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Fighting Domestic Violence

Pro Bono Initiative

North and Central America

In association with

GLOBAL RIGHTS for WOMEN Justice for Victims of Violence

EVERY WOMAN TREATY

Baker McKenzie.

Canada

Domestic Violence Legislation

> "In 2016, more than 25% of all reported violent crime in Canada was the result of family violence."

Canada

Introduction

Canada is a country comprised of 10 provinces and three territories. Canada's provinces from west to east are as follows:

1. British Columbia*
2. Alberta*
3. Saskatchewan
4. Manitoba
5. Ontario*
6. Quebec*
7. New Brunswick
8. Nova Scotia
9. Prince Edward Island
10. Newfoundland and Labrador

* Designates the provinces with the largest populations

Canada's territories from west to east are:

1. Yukons
2. Northwest Territories
3. Nunavut

In Canada, addressing the impact of domestic violence is a shared responsibility between the federal government of Canada and the governments of its 13 provinces and territories. COVID-19 has highlighted the problem of domestic violence in Canada and what some are referring to as the "crisis" Canada finds itself in with respect to domestic violence.[1] One report by a United Nations special rapporteur in 2018 argued that violence against women in Canada remains a "serious pervasive and systematic problem" and "unfinished business that requires urgent actions."[2] One Justice Department of Canada report from 2009 estimated that the total cost of "spousal violence" on the Canadian economy (through lost productivity, healthcare, police costs, etc.) was CAD 7.4 billion.[3]

In 2016, more than 25% of all reported violent crime in Canada was the result of family violence.[4] This number is deceptively low, however, because family violence is often under-reported. For example, in 2014, fewer than 19% of victims abused by their spouses reported this abuse to the

police.[5] The proportions of those reporting intimate-partner victimization to the police is even lower among immigrant populations in Canada, especially among Indo-Canadian and Muslim women.[6]

Similarly, there are relatively low rates of reporting domestic violence to the police among Aboriginal populations, despite the greater likelihood for violence to be inflicted against Aboriginal women by their partners.[7] In contrast, in 2006, Mihorean reported that the 2004 General Social Survey data indicated that a higher proportion of Aboriginal victims (50%) than non-Aboriginal victims (35%) reported that they called the police, perhaps because the violence tended to be more severe. Moreover, in 2009, slightly less than one-third (31%) of Aboriginal victims of spousal violence reported their victimization to the police,[8] which is generally consistent with reporting rates among Caucasian victims of spousal violence. Thus, the research on the police reporting rates of Aboriginal victims of spousal violence is inconsistent, and is likely affected by a wide range of additional factors, such as rural versus urban locations and overall rates of community violence.

Addressing intimate-partner violence in Canada is made particularly complex by the Canadian federal and provincial systems. We will discuss this in greater detail in Section 1 of this report but, in short, the provinces are responsible for delivering services across the health, justice and social services sectors in their respective province and the federal government is responsible for providing national guidance, leadership and coordination across the jurisdictions. This results in a patchwork of solutions that vary significantly between the provinces and territories. Some of the biggest problems facing Canada are the disparities in provincial and territorial laws (even so far as vastly different definitions of what constitutes domestic violence), unequal access to services nationally (especially between rural and urban communities) and lack of affordable public housing options.[9] Canada has seen some progress in specialized domestic violence units in police forces, specialized courts and public education; however, there is also a disconnect between the way we see and talk about physical intimate-partner violence and controlling coercive behavior. Complicating this is the fact that domestic violence can consist of a variety of behavior, from emotional abuse to withholding money, and some of these cross jurisdictional boundaries. Thankfully, recent amendments to the Divorce Act, RSC 1985, c 3 (2nd Supp) address items of controlling coercive behavior as set out in greater detail in Sections 1 and 6.5 of this report.

Despite the issues in uniformity among Canadian provinces and territories, our research has shown that one province in particular is ahead in many respects when it comes to best practices to address domestic violence and that is British Columbia (BC). BC has the broadest definition of family violence in its Family Law Act, which is relevant to both family law matters and restraining orders. The changes to the Divorce Act, which came into effect in March 2021, are very similar to BC in the definition of family violence, and it is expected that many other provinces will revise their family legislation to follow suit. BC also has requirements for training/screening for domestic violence that the revised Divorce Act does not have. We hope that Canada and its provinces and territories can work to model their laws and policies on the BC model to ensure more uniformity to address domestic violence in Canada.

1 Legal provisions

1.1 What are the relevant statutes and codes?

Canada's constitution divides governing power between two levels of government — the federal government and the provincial governments — based on the constitutional classes of subjects assigned to each. Each level of government is supreme in its area of jurisdiction. Federal laws apply to all Canadian jurisdictions, whereas the provincial or territorial laws only apply within that particular province or territory. As a result, the provincial laws vary between the provinces and territories.

Applying this specifically to domestic violence, the division of powers in applicable subject matters is as follows:

1. **The federal government has ultimate power for (i) criminal law, (ii) marriage/divorce, (iii) Indians/Indian reserves, and (iv) citizenship.**

Criminal law[10]

The Criminal Code, RSC 1985, c C-46 is a law that codifies most criminal offenses and procedures in Canada. Section 91(27) of the Constitution Act, 1867, establishes the sole jurisdiction of parliament over criminal law in Canada. Canada's criminal law does not contain any specific prohibitions related to domestic violence, but the Criminal Code includes several offenses that are applicable in this context. The Criminal Code was amended by Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, 1st Sess, 42nd Parl, 2018 (assented to 21 June 2019) to include several provisions related to intimate-partner violence including: offenses relevant to domestic violence including Sections 229-239 (murder, manslaughter and attempts); Section 264 and 264.1 (criminal harassment, uttering threats); Section 265–269 (assault and bodily harm); Sections 271–273 (sexual assault and see Section 278, which allows a person to be charged with sexual assault against their spouse whether or not they were living together at the time); Section 430 (mischief to property); Section 810 (peace bonds, which are often used in specialized domestic violence courts). Bill C-75 added choking, suffocation and strangulation to Section 267 and 272 as forms of bodily harm. Cross-examination of the victim by the accused may also be restricted for some of these offenses (see Section 486.3(2)).

The Criminal Code does refer to intimate-partner violence explicitly as an aggravating factor for interim release and sentencing purposes, and provides restitution for household expenses for some victims of domestic violence. For example, Sections 515(3)(a) and 515(6)(b.1) (intimate-partner violence is an explicit factor relevant to interim release, and an accused with a previous conviction related to such violence must show cause why they should be released); Sections 718.2(a)(ii), 718.201 and 718.3(8) (sentencing; it is an aggravating factor where the offender abused their intimate partner and sentencing courts must consider the increased vulnerability of female victims, especially Aboriginal women, and may increase the maximum term of imprisonment for repeat offenders); Section 738(1)(c) (restitution for bodily harm or threats thereof to the offender's intimate partner or child, including "actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, childcare and transportation").

Court orders may also provide that offenders have no contact with their intimate partners (and sometimes their children) and that they refrain from attending particular places as a condition of interim release, probation, conditional sentence orders and peace bonds.[11]

Where offenders are convicted of or discharged for an indictable offense in which violence was used, threatened or attempted against their current or former intimate partner, the court must make an order prohibiting the person from possessing any weapon during the period specified in the order.[12]

Section 127 of the Criminal Code provides a general offense of breaching a court order, and may be used for breaches of provincial and territorial restraining orders where the legislation does not include specific breach provisions. In other words, if there is a breach of a restraining order, it will be considered a criminal offense punishable under Section 127 of the Criminal Code.

At the enforcement level, since 1983 the federal government has maintained a pro-charging and pro-prosecution policy for offenses in the domestic violence context that applies to the Royal Canadian Mounted Police ((RCMP) Canada's federal police force) and federal prosecutors.[13] Pro-charging policies require the police to lay charges where they have "reasonable" or "reasonable and probable" grounds to do so. Pro-prosecution policies require prosecutions to proceed where there is a reasonable likelihood of conviction and it is in the public interest to do so.

Divorce

The federal government makes laws dealing with marriage and divorce.[14] The Divorce Act, RSC 1985, c 3 (2nd Supp) applies across the country and governs married individuals (including both heterosexual and same-sex couples),[15] who are dissolving their marriage through a divorce. As part of the divorce, individuals can ask the court to deal with "corollary relief" for issues such as parenting time, decision-making responsibilities and child and spousal support.[16]

Changes to the Divorce Act that came into effect in March 2021 require, for the first time, that primary consideration be given to achieving physical, emotional and psychological safety and security for children. The changes to the Divorce Act also added family violence as a relevant factor in making orders that allocate parenting time and decision-making responsibility. In particular, the amendments added the following:

(a) a definition of "family violence," which has been reproduced in Section 3.2 of this report

(b) new factors that are to be considered when making parenting and contact orders, these will include:

  (i) any family violence and its impact on, among other things:[17]

    i. the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child

    ii. the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child

    iii. any civil or criminal proceedings, order, condition or measure that is relevant to the safety, security and well-being of the child

A more detailed discussion on this topic is contained in Section 6.5 of this report.

