



PLEASE NOTE

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CHAPTER V-3.2

VICTIMS OF FAMILY VIOLENCE ACT

INTERPRETATION

1. In this Act	Definitions
(a) “child” means a child who ordinarily or periodically resides with the victim, is under the age of eighteen years and unmarried, whether or not the child is a child of the victim and the respondent or of either of them, and includes a foster child or a child in actual care and custody of the victim;	child
(b) “court” means the trial Division of the Supreme Court;	court
(b.1) “emergency” means a situation which meets the criteria set out in subsection 4(1);	emergency
(c) “emergency protection order” means an order made pursuant to section 4;	emergency protection order
(d) “family relationship” means a relationship between (i) a man and a woman who are or have been married to each other or have cohabited in a spousal or sexual relationship; or (ii) members of the same family;	family relationship
(e) “family violence” has the meaning set out in section 2;	family violence
(f) “judge” means a judge of the court;	judge
(g) “justice of the peace” means a justice of the peace appointed pursuant to the <i>Provincial Court Act</i> R.S.P.E.I.1988, Cap. P-25 and designated under section 14 of this Act;	justice of the peace
(h) “Minister” means the Attorney General;	Minister
(i) repealed by 1998,c.11,s.1;	order
(j) “prescribed” means prescribed in the regulations;	prescribed
(k) “property” means any interest, present or future, vested or contingent, in real or personal property and includes property that (i) a person owns, or (ii) a person does not own but (A) uses or enjoys, (B) is available for the person's use or enjoyment, (C) is in the person's care or custody, or (D) is at the person's residence.	property

Registrar	(l) “Registrar” means the Registrar of the court;
regulations	(m) “regulations” means the regulations made under section 19;
residence	(n) “residence” means a place where a victim normally resides and includes a residence that a victim has vacated due to family violence;
respondent	(o) “respondent” means any person against whom an order is sought or made pursuant to this Act;
telecommunication	(p) “telecommunication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by a wire, radio, visual or electromagnetic system and includes communication by telephone and facsimile;
utility	(p.1) “utility” means any person and the lessees, trustees, liquidators or receivers of any person that owns, operates, manages or controls, or is incorporated for the purpose of owning, operating, managing or controlling any plant or equipment, <ul style="list-style-type: none"> (i) for the conveyance or transmission of telephone messages, (ii) for the production, transmission, distribution or furnishing of electrical energy, or (iii) for the provision of water or sewerage or water and sewerage service, either directly or indirectly, to or for the public;
victim	(q) “victim” means <ul style="list-style-type: none"> (i) a person who has resided with or who is residing with the respondent in a family relationship, or (ii) a person who, with the respondent, is a parent of one or more children, regardless of marital status or whether the victim and respondent have lived together at any time, who has been subjected to family violence by the respondent;
victim assistance order	(r) “victim assistance order” means an order made pursuant to section 7;
Victim Services	(s) “Victim Services” means the Victim Services Program established under section 7 of the <i>Victims of Crime Act</i> R.S.P.E.I. 1988, Cap. V-3.1. 1996,c.47,s.1; 1997,c.20,s.3; 1998,c.11,s.1; 2000,c.5,s.3; 2002,c.45,s.1.
Family violence	2. (1) “Family violence” in relation to a person, is violence against that person by any other person with whom that person is, or has been, in a family relationship.
Violence	(2) In subsection (1), violence includes <ul style="list-style-type: none"> (a) any assault of the victim;

- (b) any reckless act or omission that causes injury to the victim or damage to property;
- (c) any act or threat that causes a reasonable fear of injury to the victim or damage to property;
- (d) forced confinement of the victim;
- (e) actions or threats of sexual abuse, physical abuse or emotional abuse of the victim; and
- (f) depriving a victim of food, clothing, medical attention, shelter, transportation or other necessities of life.

(3) For the purposes of this Act a respondent who encourages or solicits another person to do an act which, if done by the respondent, would constitute family violence against the victim, is deemed to have done that act personally. 1996,c.47,s.2; 2002,c.45,s.2. Vicarious responsibility

3. The object of this Act is to reduce and prevent family violence and facilitate legal protection for victims by providing speedy civil remedies. 1996,c.47,s.3. Object

EMERGENCY PROTECTION ORDER

4. (1) A justice of the peace, on the application of any person pursuant to subsection (6) in the prescribed form and without notice to any other person, may make an emergency protection order if he or she determines Emergency protection order

- (a) family violence has occurred; and
- (b) the seriousness or urgency of the circumstances merits the making of an order.

