions about how to proceed.

WHAT CAN BE DONE IN THE COMMUNITY?

In many communities, human services, animal services, and police services are sharing resources and expertise to address family violence. Professionals are encouraged to engage in cross-training and cross-reporting through interagency partnerships, and humane societies are encouraged to team up with domestic violence shelters to provide emergency shelter for pets of domestic violence victims.

⁶⁶ Ibid. Special thanks to Tim Battle, Director of Education, The Alberta Society for the Prevention of Cruelty to Animals.

Domestic Violence and People Who Have a Disability

Individuals with disabilities are particularly vulnerable to family violence. As such, the following information from Health Canada has been assembled to inform police services and Crown prosecutors about the special considerations that people with disabilities face when dealing with domestic violence.⁶⁷

Probably the single biggest factor affecting the incidence of family violence against a person with disabilities is the extent of the victim's "families." Victims with disabilities must often depend on a variety of people to provide them with assistance in carrying out their everyday lives. For this reason, their family is understood to include not only parents, siblings, spouses and other relatives, but also friends, neighbours and caregivers.

Individuals who live in institutional settings, and people who are multiply or profoundly disabled, are most vulnerable to abuse because they are more dependent upon even larger numbers of people, and less able to get away. According to Health Canada, it is estimated that women with disabilities are 1.5 to 10 times more likely to be abused than non-disabled women, depending on whether they live in the community or in institutions.

FORMS OF VIOLENCE

Violence against individuals with disabilities can take many forms, which can occur at the same time. It occurs not only as deliberate maltreatment and abuse, but also in the more passive form of neglect:

- **Neglect** - denial of food, lack of or inappropriate personal or medical care
- **Physical abuse** - assault, rough or inappropriate handling, inappropriate personal or medical care, over-use of restraint, inappropriate behaviour modification, over-medication, confinement
- **Psychological abuse** - verbal abuse, intimidation, social isolation, emotional deprivation, denial of the right to make personal decisions, threat of having her children taken away
- **Sexual abuse** - denial of a woman's sexuality, denial of sexual information/education (eg. about birth control and childbirth), verbal harassment, unwanted sexual touching, assault, forced abortion or sterilization
- **Financial exploitation** - denial of access to and control over her own funds, misuse of financial resources.

⁶⁷ Health Canada. *Family Violence Against Women With Disabilities*. From the National Clearinghouse on Family Violence, Issue 35, Summer 1998. While this Health Canada study focused on abused females with disabilities, the same considerations equally apply to men.

Some domestic violence victims have special needs because of their limited physical or mental abilities. These factors make it extremely difficult for them to report their victimization, call for assistance, or participate fully in the investigation and prosecution of their case.

Officers should refer these victims to specialized support services to ensure that the victim receives protection, physical assistance, medical treatment or other services as needed.

When an individual with a disability experiences violence, every effort should be made to determine if and how her/his disability has been affected. For example, a victim with epilepsy may be more prone to seizures after an attack. Also, a victim with a learning disability or head injury may be more easily distracted, disorganized and less able to cope with stressful situations. At the same time however, remember that the most important part of the service provider's reaction is to deal with the incident of violence without an over-emphasis on the victim's disability. If unsure about the best method of communication, ask the individual directly about her/his needs - take the lead as you would with non-disabled individuals. Speak to the person with a disability directly, not to her/his personal aide, family member, interpreter, or other person accompanying her/him.

Gay/Lesbian/Bisexual/Transsexual (G/L/B/T) Victims of Domestic Violence

Researchers and workers in the lesbian and gay community generally agree that the incidence of domestic violence in same sex relationships is comparable to that in heterosexual relationships. The forms that domestic violence may take in all intimate relationships include physical abuse, isolation, psychological and emotional abuse, threats and intimidation, sexual abuse, economic abuse, and property destruction. As well, there are additional forms of abuse that are unique to lesbian and gay relationships - abuses which arise as a direct result of the heterosexist and homophobic nature of society. The following information from Lee Vickers will help to inform police services and Crown prosecutors about domestic violence in the G/L/B/T community.⁶⁸

Partners who abuse often use homophobia and heterosexism as a weapon of control over their partner in a variety of ways:

- By 'outing' or threatening to out their partner to friends, family, employer, police, church or others in the wider community
- By telling a partner that no one will help him or her because the police and the justice system are homophobic
- By telling a partner that she/he will not be believed because homosexuals do not rape or abuse their lovers
- By telling a partner that she/he deserves it because she/he is homosexual. This type of abuse is indicative of internalised homophobia or self-hatred by an abuser
- By telling a partner that she/he is not a 'real' homosexual because she/he used to relate to men or women, has male/female friends, is a 'breeder,' or prefers certain sexual practices or behaviours, etc.
- Because of the pervasiveness of heterosexism, an abuser may attempt to convince a partner that the abusive behaviour is normal and that the abused party does not understand gay or lesbian relationships
- Abusers can also rely on heterosexist and sexist stereotypes to hide abuse and increase power and control over their partner by portraying the violence as mutual or consensual combat
- By telling a male partner that the behaviour is not domestic violence but an expression of 'masculinity'
- Forcing sex or certain sex acts, forcing sex with others, assaulting parts of their partner's body, withholding sex, criticizing sexual performance, refusing safer sex, disrespecting 'safe words' or violating boundaries of a 'scene'
- Getting in the way of medical treatment, withholding medications, destroying important documents, threatening to reveal HIV status to friends, family, employers, immigration or governmental authorities.

⁶⁸ Lee Vickers. "The Second Closet: Domestic Violence in Lesbian and Gay Relationships: A Western Australian Perspective." *Murdoch University Electronic Journal of Law* 3.4 (1996).

G/L/B/T victims of domestic violence often have difficulties with reporting their abuse to police. Some reasons for this reluctance are as follows:

- G/L/B/T victims of abuse think that they won't be believed
- To explain abuse, G/L/B/T victims have to provide details of their sexuality that may incite homophobia
- The police tell a G/L/B/T victim that they can't tell who the abuser is, despite often clear physical evidence of injury
- Police take the attitude that two men 'duking it out' is not domestic violence, just two men fighting
- Police cannot believe that one woman would batter another woman
- The police do not treat the matter seriously, or minimize the violence, because the relationship is homosexual. In the words of one gay male victim:

"My opinion of the police is the same as most other gay men. I'd never have gone to them in a million years. They treat gay violence as a huge joke."

- G/L/B/T victims are afraid that they will be ridiculed or harassed by police because of their homosexuality
- The police treat G/L/B/T domestic violence as 'mutual fighting' and try to calm the parties rather than ensure the safety of the abused party by pursuing a pro arrest policy
- G/L/B/T victims who disclose abuse risk alienation from the gay and lesbian community, particularly given the denial surrounding same sex domestic violence and prevailing attitudes towards the police.

Police and the Crown must be sensitive to the concerns of gay and lesbian victims of domestic violence. Myths surrounding same-sex relationships make it difficult for gay partners to disclose abuse. Recognize that the needs of all victims must be met, and that the abuse suffered by a gay/lesbian victim may be qualitatively different than that experienced by a heterosexual victim. Consultation with a local gay/lesbian organization or support group may be helpful.

Language Barriers and Immigration Status

According to the Canadian Department of Justice, immigrant victims of domestic violence need a great amount of support from service providers.⁶⁹ They may feel alone, have trouble talking with or relating to Canadians, or be overcome with fear. They may not have knowledge of Canadian law, their Charter rights, or the support services available to them.

Language difficulties make it difficult for an immigrant to navigate the legal system and to access services. In some cases, battered immigrant victims who are sponsored by spouses who are legal residents of Canada, may be reluctant to report the abuse because the batterer has threatened to withdraw sponsorship.

Many immigrant women are fearful of any police involvement. In most cases, this is because of past experiences with the police in their home countries, especially if the victim is from a country where the police are symbols of human rights violations. This is why it is very important for police to explain to victims what their role is.

WHAT CAN POLICE DO?

- Explain that the police respond to and investigate all complaints of family violence and are able to arrest an abusive partner if an offence has occurred.
- Explain to victims what help is available in the community.
- Apply to court on a victim's behalf for an Emergency Protection Order. Explain to them that if they are a Canadian citizen or permanent resident that they cannot be deported for leaving an abusive situation. (A permanent resident is sometimes called a landed immigrant).
- If the victim does not know whether or not she/he is a Canadian citizen, tell them to call their local citizenship office. Look in the blue pages of the telephone book under "Citizenship and Immigration."
- If the victim has been found to be a refugee, tell them that they can apply on their own to be a permanent resident.
- If language is a barrier, officers will use a translator when necessary. Children or family members should **not** be used as interpreters. As well, it is important that translation services have no ties to, or knowledge of, the perpetrator.
- Explain that being married or separated has no effect on their status.
- If a victim is a dependent of a refugee and she/he is in the process of applying for permanent residence for both of them, she/he can cancel the application. In this case, tell the victim to apply to be a refugee himself or herself, or tell them that they can apply to be a permanent resident on compassionate and humanitarian grounds. They would need to show why they should stay in Canada.
- Make sure to tell the victim that they should get legal advice.