Indians/Indian Reserves[18]

Canada has special federal laws for Indigenous peoples in Canada (listed below) and these laws have family-related aspects that can overlap with other family-related federal and provincial laws. These overlapping laws cause complexity and have caused issues for Canada in complying with

its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). See Section 2 for our commentary on this point.

(a) An Act respecting First Nations, Inuit and Metis Children, Youth and Families, SC 2019, c 24 affirms the inherent jurisdiction of Indigenous peoples to legislate in relation to child and family services and sets minimum standards for an assessment of the best interests of Indigenous children in all such matters across Canada. Mandatory considerations include the direct or indirect impact of family violence on the child and "the physical, emotional and psychological harm or risk of harm to the child" and any civil or criminal proceedings, orders or measures relevant to the safety and well-being of the child. Such factors are to be interpreted in accordance with Indigenous laws, "to the extent that it is possible to do so."

(b) Family Homes on Reserves and Matrimonial Interests or Rights Act, SC 2013, c 20, s 7 (FHRMIRA) authorizes First Nations to develop their own laws for the possession of family homes and the division of property interests.

(c) First Nations may also enact family property laws under the First Nation Land Management Act, SC 1999, c 24. If they do so, the provisional rules of FHRMIRA will not apply.[19]

2. The provincial governments have ultimate power within their province for: (i) the formalization of marriage;[20] (ii) property and civil rights;[21] and (iii) administration of civil/criminal justice.[22].

Given the presence of 13 provinces and territories in Canada, with broad jurisdiction over matters including the administration of criminal justice, civil protection orders and other civil matters, family law, property and housing, social assistance, and employment laws, the legislative and policy picture (relevant to domestic violence) is complex.[23] The table below was taken from page 21 of the Koshan article and it illustrates the various provincial and territorial legislation, policies and justice system components relevant to domestic violence and compares differences across jurisdictions to give a sense of the complex intersections facing victims and offenders in this context.

Table 1: Comparison of provincial/territorial laws including domestic violence (1)

Province or territory	Civil protection orders (2)	Family: parenting orders (3)	Family: child welfare (4)	ADR (5)	Residential tenancies (6)	Social benefits and/or social housing (7)	Employment (8)	Limitations (9)
BC	X	X	X	X	X	X	X	X
AB	X	X	X		X	X	X	X
SK	X	[X]	X	X	X	X	X	X
MB	X	X		[X]	X	X	X	X
ON		X		X	X	X	X	X
QB			X	X	X	X	X	X
NB	X		X		[X]	X	X	X

Province or territory	Civil protection orders (2)	Family: parenting orders (3)	Family: child welfare (4)	ADR (5)	Residential tenancies (6)	Social benefits and/or social housing (7)	Employment (8)	Limitations (9)
NS	X	X	X		X	X	X	X
PEI	X		X				X	
NL	X	X	X	X	X	X	X	X
YK	X		X					X
NWT	X	X	X		X		X	X
NU	X	X	X					X

This table includes statutes or regulations that explicitly reference domestic or family violence or related terms, but does not include such references in policy documents or where those terms are read in by interpretation. Square brackets indicate that the relevant provisions are not fully in force as of 31 March 2020.

(1) Civil protection order legislation specific to domestic/family/intimate-partner violence.

(2) Domestic violence is a factor regarding the best interests of a child for guardianship, parenting, custody, access and/or contact orders.

(3) Domestic violence is an explicit factor regarding whether a child is in need of protection/intervention.

(4) Domestic violence is identified as a factor in deciding whether ADR is required and/or in requiring training on domestic violence issues for at least some ADR professionals.

(5) Tenants are granted some relief from tenancy obligations in circumstances of domestic violence.

(6) Domestic violence is included as an explicit factor in providing financial supports for moving, transportation and other costs, and/or in assessing income, assets, needs and eligibility for social benefits and/or social housing.

(7) Domestic violence defined as a workplace hazard and/or allows leave from employment.

(8) No limitations periods for claims of sexual assault (including spousal sexual assault) and/or assault and battery in circumstances involving domestic violence.

Property and civil rights

Within the provincial scope (under the property and civil rights powers), there are laws dealing with parenting, custody and access orders, child and spousal support orders, and the division of matrimonial or family property (see Section 6.5 of this report). Unmarried and common-law couples or married couples who are not seeking a divorce, can make their claims for relief under these provincial or territorial statutes. There are also laws dealing with property and housing (see Section 6.6 of this report), social assistance and employment laws (see Section 6.2 of this report).

Administration of civil justice

The federal government has exclusive authority over the procedure in the courts that try criminal cases. Federal authority for criminal law and procedure ensures fair and consistent treatment of criminal behavior across the country. However, the provinces administer justice in their jurisdictions. This includes organizing and maintaining the civil and criminal provincial courts and civil procedure in those courts.

In the administration of criminal justice, all provinces have pro-charging and pro-prosecution policies for domestic violence offenses that apply to provincially regulated police forces and prosecutors. Most jurisdictions have specialized domestic violence courts that hear criminal matters in some locations, although the scope of these courts differs greatly within and between jurisdictions. The City of Toronto (Canada's largest city) has an integrated domestic violence court (IDVC) that allows some family law cases and criminal charges to be heard by a single judge. The IDVC operates at the provincial court level, excludes divorce, family property and child protection matters, and hears only summary conviction criminal matters.

Most provinces and territories have also removed or extended limitations periods for civil claims relating to sexual assault and/or assault and battery where the claimant was living in an intimate relationship with the person who committed the assault or battery.[24]

The court system in Canada

The court system is roughly the same across Canada. Except for Nunavut, each province has three levels: provincial and territorial, or lower, courts; superior courts; and appeal courts. The Nunavut Court of Justice has a single-level trial court. [25] Although the provinces and territories administer superior courts, the federal government appoints and pays the judges.[26]

Provincial and territorial courts

Provincial courts try most criminal offenses, money matters and family matters. In private-law cases involving breach of contract or other claims of harm, the courts apply common-law principles in nine provinces and in the territories. In Quebec, the courts apply the Quebec Civil Code. Provincial courts may also include specialized courts, such as youth courts, family courts and small claims courts. Each provincial government appoints the judges for its own courts. [27]

Superior courts

Superior courts are the highest level of courts in a province or territory. They deal with the most serious criminal and civil cases and have the power to review the decisions of the provincial and territorial courts. Superior courts are divided into two levels: trial level and appeal level. The trial-level courts hear civil and criminal cases. They may be called the Supreme Court, the Court of Queen's Bench or the superior court of justice. The appeal-level courts, or courts of appeal, hear civil and criminal appeals from the above superior trial courts.

Supreme Court of Canada

The Supreme Court of Canada is Canada's final court of appeal. Its nine judges represent the four major regions of the country. Three of them must be from Quebec, to adequately represent the civil law system. The Supreme Court has two main functions:

- It hears appeals from decisions of the appeal courts in all the provinces and territories, and from the Federal Court of Appeal. The Supreme Court's judgments are final.

- It decides important questions about the constitution and controversial or complicated areas of private and public law. The government can also ask the Supreme Court for its opinion on important legal questions.[28]

A note on peace bonds, restraining orders and civil protection orders

- A **peace bond** is a protection order made by a judge in a criminal court (administered by the provinces and territories) pursuant to the federal Criminal Code. A victim can apply for a peace bond for protection from anyone, including someone they have had only a dating relationship with, such as a boyfriend or ex-boyfriend. A victim should go to the police for a peace bond if they fear for their safety or the safety of their children. A victim does not need a lawyer to apply for a peace bond. The police will apply for them, and Crown counsel (a lawyer employed by the provincial or territorial government) will handle the case in court. A peace bond lasts up to one year. While both peace bonds and restraining orders from a certain province or territory can be enforced anywhere in that province or territory, only a peace bond is guaranteed to be enforceable elsewhere in Canada.[29]
- A **restraining order** is a protection order made by a judge in a civil (family) court pursuant to various provincial or territorial legislation. For a restraining order, a victim must have a family connection — they are (or were) married or living together, or they have children together. A victim can apply for a restraining order if they are afraid for their safety, or for less serious problems, for example, to get their partner or ex-partner to stop calling them every day, or to stop him/her from showing up uninvited at their home or their child's school. A victim may apply for a restraining order with or without a lawyer but a lawyer is recommended. The victim will be responsible for paying the lawyer's fees, unless they qualify for legal aid. A restraining order has no time limit, unless the judge includes a specific expiry date. A restraining order from a certain province or territory will most likely not be considered valid in another province or territory.[30]

NOTE: A restraining order can also be called a civil protection order depending on the province or territory. For the purposes of this report, we will always refer to a protective order obtained under civil statutes (versus the Criminal Code) as a restraining order. A detailed discussion on this topic is contained in Section 4 of this report.