(2) In determining whether to make an order the justice of the peace shall consider the following factors: Factors considered

- (a) the nature of the family violence;
- (b) the history of family violence by the respondent towards the victim and whether it is more probable than not that the respondent will continue the family violence;
- (c) the existence of immediate danger to the victim, other persons or property; and
- (d) the best interests of the victim or any child or other person in the care of the victim.

(3) An emergency protection order may contain any or all of the following provisions: Contents of emergency protection order

- (a) a provision granting the victim or other family members exclusive occupation of the residence for a defined period regardless of any legal rights of possession or ownership;
- (b) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;

- (c) a provision directing a peace officer to accompany a specified person, within a specified time, to the residence to supervise the removal of personal belongings;
- (d) a provision restraining the respondent from directly or indirectly communicating with the victim or other specified person;
- (e) a provision requiring the respondent to stay away from any place identified specifically or generally in the order;
- (f) a provision awarding temporary care and custody or day-to-day care of a child to the victim or some other person;
- (g) a provision granting temporary possession of specified personal property, including an automobile, cheque book, bank card, health services card or supplementary medical insurance cards, identification documents, keys, or other personal effects;
- (h) a provision restraining the respondent from
 - (i) taking, converting, damaging or otherwise dealing with property, and
 - (ii) terminating the basic services of utilities servicing the residence;
- (i) a provision restraining the respondent from committing any further acts of family violence against the victim;
- (j) a provision prohibiting the publication of the name and address of the victim;
- (j.1) a provision requiring the respondent to make the rent or mortgage payments arising in respect of the residence;
- (k) any other provision that the justice of the peace considers necessary to provide for the immediate protection of the victim or other family members.

Conditions

(4) A justice of the peace may make an emergency protection order subject to such conditions as the justice considers appropriate but the duration of the order shall not exceed 90 days unless otherwise ordered by a judge.

Effective date

(5) Subject to subsection 5(1), an emergency protection order takes effect immediately.

Application for order

- (6) An application for an emergency protection order may be made by
- (a) a victim;
 - (b) a member of a category of persons designated in the regulations on behalf of, and with the consent of, the victim; or
 - (c) if the victim is incapable of giving consent,
 - (i) a parent or guardian of, and on behalf of, the victim, or
 - (ii) any other person on behalf of the victim with the leave of the justice of the peace.

- (7) An application for an emergency protection order may be made by telecommunication. 1996,c.47,s.4; 1998,c.11,s.2; 2002,c.45,s.3. *Idem*, emergency protection
- 5.** (1) A respondent is not bound by any provisions in an emergency protection order until he or she has notice of the order. Respondent to have notice
- (2) Notice of an emergency protection order shall be given in the prescribed form and manner. Notice
- (3) If, on application to a justice of the peace, it appears that
 (a) attempts at service or substituted service of the notice on the respondent have failed; and
 (b) the respondent is intentionally evading service,
 the justice of the peace may by order dispense with service of the notice and the respondent shall then be deemed to have notice of the emergency protection order. 1996,c.47,s.5. Dispensing with service
- 6.** (1) As soon as practicable after making an emergency protection order and in any event within two working days, the justice of the peace shall forward a copy of the order and all supporting documentation, including notes or tape recordings of the proceedings, to a judge in the prescribed manner. Transfer of documents, etc., to the court
- (2) Within five working days of the receipt of the emergency protection order and all supporting documentation by the court, a judge shall review the order and where the judge is satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, he or she shall
 (a) confirm the order; or
 (b) vary the order
 and the order as confirmed or varied shall be deemed to be an order of the court. Confirmation and variation
- (3) Where, on reviewing the emergency protection order, the judge is not satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, the judge shall direct a rehearing of the matter in whole or in part before a judge. Rehearing on direction of judge
- (4) Where a judge directs that a matter be reheard,
 (a) the Registrar shall issue a summons in the prescribed form requiring the respondent to appear before the court;
 (b) the Registrar shall give notice of the rehearing to the victim and the victim is entitled to attend and may fully participate in the rehearing personally or by counsel;
 (c) the Registrar shall give notice of the rehearing to a peace officer and to Victim Services in the areas where the alleged family violence occurred and the victim and respondent reside and the Summons

peace officer and a representative of Victim Services are entitled to attend the rehearing;
 (d) the Registrar shall issue a subpoena to the applicant and the applicant is required to attend the rehearing; and
 (e) where a child is identified on an emergency protection order, the Registrar shall give notice of the rehearing to the Director of Child Welfare.