⁶⁹ Department of Justice Canada. *Abuse is Wrong in any Language*, 2003. Find at: <http://canada.justice.gc.ca/en/dept/pub/awal/abusxdoj.html>.

- Call Citizenship and Immigration Canada at 1-888-242-2100, or visit their website at www.cic.gc.ca to get more information.

A sponsored immigrant would not be deported solely because their sponsorship has broken down. Furthermore, if the abuser is a citizen, he/she cannot be deported. If the abuser is a refugee or a permanent resident, he/she could be deported if a court convicts him/her of assault or another criminal offence. The deportation process, however, could take a long time.

Coordination and Collaboration

This handbook outlines the complexities and important issues for police services and Crown prosecutors in Alberta, for their information and guidance in domestic violence cases. The Crown and police must work together with the advocacy community on collaborative efforts that improve the referral network and the criminal justice response to these cases. As well, the Crown and police should engage in joint training and education programs that seek to improve the level of understanding of what is needed to successfully prosecute a domestic violence case.

In a number of recent studies, the following key areas have been identified as important for improving community and system responses to domestic homicides:

- Communication/coordination of services
- Increased access to or availability of services for victims and abusers
- Standardizing risk assessment instruments
- Greater attention to victim safety
- Training
- Education
- Data collection.⁷⁰

This handbook has been developed with these areas of improvement in mind, in the hopes that it will assist police, prosecutors and all front line professionals to help make Alberta families safer and free from violence.

It is recommended that police and prosecutors build and improve links with community partners at the local level. To compile a list of domestic violence resources in your community, please contact the Office for the Prevention of Family Violence and Bullying toll-free at: 310-0000 then (780) 422-8519, or visit the Alberta Roundtable on Family Violence and Bullying website at: http://www.familyviolenceroundtable.gov.ab.ca/crisis_line.asp.

DOMESTIC VIOLENCE COURTS

Specialized domestic violence courts have been established in five Alberta jurisdictions to improve the response of the justice system to incidents of spousal abuse or decreasing court processing time; increasing conviction rates; providing a focal point for programs and services for victims and offenders; and, in some cases, allowing for the specialization of police, Crown prosecutors and the judiciary in domestic violence matters.

⁷⁰ Annual Report to the Chief Coroner: Case Reviews of Domestic Violence Deaths, 2002.

In order to effectively respond to the unique nature of domestic violence crime, it is recommended that all jurisdictions continue to explore options to improve the handling of spousal/partner abuse cases through delivery of a coordinated justice system response, including specialized court processes providing:

- Methods to expedite cases
- Sensitive, informed, appropriate service by trained justice professionals
- Coordination of justice system response (in policy and practice)
- Coordination with a range of other service providers
- Early access to treatment by offenders (to capitalize on offender motivation to change and allow for a more immediate response)
- Monitoring of offender compliance with meaningful sanctions to hold offenders accountable.
- Access to support, information, and referral by victims
- Monitoring and evaluation of systems to assess effectiveness, and to identify areas requiring change or improvement.⁷¹

THE GOAL OF SPECIALIST DOMESTIC VIOLENCE COURTS⁷²

Commonly stated aims of specialist domestic violence courts are to provide for:

- Best practice in policing and prosecuting domestic violence offences
- Expedition of cases
- Information, support, advocacy and services for victims of domestic violence and their children
- Safety for victims of domestic violence and their children as the primary outcome
- Safety for victims at court
- Validation and empowerment of victims of domestic violence and their children
- Responsibility and accountability for domestic violence to be accepted by offenders
- Reduction and prevention of domestic violence.

⁷¹ Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation http://canada.justice.gc.ca/en/ps/fm/reports/spousal_e.pdf.

⁷² Stewart, Julie. "Specialist Domestic/Family Violence Courts Within the Australian Context." Australian Domestic & Family Violence Clearinghouse, University of New South Wales. Issues paper 10, 2005. The following four lists are taken directly from this paper.