3. The federal and provincial governments share the power over immigration.

Another important federal statute in the domestic violence context is the Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA). A detailed discussion on this topic is contained in Section 6.6 of this report.

4. Federal, provincial and territorial laws in this report

The information included in this report makes specific reference to federal legislation; however, the analysis on provincial and territorial laws will include comment on some of the variances between jurisdictions but is not a full and comprehensive summary of all provincial and territorial laws.

1.2 What is the controlling case law?

The Canadian legal system is based primarily on the English common-law system except for Quebec, which is based on the French civil law system and applies the Quebec Civil Code. Case law is made up of the written decisions of judges in the leading court cases and tribunals. Given the number of statutes pertaining to domestic violence in Canada, our research has focused on

the statutes. We have included important case law pertaining to domestic violence in our report wherever possible.

1.3 What are the specific parts of the court system that address domestic violence?

See "Administration of civil justice" and "The court system in Canada" above in Section 1.1.

1.4 What are potential causes of action?

In addition to the criminal causes of action we have set out above, survivors of domestic violence may also make a civil claim for the tort of "assault" and "battery" (assault in this context means a threat to harm someone and battery refers to intentional and unwanted physical contact). The plaintiff (victim) would need to prove damages (typically include out-of-pocket expenses, lost income and compensation for pain and suffering).

2 Introduction: framework guiding domestic violence law

2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes. See Section 4.4 "Restitution and remedies available to victims" of this report for further details on this point.

2.2 Is protection from domestic violence identified in national law as a human right?

No. It is not explicitly identified under federal, provincial or territorial law. Under the Canadian Charter of Rights and Freedoms, Constitution Act, 1982, everyone in Canada has the right to life, liberty and security of the person (Article 7) and to equality before and under the law and equal protection and benefit of the law without discrimination based on […] sex (among other things) (Article 15). Most provinces and territories have human rights acts with similar concepts.

2.3 Has your country signed and ratified the Conventions?

Yes. Canada ratified CEDAW in 1981 and ratified the CEDAW Optional Protocol on 18 October 2002.

2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

The Maputo Protocol is not applicable to Canada.

2.5 If it has ratified the 1979 Convention, how have the recommendations part of General Comment No. 35 been implemented into national law?

The CEDAW Committee adopted General Recommendation No. 35 on gender-based violence against women on 14 July 2017 and this updates General Recommendation No. 19.

We believe it is fair to say that Canada strives to implement the recommendations in General Recommendation No. 35 but there is still work to do. Our research has shown that UN treaty bodies have criticized governments in Canada for the lack of follow-up on recommendations. Both the treaty bodies and the Canadian nongovernmental organizations have called on the Canadian federal government to create effective mechanisms to oversee Canada's implementation of its commitments under CEDAW and other international human rights treaties.[31] However, despite that, Canada has no mechanism for overseeing, evaluating or ensuring domestic implementation of CEDAW. In 2008, the CEDAW Committee reiterated its 2003 recommendation that the government of Canada use its leadership and funding power to set standards and establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of CEDAW throughout its territory in which all levels of government can participate.

Other treaty bodies, including most recently the Committee on Economic, Social and Cultural Rights, have urged the government of Canada to use funding and other agreements with the provinces and territories to "establish responsibilities for the implementation of [treaty] rights at the different levels." However, there is no move to do this and no domestic intergovernmental mechanism to monitor the status of Canada's implementation of its international human rights commitments, including recommendations made by CEDAW and other UN treaty bodies. While Canada is proud to have ratified CEDAW, it has taken no effective steps to make the Convention a known and widely understood instrument for evaluating government policies and conduct.[32]

The first communication against Canada to be heard on its merits was *Kell v. Canada* (16 July 2012).[33] This is a decision dealing with the intersection of Indigenous laws and domestic violence laws in Canada. In that decision, the committee established that Canada, as party to the Convention and its Optional Protocol, had failed to fulfill its obligations under Articles 1, 2 and 16 and that it should provide monetary compensation and housing matching what Kell was deprived of. The committee also recommended recruiting and training more aboriginal women to provide legal assistance, and reviewing Canada's legal system to ensure that aboriginal women victims of domestic violence have effective access to justice.[34]

2.6 If the Conventions have not been ratified or signed, is it envisaged that your country will do so?

N/A

3 Similarities and differences in terminology

The following definitions are taken from the Criminal Code of Canada[35] and apply only to criminal matters:

Term	Definition
Domestic violence	Most acts of domestic violence would be captured under the provisions on assault[36] and/or sexual assault.[37] There is no offense specific to domestic violence in the Criminal Code; however, offenses against an intimate partner or family member(s) of the victim or offender will often lead to more severe sentencing.[38] **A note regarding Quebec:** There is no definition of "domestic violence" in the civil code. However, domestic violence offenses would be considered: ▪ as a fault giving rights to reparation for the injury, whether it be bodily, moral or material in nature[39] ▪ as a violation of the rights to personal security, inviolability, dignity and private life (Sections 1, 2 and 5) recognized by the Charter of human rights and freedoms[40]
Stalking	See "harassment."
Harassment	The Criminal Code covers criminal harassment in Section 264, which refers to conduct that would lead a person to reasonably fear for their safety or the safety of anyone known to them. Such conduct includes repeatedly following, communicating with, besetting, watching or engaging in threatening conduct directed at a person or someone known to that person. Stalking, therefore, would be captured as a form of criminal harassment. Section 372(3) of the Criminal Code also recognizes harassment over telecommunication as an offense. Harassment is also defined by some provincial laws, for example, in occupational health and safety laws or labor standards legislation (Quebec).
Victim	The Criminal Code defines a "victim" as: a person against whom an offense has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of the offense and includes, for the purposes of Sections 672.5, 722 and 745.63, a person who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of an offense against any other person[41]
Abuser	Abuser is not defined in the Criminal Code. The Criminal Code instead uses the term "offender" to mean a person who has been determined by the court to be guilty of an offense. Otherwise, the term "accused"

Term	Definition
	or "defendant" would be used to describe someone who is charged with an offense.
Civil protection order	Civil protection orders or restraining orders are issued on a provincial level. For example, in the case of intimate-partner violence in Ontario, a victim may apply to the superior court of justice, Ontario Court of Justice or a justice of the peace, for an Emergency Intervention Order under Section 4 of the Domestic Violence Protection Act, 2000.[42]
Causes of action	See "domestic violence" definition for the offenses related to domestic violence. Causes of action are brought by a private party against another party. In the criminal law context, charges are laid against a defendant by the prosecution ("**Crown**"). There are three types of offenses under the Criminal Code, and they differ by the form of punishment that accompanies a guilty verdict. (a) **Summary conviction offenses** are the least serious offenses, with a penalty being a fine of up to CAD 5,000, up to two years in prison, or both. Domestic violence would likely not automatically fall under a summary conviction offense. (b) **Indictable offenses** are the most serious offenses and can include punishments of life imprisonment. Certain types of assault and sexual assault are considered indictable offenses. For example, aggravated assault is an indictable offense whereby the punishment can be up to 14 years in prison. Cases of domestic violence may fall under this category, depending on the level of severity. (c) **Hybrid offenses** are those where the Crown can choose to proceed by either indictment or summary conviction. For example, assault under Section 266 can result in either a summary conviction penalty or imprisonment of up to five years. Cases of domestic violence may be captured under this category; given that domestic violence by nature involves intimate partners or family members of victims and/or offenders, the sentencing principle discussed above will more likely apply in these cases.
Marital rape	The Criminal Code acknowledges marital rape as a crime under Section 287: A husband or wife may be charged with an offense under Section 271, 272 or 273 [sexual assault] in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject matter of the charge occurred.

3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Term	Definition
Family violence	Further to Section 1 of this report under the heading "Divorce," the amendments to the Divorce Act, which came into force in March 2021, include the following definition of "family violence": means any conduct, whether or not the conduct constitutes a criminal offense, by a family member toward another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behavior or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person (b) sexual abuse (c) threats to kill or cause bodily harm to any person (d) harassment, including stalking (e) the failure to provide the necessaries of life (f) psychological abuse (g) financial abuse (h) threats to kill or harm an animal or damage property (i) the killing or harming of an animal or the damaging of property (*violence familiale*)[43]
Assault	Assault is defined as applying force intentionally on another person without that person's consent, or attempting or threatening to do so to the point that the other person believes on reasonable grounds that the assault is likely to happen. Sections 265-268 cover varying levels of assault, including assault with a weapon and aggravated assault endangering life. Sexual offenses other than sexual assault are covered under Sections 150.1-162.2, and include sexual exploitation, sexual touching of a minor and voyeurism.
Peace bond	A peace bond is a criminal court order "to keep the peace" under Section 810(1) of the Criminal Code. It is granted by a justice in a summary conviction court who is satisfied that a person has reasonable grounds to fear that a defendant will cause personal injury or damage to property, or publication of an intimate image without that person's consent (under Section 162.1). A peace bond can be in force for up to 12 months, and if a defendant fails or refuses to abide by it, they may be imprisoned for a term of up to 12 months. Courts will have discretion to determine the conditions of the peace bond, including the abstention or testing of drug and alcohol consumption, and prohibiting the defendant from being within a certain distance from the person(s) in need of protection. Also, see Section 4.1 below.