Evidence	(5) The evidence that was before the justice of the peace shall be considered as evidence at the rehearing.
Absence of respondent	(6) Where the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence.
Decision	(7) At the rehearing, the judge may confirm, terminate or vary the order.
Respondent entitled to be heard	(8) The respondent is entitled to be heard and to examine and cross-examine witnesses at the rehearing.
Subpoena to victim	(9) The court may issue a subpoena to the victim. 1996,c.47,s.6; 1998,c.11,s.3.

VICTIM ASSISTANCE ORDER

Victim assistance order	<p>7. (1) Where, on application by a victim in the prescribed form to a judge of the court, the judge determines that family violence has occurred, the judge, within ten days of receipt of the application or as soon as possible after that, may make a victim assistance order containing any of the following provisions:</p> <ul style="list-style-type: none"> (a) a provision referred to in subsection 4(3); (b) a provision for access to children on such terms as the judge may determine, but in making such provision the court shall give paramount consideration to the safety and well-being of the victim and the children; (c) any other provision the judge considers appropriate.
Conditions	(2) The judge may make a victim assistance order subject to such conditions as the judge considers appropriate.
Other proceedings	(3) The existence of other proceedings between the victim and the respondent does not preclude the judge from making a victim assistance order. 1996,c.47,s.7.

ORDERS, GENERAL PROVISIONS

Application for order	8. (1) Repealed by 1998,c.11,s.4.
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(2) Repealed by 1998,c.11,s.4.

(3) At a hearing or rehearing of an application for an emergency protection order or a victim assistance order or review of an emergency protection order or a victim assistance order, the standard of proof shall be on a balance of probabilities.

Tele-communication Standard of proof

(4) The justice of the peace or Registrar shall provide a copy of any orders made by the justice of the peace or by the court to a peace officer and to Victim Services in the areas where the family violence occurred and in which the victim and respondent reside.

Copy to police and Victim Services

(5) The peace officer who receives an emergency protection order or a victim assistance order shall cause it to be maintained in the files of his or her employer for the duration of the order.

File retention

(6) Where a child is identified on an emergency protection order or a victim assistance order, the Registrar shall provide a copy of any emergency protection or victim assistance orders made by the justice of the peace or by the court to the Director of Child Welfare. 1996,c.47,s.8; 1998,c.11,s.4.

Where child identified on order

9. Repealed by 1998,c.11,s.5.

Consent

10. (1) At any time after a respondent has been served with an emergency protection order or a victim assistance order, the court, on application by a victim or respondent named in the emergency protection order or a victim assistance order, may

Variation

- (a) make changes to, or terminate, any provision of an emergency protection order or a victim assistance order;
- (b) decrease or extend the period for which any provision in an emergency protection order or a victim assistance order is to remain in force; or
- (c) revoke the emergency protection order or a victim assistance order.

(2) On an application pursuant to subsection (1)

Evidence

- (a) the evidence before a justice of the peace on previous applications pursuant to this Act shall be considered evidence; and
- (b) the respondent has the right to be heard and the right to examine and cross-examine witnesses.

(3) The variation of one or more provisions of an emergency protection order or a victim assistance order does not affect the other provisions in the emergency protection order or a victim assistance order.

Variation, effect of

Continuity of order	(4) Unless otherwise ordered by the court, an emergency protection order or a victim assistance order is deemed to be an order of the court and continues in effect and is not stayed by a direction for a rehearing pursuant to section 6 or an application pursuant to subsection (1).
Variation under other Act	(5) Any provision in an emergency protection order or a victim assistance order is subject to and is varied by any subsequent emergency protection order, victim assistance order or any order made pursuant to any other Act or any Act of the Parliament of Canada.
Service of variation	(6) An emergency protection order that has been varied pursuant to clause 6(2)(b) shall be served on the respondent in the prescribed form and manner.
Deemed notice	(7) Notice to the respondent on an emergency protection order shall be deemed to give the respondent notice of the court's confirmation of the existing emergency protection order and notice of the respondent's right to initiate a court hearing. 1996,c.47,s.10; 1997,c.53,s.1; 1998,c.11,s.6; 2002,c.45,s.4.