OUTCOMES OF SPECIALIST DOMESTIC VIOLENCE COURTS⁷³

- Increased level of awareness of domestic violence within the community and the agencies which respond to it.
- Raised awareness of offenders and victims that action will be taken if a domestic violence offence is reported to police.
- Increased rate of reporting of domestic violence offences.
- Increased victim participation, a lessened rate of victims' withdrawal from proceedings.
- Proactive policing and improved investigation methods in domestic violence offences.
- Increased rate of guilty pleas and convictions for domestic violence offences, due in part to better evidence and brief preparation.
- Increased rate of prosecution of domestic violence offences.
- Decreased rate of withdrawal of charges.
- Higher level of safety of victims of domestic violence and their children.
- More appropriate protection orders, tailored to victims' circumstances.
- Increased quality of service delivery.
- Increased interagency co-operation.
- Consistency of approach to domestic violence.
- Co-ordination of services.
- Accountability of courts and its personnel to the community and service providers.
- Reduction and prevention of further domestic violence.
- Victim satisfaction with the process.

ROLE OF POLICE IN DOMESTIC VIOLENCE COURTS⁷⁴

The role of police investigating a domestic violence offence is vital to achieving the aims of the specialist domestic violence court. In particular, the role is proactive and more professional:

- Appropriate and timely responses to calls for assistance to domestic violence incidents
- Appropriate and timely police intervention and action, proceeding by way of arrest and charge when a domestic violence offence has occurred and not by way of summons or court attendance notice
- Improved investigation of offences, commencing with treatment of the site of the offence as a crime scene and the gathering of physical evidence (exhibits and forensic evidence), including photographing and videotaping the crime scene, photographing the victim's injuries, involvement of forensic scientists or scene of crime officers, improved statement-taking, canvassing of neighbours, family and friends
- Taped evidence of the emergency call to be made available and obtained by the investigating officer
- Ensuring safety and protection of victims and family members through appropriate police bail determination and by applying immediately for interim protection orders

⁷³ Ibid.

⁷⁴ Ibid.

- Medical evidence relating to the incident and to prior incidents to be obtained by the investigating officer
- Videotaping or audiotaping of statements of victims and records of interview with defendants; this requires skill in planned interview techniques
- Ensuring logging and continuity of exhibits
- Follow-up interviews with victims to ensure orders sought meet the specific needs of the victim and family and continue to be appropriate
- Provision of information and notice of the requirement to attend court
- Referral to appropriate agencies for further assistance
- High quality brief preparation
- Timely disclosure to the defendant/defence counsel
- Liaison with and detailed briefing of prosecutors, including provision of details for submissions on bail and conditions of orders to be made by the court
- Ongoing contact with the victim to ensure victim ‘co-operation.’

ROLE OF CROWN PROSECUTORS IN DOMESTIC VIOLENCE COURTS⁷⁵

Literature refers to the desirability of specialist prosecutors being appointed to specialist courts given their critical role in achieving the goals of the court. They have a highly significant role in:

- Ensuring the brief of evidence is thorough and all relevant evidence is included and admissible
- Ensuring appropriate charges have been laid
- Ensuring exhibits are available as and when required
- Ensuring expeditious hearing dates
- Meeting with and interviewing the victim witness to obtain further information and to provide information about procedures
- Ensuring appropriate bail conditions and orders are imposed
- Liaising with victim court advocates, as appropriate
- Making submissions on sentencing with the victim’s safety in mind
- Providing a positive attitude to prosecution of the offence to the victim to encourage participation and attendance at court
- Providing timely disclosure to the defence
- Prosecuting offences at a high level of skill
- Participating in specialist court forums to improve and develop streamlined processes and procedures
- Ensuring that the victim-centred objectives of the specialist court are facilitated and fulfilled.

⁷⁵ Ibid.