4 Protection for domestic violence victims and relief granted

4.1 Civil protection orders

4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, a variety of protection orders are available to victims of domestic abuse. These include peace bonds, protective orders or restraining orders. Peace bonds, protective orders and restraining orders are sometimes referred to collectively as "protection orders," however, only protective orders and restraining orders are obtained under civil statutes (i.e., not via criminal law). While largely the same in function, "protective orders" and "restraining orders" exhibit different names due to dissimilar naming conventions across the provinces. For the purposes of this report, we will collectively refer to a protection order obtained under civil statutes (such as protective orders and restraining orders) as a "restraining order."

Peace bonds

A Criminal Code peace bond (also called a "statutory peace bond"), issued pursuant to Section 810 of the Criminal Code, requires the accused to "keep the peace and be of good behavior" and to follow other conditions ordered by a judge or justice of the peace. A peace bond can takes weeks or months to obtain (not an emergency response) and consists of a promise made between an accused abuser and the court, where the accused abuser promises to follow the court's orders and be on good behavior. If the accused abuser breaks this promise and disobeys the peace bond, they will be found guilty of a criminal offense and can go to prison for up to four years.

While individuals may apply directly to the court to obtain a statutory peace bond against another person, most victims will file a complaint with the police, who can then refer the case to the Crown. Before a statutory peace bond is issued, the court must be satisfied that the informant has reasonable grounds for the fear that the accused will harm the informant or their family, or damage the informant's property. The judge or justice of the peace may add any reasonable conditions to the statutory peace bond that they consider necessary to secure the accused's good conduct, including requiring the accused to remain a certain distance away from the victim's home, school, workplace, etc. Criminal Code peace bonds can last up to 12 months.[44]

Common-law peace bond

The effect of a common-law peace bond is similar to a Criminal Code peace bond. However, a common-law peace bond may be ordered in a broader set of circumstances. Specifically, a common-law peace bond can be ordered if there is a reasonable basis to believe the accused will breach the peace. There is no time limitation for a peace bond.

Family court restraining orders

If a victim is concerned about his or her safety but does not want to press criminal charges, a request can be made to the family court for a restraining order.[45] Similar to a peace bond, these orders will list conditions that the person the victim is afraid of must obey. If the accused abuser does not follow the conditions of a restraining order, they can be arrested, though criminal charges are generally not automatic, like they would be if they disobeyed the conditions of a restraining order. Information on how to get a restraining order can be found at each province's legal aid clinic.[46]

In Quebec, there is no civil protection order specific to domestic violence; however, based on Article 509 of the Code of Civil Procedure,[47] an injunction (sometimes called a protection order) can be obtained, especially in a context of violence.

4.1.2 Who can petition for civil protection orders?

Peace bonds

Anyone who believes that an abuser can injure them, their spouse/partner, child or their property can obtain a peace bond. Peace bonds can order the accused abuser to have no contact with the victim (including in-person visiting, calling or writing), abstain from nonprescription drugs or alcohol (required bodily samples), forbid ownership of weapons, pay a refundable surety or any other condition the court considers desirable to prevent the harm.[48] Peace bonds can be obtained either (i) by an application made by the police or prosecutors; or (ii) by an application brought by a private individual.[49]

Restraining orders

To obtain a restraining order, any person that fears that a current spouse or partner will hurt them or children in their custody, he or she can ask a family court to issue a restraining order. Note that you cannot apply for a restraining order against a person that you have not lived with.[50]

4.1.3 Are there temporary custody of a child or child support orders?

Temporary orders, whether for custody or child support, are available via a motion if the parties are actively involved in court proceeding (under either the federal Divorce Act or the applicable provincial family law act).[51] Custody orders and support orders are typically obtained by filing an application to the court of your jurisdiction. As the application process and final determination may take some time, a party may make a motion to the court for a temporary immediate order, which would stay in place until the court either makes a different temporary order or provides a final order later once the case has been heard and a final decision is made.[52] In case of emergency, if a victim is seeking to separate a child from an abusive partner, it is advisable to pursue a protection order/restraining order as an interim measure.

4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

A judge can ensure that a restraining order lists conditions that are suitable for the victim's unique situation, to ensure protection from an abuser(s). These conditions, in effect for the duration of the restraining order, can prevent an abuser from residing at the same domicile as the victim, and can restrain them from attending locations frequented by the victim, such as their work or the home of a relative.

4.1.5 Are there any other types of emergency, preventive and civil protection orders?

There may be additional protective conditions available, in the form of a court order, where criminal charges have been laid. These orders (e.g., "no contact" order) can include bail, probation or conditional sentence orders. The remedies offered by these orders vary widely based on contextual factors, and may include conditions to have no contact with the abused or their children/family/friends, and to avoid locations known to be frequented by the abused, such as a workplace, school or residence.[53]

4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Yes. Where a concern has been raised about the care of a child, a child protection agency may take steps to conduct an investigation. If it is determined that a child requires protection, a provincial children's aid agency may begin a court application on the child's behalf against the child's parents or caregivers.[54]

4.1.7 Are their different types of civil protection orders, e.g., for a short-term period?

See answer below — "How long do the orders last?"

4.1.8 Are *ex parte* orders permitted without the aggressor being present?

Yes. In the context of restraining orders, these are typically obtained by either making an application directly to the court or calling the police, and do not require the presence of the aggressor.[55]

4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes. Emergency orders can be drafted to extend protections to others including the victim's children, other family members and/or the victim's current partner(s).[56]

4.1.10 How long do the orders last?

Peace bonds last up to one year, though this period can be renewed by application to the court.[57]

In the context of restraining orders, their duration is contingent on the particular circumstances. For example, some restraining orders are considered "temporary orders." These would end either on a date chosen by the judge and indicated in the order, within 365 days of the order or when the victim and the other person return to court. The judge may decide to have the temporary order continue, have it made final or have it expire.

Final restraining orders will only end if the judge has included a termination date with the order or if the other person successfully opposes it in court.

4.1.11 Please provide any resources or hyperlinks to website displaying data on how often civil protection orders are issued, and any demographics information from the last two to four years, e.g., police complaints related to domestic violence, prosecutions of domestic violence, convictions on domestic and sexual violence.

Reporting to police, charges and Restraining Orders laid in self-reported stalking incidents, by relationship of stalker to victim, Canada, 2014

Statistics Canada: Family Violence in Canada: A Statistical Profile, 2018

4.2 Steps for receiving a protective order

4.2.1 What documentation is needed to obtain a civil protection order?

Peace bonds

The person applying for a peace bond should have evidence that supports their claims, such as:

- a documented account of every time the person has stalked or threatened them
- pictures, emails, text messages, phone messages (if applicable)

A person who is applying for a peace bond on their own can consult a lawyer to help them, or they can go to the courthouse and ask to see a clerk of the criminal court. The clerk will then advise them on how to appear before the court to present their information, which is a sworn statement of the reason they fear that another individual will commit an offense against them, someone in their family or against their property. The clerk will provide them with the forms necessary to begin this process.[58]

Civil protection orders/restraining orders

Civil protection orders are issued on a provincial level and are referred to as protection orders, restraining orders and emergency protective orders. Throughout this report, we have used the term "restraining order" to capture the various kinds of civil protection orders available. For the purposes of this section, however, we will maintain the terminology used by the relevant province:

- **British Columbia**

A family law protection order is a protection order that is made under the Family Law Act. It does not require the involvement of the criminal justice system. It can be applied for in either a provincial court or Supreme Court. Forms are required in both courts, which are available online or at the courthouse.[59]

- **Alberta**

A Queen's Bench protection order can be obtained without notice to the other party and the victim can apply directly in the Court of Queen's Bench for the order.[60] In order to make an application to the Court of Queen's Bench, two court forms must be prepared — an Originating Application and a Queen's Bench Protection Order Questionnaire.[61] Once these forms are completed, the questionnaire must be declared before a Commissioner for Oaths. The documents must also be served on all other parties.