CONFIDENTIALITY

Address kept confidential	11. (1) The Registrar and a justice of the peace shall keep the victim's address confidential at the request of the victim or a person acting on behalf of the victim.
Hearing in private	(2) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the possibility of an injustice, harm, hardship or adverse effect to or upon a victim or a child outweighs the desirability of holding the hearing in public.
Prohibition on publication, etc.	(3) Upon request of the victim, the court may by order prohibit the public disclosure of a report of a hearing or any part of a hearing or prohibit publication of any matter connected with an emergency protection order or victim assistance order, where in the opinion of the court, such disclosure or publication would <ul style="list-style-type: none"> (a) not be in the best interests of a victim or a child; or (b) be likely to identify, have an adverse effect on or cause hardship to, the victim or child.
Access to court files	(4) A court order made pursuant to subsection (3) does not preclude access to court files with the consent of a judge for research or statistical purposes, where there is no public disclosure of individual names or other information that could identify persons named in any report, hearing, or other matter prohibited from being disclosed by order made pursuant to this section. 1996,c.47,s.11; 1998,c.11,s.7.

PROPERTY

12. (1) An emergency protection order or victim assistance order does not in any manner affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties. Effect on ownership of property

(2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and a victim who is not a party to the lease is granted exclusive occupation of that residence, no landlord shall evict the victim solely on the basis that the victim is not a party to the lease. Leases

(3) On the request of a victim referred to in subsection (2), the landlord shall advise the victim of the status of the lease and serve the victim with notice of any claim against the respondent arising from the lease and the victim, at his or her option, may assume the responsibilities of the respondent pursuant to the lease. 1996,c.47,s.12; 1998,c.11,s.7. Assumption of lease

ADMINISTRATION

13. (1) The Registrar shall supply the forms for application under this Act and shall render assistance to victims in completing the forms. Forms

(2) The Registrar shall cause to be served all notices and other documents required pursuant to an application under this Act and such notices and documents may, upon the direction of the Registrar, be served by a peace officer or sheriff. Service of notices

(3) Upon request the address of the victim shall be kept in a confidential manner by the court and shall not be released to the respondent. Address

(4) The court may order the respondent to pay the fees for filing and service of documents. 1996,c.47,s.13. Idem

14. (1) The Lieutenant Governor in Council may designate justices of the peace to hear and determine emergency protection applications pursuant to this Act. Designation of justices

(2) Where the Lieutenant Governor in Council designates a justice of the peace to hear emergency protection applications pursuant to this Act, the Lieutenant Governor in Council may specify the place at which and the period during which the justice of the peace may hear those applications. 1996,c.47,s.14; 1998,c.11,s.9. Location, etc., of justices

GENERAL

- Immunity** **15.** No action lies against a peace officer, the Registrar, a justice of the peace, a representative of Victim Services or any other person for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done
- (a) pursuant to or in the exercise or purported exercise of any power conferred by this Act or the regulations; or
 - (b) in the carrying out or the purported carrying out of any decision or order made pursuant to this Act or the regulations or any duty imposed by this Act or the regulations. 1996,c.47,s.15.
- Offences** **16.** Any person who
- (a) fails to comply with the provisions of an emergency protection order or a victim assistance order;
 - (b) falsely and maliciously makes an application under this Act;
 - (c) obstructs any person who is performing any function authorized by an emergency protection order or a victim assistance order; or
 - (d) publishes any information in contravention of an emergency protection order or a victim assistance order,
- is guilty of an offence and upon summary conviction is liable in the case of a first offence, to a fine of not less than \$500 and not more than \$5,000 or to imprisonment for a term of not more than three months, or to both, and in the case of a second or subsequent offence, to a fine of not less than \$1,000 and not more than \$10,000 or to imprisonment for a term of not more than two years, or to both. 1996,c.47,s.16; 1998,c.11,s.10; 2002,c.45,s.5.
- Arrest** **17.** A peace officer may arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an order made pursuant to this Act. 1996,c.47,s.17; 1998,c.11,s.11.
- Contempt** **18.** (1) In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not exceed \$5,000 nor shall the term of imprisonment exceed 90 days.
- Imprisonment** (2) An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order. 1996,c.47,s.18.
- Regulations** **19.** The Lieutenant Governor in Council may make regulations
- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Act but not defined in this Act;

- (b) prescribing forms and fees for the purposes of this Act and providing for the waiver of fees;
- (c) prescribing the procedures to be followed for applications, hearings, and rehearings pursuant to this Act;
- (d) prescribing the manner in which a justice of the peace is to forward a copy of an emergency protection order and all supporting documentation to the court;
- (e) designating persons or categories of persons who may make applications for an emergency protection order on behalf of a victim with the victim's consent;
- (f) prescribing the form and manner of providing any notice or summons required to be provided pursuant to this Act, including prescribing methods of substituted service and a rebuttable presumption of service;
- (g) prescribing any other matter or thing required or authorized by this Act to be prescribed;
- (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act. 1996,c.47,s.19.