EIGHT CHARACTERISTICS AND ACTIVITIES OF AN EFFECTIVE COLLABORATIVE COORDINATED COMMUNITY RESPONSE

The Domestic Abuse Intervention Project in Duluth, Minnesota has identified eight characteristics and activities of an effective coordinated community response. These are summarized below:

- Developing a common philosophical framework. The community and practitioners should agree on a common understanding about battering and the complicated dynamics of domestic violence. This helps create an atmosphere conducive to holding offenders accountable and avoiding all victim blaming.
- Creating consistent policies for intervening agencies that respect the efforts of other agencies and incorporate the goals of intervention.
- Monitoring and tracking individual cases to ensure practitioner accountability. Each agency must have a clear understanding of its role and the role of other agencies in responding to domestic violence.
- Coordinating the exchange of information and inter-agency communications. (For examples, see “Assessing the Justice System Response to Violence Against Women: A Tool for Communities” located at www.vaw.umn.edu.)
- Providing resources and services to victims.
- Ensuring sanctions, restrictions and serviced for offenders.
- Working to protect children.
- Evaluating the coordinated justice system response from the victim’s perspective.

A True Story

The first domestic violence offender in Canada designated a Dangerous Offender was in 1995.⁷⁶

The accused was charged with assault causing bodily harm and unlawful confinement against his common-law wife. At trial the victim was un-cooperative and reluctant to testify. Instead, she wanted the charges withdrawn and became even more hostile when she learned of the Dangerous Offender application. Part way through the trial, and after the victim's teenaged son testified, the accused pleaded guilty. Although the accused's criminal history consisted primarily of domestic violence related offences, the Crown proceeded with a Dangerous Offender application. This was an unusual step in 1995.

The expert psychiatrist held the belief that although the offender was a high risk to re-offend, it was inappropriate to pursue a Dangerous Offender Designation because he was not a safety risk to the public, only to his wife. To counter this opinion another expert, Dr. Peter Jaffe, was called to testify on behalf of the Crown. Dr. Jaffe is the founding Director of the Centre for Children and Families in the Justice System, and a member of the Clinical Adjunct Faculty in the Department of Psychology as well as a part-time Professor in the Department of Psychiatry at the University of Western Ontario. Furthermore, Dr. Jaffe was a member of the Canadian Panel on Violence Against Women and an expert witness in two Ontario inquests into domestic violence, in addition to being appointed to the Joint Committee on Domestic Violence to provide advice to the Attorney General on the implementation of jury recommendations. After domestic violence was explained in the proper context, the accused was declared a dangerous offender - the first in Canada where the history relied on was solely domestic violence.

This process took over a year. The Crown was able to get the victim to testify at the hearing, although it was a tortured process. At first reluctant, the victim ultimately testified against the accused when she learned that he was writing another woman from jail. She was able to give a unique perspective into the victim's mind. She told the court that she was **more afraid of the accused when he was in jail, than when he was out**. When he was in jail, she didn't know who she should be afraid of, what contacts he may have, and who might be out to get her on his behalf. When he was out, at least she knew who the enemy was and she had learned coping mechanisms to try to avoid or deal with the violence.

⁷⁶ *R. v. Gaudry* (R.E.) 186, A.R. 91. The 32-year-old accused pleaded guilty to assault causing bodily harm and unlawful confinement. Victim was his common law spouse. Of the accused's total of 37 convictions, most related to domestic violence to common law spouses and peace officers, friends, health care professionals, etc., who tried to intervene. No remorse. History of reoffending a short time after release. Accused never took advantage of recommended therapy and treatment programs. Accused abused alcohol and came from an abusive family. Medical evidence opined that the accused was a high risk to reoffend against current or future female companions without long-term treatment. The trial judge found the accused a Dangerous Offender. Where the time needed to treat the accused exceeded what would be a fit determinate sentence, the court held that the appropriate disposition was an indeterminate sentence. Alberta Court of Appeal dismissed the appeal and affirmed the trial judge's decision to declare accused a Dangerous Offender.

Further, while she was able to testify about the physical abuse, she could not say aloud the names the accused had called her when he was verbally abusing her. Instead, the Judge allowed her to write them down. They were then entered as exhibits.

Even though the victim ultimately testified for the Crown, she was adamantly opposed to the Dangerous Offender application and expressed hostility towards the entire criminal justice process.

NOW THE REST OF THE STORY...

In 1997 or 1998, the Crown prosecutor was on the corner of 97 street and 103A Avenue, coming back from Court when a strange woman approached her. Although she looked familiar to the prosecutor, she looked nothing like the emaciated malnourished victim from the Dangerous Offender case. The woman now speaking was healthy, full-bodied and glowing. She told the prosecutor that she was glad to run into her because she needed to thank her. She said that the prosecutor had done the right thing and that she wanted to thank her and the Judge for saving her life. She now had a job and was off social assistance. Her son who testified against the accused was in University and doing well. Her other children were also in school and doing well.

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