- **Saskatchewan**

The Court of Queen's Bench can issue a victim's assistance order. Applications are made directly to the court, usually with the assistance of a lawyer.[62]

- **Manitoba**

In Manitoba, there are two kinds of protection orders that are granted under The Domestic Violence and Stalking Act (DVSA), which sets protective conditions for victims of domestic violence and/or stalking, and The Sexual Exploitation and Human Trafficking Act, which sets protective conditions for people being victimized by sexual exploitation and human trafficking.[63] A protection order under the DVSA can be made in person, by telephone with the help of a police officer, a lawyer or a person, a lawyer or a person who has been trained and has been designated

by the minister of justice to assist with protection order applications (known as protection order designates (PODs)).[64]

- **Ontario**

Restraining orders are available through the Family Law Act and the Children's Law Reform Act (CLRA). A restraining order can be applied for at the family court: 1) if you fear your former partner and you were married or lived together for any period of time; and/or 2) to protect yourself and any children who are in your custody. In order to apply for a restraining order, certain documents need to be filed at a family court, either: 1) the family courthouse in the municipality where the victim or the other person lives; or 2) if the victim fears for the safety of their children or children in custody, a family court in the municipality where the children ordinarily live. The following will need to be completed to start an application for a restraining order: a) Form 8: Application; and b) a Canadian Police Information Centre (CPIC) Restraining Order Information Form, which is available at the family court counter.[65]

- **Quebec**

Under the Code of Civil Procedure, the superior court can make an order to protect a person whose life, health or safety is threatened, in particular, in a situation that involves violence. A victim can apply to a judge of the superior court for a protection order in civil matters. If the victim is not represented by a lawyer, an application form that describes the facts of the situation and the action requested from the court must be completed. The application must include relevant documents such as a sworn statement from a witness or a medical report. The application must be filed at the office of the superior court and be served by a bailiff on the person whose behavior is a threat.[66]

- **New Brunswick**

A restraining order is a protection order under the New Brunswick Family Services Act. Restraining orders must have a family connection and do not apply to property. There are two types of orders available: 1) Section 128 Order: the respondent can be restricted from "molesting, annoying, harassing, or interfering with the Applicant or interfering with the Applicant or any children in the lawful custody of the Applicant…"; and 2) a Section 132 Order can be an order as part of a custody order that a person refrain from contacting the child and/or the person having custody or access to the child. An application must be made to the Court of Queen's Bench, Family Division.[67]

- **Nova Scotia**

Applications for an emergency protection order are done over the phone. There is no paperwork to be completed, and a victim can apply for an emergency protection order by phoning 1-866-816-6555, any day between 9 am and 9 pm.[68]

- **Prince Edward Island**

A restraining order is a court order under the Family Law Act. It requires the victim's partner or former partner to refrain from "molesting, annoying or harassing" the victim or the children in the victim's lawful custody.[69]

- **Newfoundland and Labrador**

An emergency protection order is a court order that a judge of the provincial court can grant in urgent situations to provide immediate protection when family violence has occurred. An application for an emergency protection order may be made by: a) a person who resides with or has resided with the respondent in a conjugal relationship, whether within or outside marriage; or b) a person who is, together with the respondent, a parent of one or more children, regardless of

their marital status or whether they have lived together.[70] The police normally make the emergency protection order application. This can happen on a 24-hour basis.[71]

- **Northwest Territories**

A protection order can be obtained by applying through a local court worker, local victim services worker, legal aid or lawyer. A protection order can take weeks to obtain and often it makes more sense to apply for an emergency protection order first.[72]

- **Nunavut**

In Nunavut, a Restriction of Contact or Communication, restricts and prohibits communications between parties. This order applies to spouses only and can be obtained by making an application to a judge of the Nunavut Court of Justice.[73]

- **Yukon**

In order to obtain a restraining order, the victim must go to the family court. The victim must prove that there are reasonable grounds to fear for the victim's safety or the safety of any child in the victim's custody.[74]

4.2.2 Does the victim need to attend a hearing?

Peace bonds

The victim will be required to attend the hearing. The court will hear evidence from the police (or prosecutor) and the defendant to determine whether there are reasonable grounds for the fear that the defendant will commit an offense. The person who fears the defendant or others with first-hand knowledge may be asked to testify in court. **If the person has concerns about testifying, the police can explore alternatives with them.[75]**

Civil protection orders/restraining orders

Whether a victim must attend the hearing varies between the provincial jurisdictions. A victim must attend a hearing for a civil protection order or restraining order in Alberta,[76] New Brunswick, Northwest Territories, Nunavut,[77] Ontario[78] and British Columbia.[79]

In other jurisdictions, provincial governments have adopted application procedures that allow for an emergency protection order to be issued remotely. For example, in Newfoundland and Labrador, an application for an emergency protection order can be made online, the application is reviewed and ruled on by a judge at one of the provincial courts in the province.[80] In Nova Scotia, applying for an emergency protection order can be done over the phone.[81]

Other jurisdictions have employed a hybrid model. For example, in Manitoba, a victim can apply for a restraining order either in person or by telephone. If applying in person, the victim will need to attend the hearing in person. If applying by telephone, the victim can go to a POD or police officer to ask for help. An application and a fill-in-the-blank affidavit will need to be completed. The judicial justice of the peace (JJP) will be called and the victim can give evidence over the phone, as long as it is possible to record it. The application, affidavit and any verbal evidence will be reviewed by the JJP.[82]

4.2.3 Can you request remedies?

Peace bonds

The Defendant may agree or the court can order the defendant to: keep the peace and be of good behavior; not contact the person, their spouse or child; not visit the person, their spouse or child; not call the person on the phone; not write letters or send text messages; abstain from using nonprescription drugs or alcohol; and be required to provide bodily samples to ensure compliance.

Civil protection orders/restraining orders

The following are examples of provinces that provide for specific remedies that can be requested under a restraining orders:

- **British Columbia**

A restraining order can provide the following: no contact/communication; no attendance at or near the family residence, school or place of employment of the at-risk family member; restraining the possession of weapons; and conditions to report to court. (Section 183(3))

- **Alberta**

Several remedies can be requested including: 1) a restraining order restricting the defendant(s) from being within 200 meters of the residence and place of employment of the plaintiff(s) and from being within 200 meters of the plaintiff(s) anywhere else they may be in the Province of Alberta; 2) an order restraining the defendant(s) from interfering with or contacting the plaintiff(s) either directly or indirectly and either personally or by agency, anywhere in the Province of Alberta; 3) an order authorizing any police officer in the Province of Alberta to arrest and detain the defendant(s); and 4) costs of the action.[83]

Alberta's Protection Against Family Violence Act (PAFVA) provides for warrants permitting entry. This allows peace officers to enter premises when there are reasonable grounds to believe a victim will be found there and the respondent is refusing access to them (Section 10). The PAFVA also creates an offense for failing to comply with a protection order and allows peace officers to arrest, without warrant, a person they reasonable believe has breached a protection order (Sections 13.1 and 13.2).

- **Manitoba**

When seeking a restraining order, the order may contain as many of the following provisions as are necessary for the immediate or imminent protection of an applicant: prohibiting the respondent from attending at the applicant's residence or place of employment, or that of other specified persons; prohibiting the respondent from following the applicant or others; prohibiting the respondent from contacting or communicating with the applicant or others, directly or indirectly; giving the applicant or respondent possession of necessary personal effects; peace officer assistance to remove the respondent from premises and/or to ensure the orderly removal of personal effects; and requiring the respondent to turn over weapons and authorizing the police to search for weapons.[84] For the second type of order, a Queen's Bench Prevention Order, judges are able to grant any of the types of relief available from designated justices of the peace.

In addition, the court may order other remedies including: sole occupation of the family residence; temporary possession of specified personal property, such as household goods, furniture or vehicles; seizure of items used by the respondent to further the domestic violence or stalking; recommending or requiring the respondent to receive counseling; and prohibiting the respondent from damaging or dealing with the property in which the victim has an interest. Additionally, judges

of the Court of Queen's Bench may order the respondent to pay compensation for any monetary losses incurred by the applicant or any child of the applicant, due to the domestic violence or stalking. This can include expenses for counseling, security measures or moving, or lost income. Finally, if the court is satisfied that a respondent has operated a motor vehicle to further the stalking or domestic violence, the court can order the respondent's driver's license be suspended and prohibit the respondent from operating a motor vehicle.[85]

- **Quebec**

In some cases, the restraining order in Quebec may include some conditions. For example, the order can require another person to do the following: cease behavior that is considered threatening, such as harassment, intimidation or psychological violence; refrain from certain actions, such as asking the victim for money; and respect an obligation imposed by the court for the victim's protection. In other cases, the protection order may include conditions such as ordering the person who is a threat to the victim to hand over his or her weapons to the police; refrain from communicating with the victim; refrain from giving information about the victim to a third party; stay away from the victim's home and any place the victim frequents.[86]

- **Nunavut**

Under the Family Abuse Intervention Act, the following remedies are available to or in respect of a person who is being or has been subjected to family abuse: a) an emergency protection order (restraining order); b) a community intervention order; c) an assistance order; or d) a compensation order. [87]

4.2.4 Are there time limits?

Peace bonds

Peace bonds can only last for up to 12 months and they are not renewable. If another peace bond is needed, a new application must be made.[88]

Civil protection orders/restraining orders

The length of a restraining order varies between the provinces and can range from as short as 90 days to three years. The following are examples of the varying lengths of time:

- **British Columbia**

Restraining orders expire after one year unless specified (Section 183(4)).[89]

- **Alberta**

The Queen's Bench judge will determine how long the restraining order will continue up to one year. The order can be extended if you apply to the court near the time that it will expire.[90]

- **Manitoba**

Restraining orders are usually in effect for three years. However, the JJP can grant a longer order if they believe protection is needed for longer.[91]

- **Ontario**

There is no time limit on a restraining order in Ontario.

- **Quebec**

A restraining order is valid for the period determined by the court with a maximum of three years. An order issued as a matter of urgency is valid for 10 days.[92]

- **New Brunswick**

An emergency restraining order may last up to 180 days.[93]

- **Newfoundland and Labrador**

An emergency restraining order is temporary and has a maximum duration of 90 days.[94]

- **Northwest Territories**

The length of a restraining order is not limited by the legislation.[95]

4.2.5 Are there different rules in emergencies?

Yes. In the following jurisdictions:

- **Alberta**

In Alberta, an emergency protection order may be obtained, without notice, in the following circumstances: where "family violence" has occurred; the claimant believes the respondent will continue or resume family violence; and the order is required because of seriousness or urgency to provide for the immediate protection of the claimant and other family members (Section 2). A justice of the Court of Queen's Bench must review emergency protection orders within nine working days after being granted (Section 2(6)).

- **Saskatchewan**

An emergency intervention order is available 24 hours a day from specially designated justices of the peace and it is effective upon notice to the abuser and remains in effect for as long as the justice of the peace directs. An emergency intervention order can be obtained by a victim, or a person acting on behalf of the victim. In most cases, the police, a mobile crisis worker or a victim services coordinator will make the application to the special justice of the peace. The police, mobile crisis workers or victim services coordinators can make the applications over the phone to the justice of the peace.[96]

- **Ontario**

In Ontario, if a victim needs help from immediate harm, the victim can ask the court for an urgent restraining order.[97]

- **New Brunswick**

An order can be made under the Intimate Partner Violence Intervention Act. Emergency intervention orders are civil remedies that are granted on application to individuals who are experiencing abuse or violence in an "intimate personal relationship."[98] An emergency internation order can last up to 180 days.[99]

- **Prince Edward Island**

In Prince Edward Island, typically a police officer applies for an emergency protection order on the victim's behalf. In some cases, a victim services worker can also apply for an emergency

protection order on the victim's behalf. An emergency protection order is made only if a justice of the peace is satisfied that the situation is serious, urgent and that family violence has happened.[100] The justice of the peace will forward a copy of the emergency protection order and all supporting documents to the court. Within five working days, a judge of the Supreme Court will review the order and documents and will decide whether to confirm or change the order.[101]

- **Yukon**

An emergency intervention order is a short-term order that lasts an average of 30 days.[102]

4.3 Judicial discretion

4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The court has full discretion in granting a restraining order and it will exercise its discretion in accordance with the unique factors of every case.

4.3.2 Are there age limits on who can obtain orders?

There are no age limits on who can obtain orders, though in some circumstances, such as where a minor is involved, the process for obtaining an order may be initiated by a third party children's aid society.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Criminal

A restitution order requires the offender to pay the victim for financial losses that the victim suffered because of the offender's crime.[103] On 23 July 2015, the Canadian Victims Bill of Rights came into force, giving every victim the right to have a court consider making a restitution order when deciding the offender's sentence. If the restitution order is not paid, a victim also has the right to register the restitution order with a civil court and seek to enforce it as a judgment through that court. [104]

Civil claims

A survivor of domestic violence may make a civil claim, as a "plaintiff," asking the court to find that the abuser (defendant) has breached the law and should pay "damages" for the harms caused by domestic violence. The tort of "assault" and "battery" is the most common type of civil claim for survivors of domestic violence.[105]

4.4.2 Can they recover wages and profits lost?

Yes, victims can recover some lost wages and profits. Restitution cannot be ordered for pain and suffering, emotional distress or other types of damages that can only be assessed in civil courts.[106] Generally, victims can recover two weeks' lost wages due to injuries caused by assault if this could be proved with pay stubs. A judge can also order restitution to cover a victim's financial losses related to the following:

- damaged or lost property due to the crime

- bodily injury or psychological harm due to the crime including loss of income or support
- reasonable expenses for temporary housing, moving, food, childcare and transportation due to a spouse, common-law partner, child or other person moving out of the offender's household because of harm or threat of harm from the offender
- reestablishing a victim's identity or correcting credit history or credit rating because of identity theft or fraud
- costs that victims of nonconsensual publication of an intimate image had to pay to have that image removed from the internet or other digital networks

Jurisdiction specific:

- In **Nova Scotia, Newfoundland and Labrador** and **Northwest Territories**, there is no remedy for compensation but victim assistance is available.
- **British Columbia**

The Crime Victim Assistance Program (CVAP) provides benefits for victims of crime including medical and dental services, prescription drug expenses and counseling. The program cannot cover the following types of losses: compensation for pain and suffering; property-related offenses, including stolen or lost items or money; injury or loss from motor vehicle accidents; and injury or loss from work-related incidents covered by workers' compensation.[107]

- **Manitoba**

The Compensation for Victims of Crime provides compensation to victims who suffer personal injury, hardships or expenses as a result of certain crimes, which are provided for in the Victims' Rights Regulation of The Victims' Bill of Rights Act. The regulation provides that a designated offense, for the purpose of Part 1 of The Victims' Bill of Rights, means (viii.1) Section 264 (criminal harassment); Section 268 (aggravated assault); Section 272 (sexual assault with a weapon, threats to a person, causing bodily harm, gang sexual assault).[108] Compensation may cover expenses including: payment of medical expenses, replacement of damaged clothing or items seized by police as evidence, and compensation for lost wages for victims who have been disabled or for the dependents of victims who were fatally injured.[109]

- **Ontario**

In Ontario, the Victim Quick Response Program may provide financial support for essential expenses of eligible victims. These expenses include short-term, emergency counseling (to a maximum of CAD 1000) and crime scene cleanup (up to a maximum of CAD 1500). There is a short timeframe for claiming these benefits: within 45 days of reporting or disclosing for some benefits, and 90 days for others.[110]

- **Quebec**

Under the Civil Code of Quebec, a victim of domestic violence can obtain damages that are an immediate and direct consequence of the spouse's fault. Damages awarded under the Civil Code of Quebec are compensatory in nature (1457 of the Civil Cod of Quebec).[111]

Bodily, moral or material damages can be recovered (1457 of the Civil Cod of Quebec). For example, (i) physical and psychological injuries; (ii) material damages such as loss of income, loss of working benefits (dental and pension); and (iii) moral damages such as pain and suffering, loss of enjoyment of life, trauma, anxiety, humiliation, etc.

Punitive damages, which have a preventive purpose (1621 of the Civil Cod of Quebec), may be awarded when provided by law. In most cases of domestic violence, the courts have awarded punitive damages under the Charter of Human Rights and Freedoms.[112]

- **New Brunswick**

Under the Victims Services Act, financial benefits may be available to victims of violent crime to assist with expenses incurred as a direct result of the crime and which are not covered by other means.[113] Expenses that could be eligible for compensation include: funeral expenses, counseling, medication, eye wear, transportation, dental and miscellaneous.[114]

4.4.3 Is a separate civil process required?

In most jurisdictions, the court can order the offender to pay restitution directly to the victim or to a public authority created for this purpose. The court can order the offender to pay the restitution amount immediately, by a specified day in the order or as part of a payment plan. The court can also order restitution to be paid to more than one victim and can assign priority among the victims on the order. If an offender fails to pay a restitution order by the day specified in the court order or if the offender does not comply with a payment plan, a victim can file the order in the civil court and use civil enforcement methods to collect the unpaid amount. Some provincial and territorial victim services offer help to victims in collecting unpaid restitution orders.[115]

In Quebec, a separate civil process is required.

5 Prosecutorial considerations

5.1 Police procedures

Law enforcement in Canada

There are three public-sector police forces in Canada that are associated with and commissioned to the three levels of government: municipal, provincial and federal. In addition, many First Nations reserves have their own police forces established through agreements between the governing native band, province and the federal government.

The provinces of Ontario, Quebec and Newfoundland and Labrador maintain their own provincial police forces — the Ontario Provincial Police (OPP),[116] Sûreté du Québec[117] and Royal Newfoundland Constabulary,[118] respectively. Smaller municipalities often contract police services from the provincial policing authority, while larger urban areas maintain their own forces.

Seven of Canada's provinces and all three territories, in turn, contract out their provincial/territorial law enforcement responsibilities to the RCMP (popularly known in English-speaking areas as the Mounties),[119] the national police force, which is commissioned to the federal level of government. The RCMP also serves as the local police in all areas outside of Ontario and Quebec that do not have an established local police force, mostly in rural areas. Thus, the RCMP is the only police force of any kind in some areas of the country.

There is no uniform domestic violence policy throughout Canada for police or Crown prosecutors, each province or territory, or even each police department, has its own policies. However, some policies and other resources have been developed at the federal level or through cooperation between the federal, provincial and territorial governments[120] or at the federal/interjurisdictional level.[121] In view of the lack of standardization, the content and implementation of policies and procedures for police and Crown prosecutors differ significantly from one jurisdiction to another.[122]

Because of the complexities in investigating domestic violence files, many jurisdictions have introduced specialized units dedicated to handling domestic violence offenders. All police and RCMP officers receive basic training in investigating domestic offense files but there are also specialized police units made up of specially trained police officers and supervisors and, sometimes, civilian personnel tasked specifically with victim support services and trained in how to effectively and reliably conduct risk assessments in domestic violence incidents.[123]

5.1.1 When do the police get involved in domestic disputes or legal actions?

In matters of domestic disputes, Canadian police officers are often the first responders and the only responder in domestic violence incidences in rural and remote communities.

Typical process for engaging police across Canada

- A victim or any individual witnessing domestic violence may call the police by dialing 911. The 911 dispatcher will engage the police officers on general patrol duty who will respond to the initial call at the victim's location. They will physically attend the scene and intervene as needed, assess the safety of everyone involved, attend to the welfare of the victim, interview the victim and witnesses and take statements. The police officers are required to conduct a complete investigation and collect all available evidence from all sources.
- Police departments will generally collaborate with domestic violence support groups and engage with victims and advise them of, and direct them to, available victim

services and other supporting agencies (such as shelters), at the time of their intervention and/or afterward.[124] Additionally, if children are present at the scene or have been exposed to intimate-partner violence, police officers will usually contact youth protection services for assistance.

- If a criminal offense has taken place and there are sufficient grounds for arrest, the police will arrest the accused. The accused may be arrested even if the victim does not want this to happen. The accused will be removed from the scene and will be taken to the local police detachment for processing. The accused has the right to contact legal counsel and provide a voluntary statement (statement cannot be compelled). Some police departments use video recordings to document their interviews with the victim and offender for evidentiary purposes.
- Following the arrest, the accused may be remanded in custody or released with conditions such as peace bonds, no contact or noncommunication orders, nonattendance (for example, at residence, schools and place of employment), a requirement for the offender to attend counseling, communicate any change of address, firearms and drug or alcohol prohibitions. Some jurisdictions require that the victim be advised of the decision to release an offender from custody and of any applicable conditions. Generally, peace bonds are not be used in place of charges where the evidence warrants criminal charges.
- In some police departments, additional steps might be required for calls relating to domestic violence, such as the unit supervisor may be required to be present at the scene, the responding officer's report may be reviewed by the unit supervisor and then the report may be handed over to an investigator for review, completion of a risk assessment of the situation and/or the offender and a more comprehensive investigation. Similarly, police training on domestic violence greatly differentiates from province to province and among police departments; some offer compulsory robust training while in other jurisdictions, police officers may only have basic rudimentary preservice (i.e., police academy) training on such matters.
- Following the intervention, where there are no reasonable grounds to believe that a criminal offense has been committed, but police nonetheless believe that the victim's safety may be at risk, police may consider the availability of other responses, including civil protection orders under provincial and territorial legislation on domestic violence, where applicable, and orders under Section 810 of the Criminal Code.
- If there are **reasonable and probable grounds** to believe that a criminal offense has been committed, the police officer will recommend criminal charges regardless of the wishes of the victim.[125] In British Columbia and Quebec, the decision to charge is made by the Crown. In New Brunswick, the decision to lay charges is made by police after receiving advice from the Crown. In these provinces, the Crown must also consider whether it is in the public interest to charge.
- Where charges are laid, an appearance notice will be sent to the offender (now an accused), stating where and when to attend court or if the accused cannot be found, an arrest warrant may be issued against them.
- Once charges have been laid, a central part of the police officer's job:

  > […]is focused on maintaining the victim's involvement in the file and encouraging her to proceed with any charge. Although at this point the victim's desire to have their partner charged or not has little direct influence on the likelihood that [the] Crown will proceed, a victim who is unsupportive of moving forward with charges increases the chances that [the] Crown will determine that the likelihood of conviction is low because the victim may not attend court and provide evidence.[126]

- The responding police officer and investigator, if any, will also be involved in the ensuing court hearing relating to the domestic violence incident as material witnesses.

5.1.2 What circumstances affect law firm involvement?

The Crown prosecuting attorney lays the criminal charges. Law firms may become involved in domestic violence cases in one of three ways: they represent the offender/accused; they represent the victim; or they represent the children involved in such domestic dispute matter.

At the time of the arrest, the offender/accused has the right to remain silent and the right to receive legal counsel from an attorney. A law firm could become involved at this stage if called upon by the offender/accused for legal advice. Thereafter, if mandated by the offender/accused, the law firm will continue to represent the offender/accused during the criminal or civil court proceedings.

Law firms can also be mandated to provide legal advice and/or represent the victim or the concerned children in civil or family law proceedings.

Of note, victim support organizations cannot provide legal advice to victims. In general, only a certified lawyer may give legal advice.[127]

5.1.3 Victim support services programs and organizations

All Canadian provinces and territories offer domestic violence support services and/or victim services, through either government-run programs or private specialized organizations.[128]

5.2 Standard of proof

5.2.1 Is proof required and are there requirements for evidence and documents?

All evidence must be tendered by a witness, and can be given either by oral testimony or by written affidavits. Documents that are meant to be used as evidence will be admitted through exhibits. Whether given orally or in writing, the evidence must be given under oath or by solemn affirmation. A person who is reasonably expected to have knowledge of evidence may be summoned to the court to be examined or cross-examined.[129]

5.2.2 Is proof "beyond a reasonable doubt" required?

Yes, proof beyond a reasonable doubt is required in order to convict an accused person of a criminal offense, such as assault or sexual assault in a criminal court.[130]

If the matter is pursued in civil court, where the punishment would be a monetary fine, the standard of proof is lower and the plaintiff must only provide proof that the offense occurred on a balance of probabilities; in other words, the court will have to be convinced that it is more likely than not that the accused assaulted the victim.

5.2.3 Is the standard of proof different for *ex parte* orders?

Generally, *ex parte* orders made under the Criminal Code do **not** require proof beyond a reasonable doubt. Rather, the requirement laid out in the Criminal Code stipulates that a judge must be satisfied that there are "reasonable grounds to believe" that the order is necessary. *Ex parte* orders under the Criminal Code are typically related to warrants, searches and seizures. (For

example, Section 164.1(1) addresses the seizure of material that a judge suspects is child pornography or voyeuristic material, which may be done on an *ex parte* basis).

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

Yes. Affirmative defenses may be available, including the following:

- **Automatism** is a form of impaired consciousness, where an individual is capable of action but has no voluntary control over the action.[131] There are two kinds of automatism. First, there is "insane" or "mental disorder" automatism, which is an involuntary action that results from mental illness. This type of automatism falls within the defense of mental disorder and leads to a verdict of "not criminally responsible on account of mental disorder." Second, there is "noninsane" or "nonmental disorder" automatism, which does not stem from mental illness. If an accused can prove noninsane automatism, they should be acquitted. If the automatism is the result of voluntary intoxication (i.e., alcohol or drugs), the defense of intoxication, rather than automatism, would apply, although courts have recognized that extreme intoxication may result in a state similar to automatism.

  If an accused claims automatism, they must prove, on a balance of probabilities (i.e., more likely than not), that they acted involuntary at the relevant time. The court will expect the accused to provide psychiatric or psychological evidence to confirm the involuntariness. The court will also consider all of the available evidence to determine if the accused proved involuntariness.

- **Mistake of law** (also referred to as "color of right" because the accused mistakenly believes that they have the lawful right to act in a particular way) may be available as a defense if the mistake is objectively reasonable and negates the accused's *mens rea* (i.e., the mental element of the offense).[132]

  Similarly, **mistake of fact** may be available as a defense if the accused has a reasonable and honest belief in a state of facts that, if true, would justify or excuse the conduct.[133]

- Under Section 17 of the Criminal Code, the defense of **duress** applies if a person is compelled to commit a crime by threats of immediate death or bodily harm, and the threats come from a person who is present when the crime is committed. However, the defense only applies if the main person carrying out the crime (i.e., the "principal") believes the threats will be carried out and is not part of a conspiracy or association that led to them being compelled by threats. In other words, the accused must not put themselves in a position where they are likely to receive such threats.

  In addition, there must be "no safe avenue of escape" for the accused, from the perspective of a reasonable person in similar personal circumstances to the accused. There must be a time connection between the crime and the threatener's presence, in the sense that the threatener must be able to carry out their threat immediately if the accused refuses to commit the crime. Finally, there must be proportionality between the harm avoided (i.e., the harm threatened) and the harm inflicted (i.e., the harm resulting from the crime), such that the harm avoided must be comparable to or clearly greater than the harm inflicted.[134]

  The Criminal Code defense of duress does not apply to the following crimes: high treason, treason, murder, piracy, attempted murder, sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm, aggravated sexual assault, forcible abduction, hostage taking, robbery, assault with a weapon or causing

bodily harm, aggravated assault, unlawfully causing bodily harm, arson or the abduction and detention of young persons.

If the accused is not the "principal" but is charged as a party to a crime, they cannot rely on the Criminal Code defense, but may be able to rely on the common law defense of duress (which may also be available to principals who cannot rely on the Criminal Code defense). The common law defense, like the Criminal Code defense, requires an explicit or implicit threat of present or future bodily harm against the accused or a third party, which the accused reasonably believes will be carried out. Also like the Criminal Code defense, the common law defense of duress only applies if there is no safe avenue of escape or conspiracy involving the accused, and there is both a close time connection between the crime and the threatener's presence, and also proportionality between the threat and crime.[135] The exclusions to the Criminal Code defense do not apply automatically to the common law defense, and it is unclear if any exclusions exist.[136]

To rely on the defense of duress, the accused must raise the defense and some evidence to make it a live issue. Once the accused has done so, the Crown must show, beyond a reasonable doubt, that the accused did not act under duress.[137]

- The defense of **necessity** is closely related to duress. The accused must establish that they were in clear and imminent danger, that no reasonable and lawful alternative existed, and that the harm inflicted by the crime was acceptable in proportion to the harm avoided.[138] In considering whether the defense should apply, the applicable test for the first two factors is what a reasonable person would have done if they had a similar situation and characteristics as the accused. Proportionality must be measured on an objective standard, i.e., whether the harms inflicted and avoided were in fact proportionate, regardless of what the accused believed.

  To rely on the defense of necessity, the accused must raise the defense and some evidence to make it a live issue. Once the accused has done so, the Crown must show, beyond a reasonable doubt, that the accused did not act out of necessity.[139]

- **Provocation** may reduce a proven charge of murder to manslaughter. Under Section 232 of the Criminal Code, the defense is available if the accused acted "in the heat of passion," in response to conduct from the victim that would deprive an ordinary person of their self-control, but only if the accused acted before there was time for their passion to cool. The "ordinary person" analysis must be contextualized to take into account the accused's relevant circumstances and characteristics, but it is still an objective standard. The question of whether the accused was actually provoked (i.e., deprived of their self-control by being caught off guard) and acted before there was time for their passion to cool, is a subjective analysis, which is focused on what actually occurred in the accused's mind.[140]

  Provocation does not apply if the victim was doing anything that they had a legal right to do, or if the accused incited the victim in order to provide the accused with an excuse to cause death or bodily harm. Under the Criminal Code, the victim's conduct must amount to an indictable offense punishable by five or more years of imprisonment before it will be considered "provocation," but some courts have found this requirement to be unconstitutional. While Section 232 of the Criminal Code applies only to murder, evidence of provocation may be relevant to determining if the accused had the necessary intent (i.e., the mental element) for other offenses.

  To rely on the defense of provocation, the accused must raise the defense and some evidence to make it a live issue. Once the accused has done so, the Crown must show, beyond a reasonable doubt, that the accused was not provoked.[141]

- In certain cases, **intoxication** may be a defense to some offenses. For the purpose of this defense, there is a difference between offenses requiring "general intent" (i.e., the

minimal intention to perform the prohibited act, with no further ulterior purpose) and offenses requiring "specific intent" (i.e., a heightened mental element that goes beyond the performance of the prohibited act). Crimes like sexual assault and manslaughter require general intent, while crimes such as murder and robbery require specific intent.[142]

If the intoxication is involuntary, then intoxication may be a complete defense because of a lack of *actus reus* (i.e., the physical element of a crime). Intoxication is not involuntary if the accused saw or could have foreseen that the substances they voluntary took might result in intoxication.[143]

If the intoxication is self-induced, the court will consider the level of intoxication. **Mild** intoxication, leading to relaxed inhibitions, is not generally a defense. **Advanced** intoxication may be a defesce if it prevents the accused from forming the complex intent required for a specific intent offense, because they cannot foresee the consequences of their actions. The accused may still be convicted of any related offense that only requires a general intent. **Extreme** intoxication, akin to automatism, is a rare and complete defense. Extreme intoxication may be a defense to general intent offenses if the accused cannot form the minimal intent required.[144]

Under Section 33.1 of the Criminal Code, the defense of intoxication (even extreme intoxication) is not available for crimes that involve an element of assault or any other interference or threat of interference with another person's bodily integrity, if the intoxication is self-induced. Some courts, including the Ontario Court of Appeal and the Court of Queen's Bench in Alberta, have found this restriction to be unconstitutional.

To rely on the defense of intoxication, other than extreme intoxication, the accused must raise the defense and some evidence to make it a live issue. Once the accused has done so, the Crown must show, beyond a reasonable doubt, that the accused was not intoxicated.[145] To rely on the defense of extreme intoxication, the accused must prove the defense on a balance of probabilities.[146]

5.3.2 Is willful intent required?

Yes, under the Criminal Code, offenses require both a physical element (i.e., the *actus reus,* which is a voluntary act or omission) and a mental element (i.e., the *mens rea*). The type of *mens rea* required for a particular offense will vary and can include intention, knowledge of the wrongfulness of the act or reckless disregard of consequences. Generally, the Crown must prove the *mens rea* with respect to all the elements and consequences that form part of the *mens rea*.[147] Negligence is not generally sufficient to establish *mens rea*.[148]

5.3.3 Are false accusations punishable for the victim?

Yes. Under Section 140 of the Criminal Code, a person commits the offense of public mischief if, with an intent to mislead, the person causes the police to start or continue an investigation by any of the following:

- making a false statement that accuses some other person of having committed an offense
- causing, or attempting to cause, another person to be suspected of having committed an offense that the other person has not committed, or to divert suspicion from the person reporting the offense
- reporting that an offense has been committed when it has not been committed

- reporting or otherwise publicizing that some person has died when that person has not died

5.3.4 How is consent discussed in the law?

Voluntary consent is required for each sexual act in order for it not to be an act of sexual assault; consent must be expressed affirmatively either with words or by conduct.[149] Subject to a few exceptions, the age of consent in Canada in 16 years old. Importantly, there is no such thing as "implied consent" to sexual activity in Canada. This means that a defendant cannot rely on prior consent as proof that the complainant consented to the sexual act in question.[150] This also means that consent cannot be given for a sexual act in advance of the act itself; it must be expressly and voluntarily given during the time that it occurred. A complainant, therefore, could not have legally given consent to an act performed on them when they are unconscious, for example, even if consent had been expressly given immediately before falling unconscious.[151]

The Criminal Code lists additional circumstances where consent cannot be obtained, and in doing so, it safeguards the requirement that consent be truly **voluntary**.[152] For example, consent cannot be given on behalf of a complainant, nor can it be given under threat or induction by a person in a position of trust, power, or authority over the complainant.

The courts have also recognized that a lack of resistance or objection does not necessarily suggest that consent has been given; rather, consent must be expressed orally or by affirmative conduct.[153] There may be several scenarios that would lead a complainant not to openly object to an assault, for example, the application of force or harm, or threat thereof, on the complainant or someone else (like a family member), may be reason enough to not resist. In these cases, consent would not have been freely given.

If a defendant truly believed at the time of the alleged sexual assault that the complainant had consented to each sexual act in question, this may lead to a successful defense, but only if the accused took reasonable steps to ascertain the complainant's consent at the time of the act.[154] Given the principles listed here, a defendant cannot reference prior consent or behavior as proof of an honest mistaken belief of consent.

The defense of an honest mistaken belief of consent may also be raised with regard to other assault claims outside of sexual assault. All the concepts discussed until now (i.e., consent must be given voluntarily, and for each act at the time they occur), equally apply to consent to nonsexual assaults. Circumstances of such consent usually arise in relation to competitive sports, or other activities likely to cause bodily harm such as tattooing, piercings and elective surgeries, where a defendant may have been acting within the boundaries of a socially recognized and accepted activity.[155] However, this is unlikely to apply in the context of domestic violence cases.

5.3.5 Is self-defense or insanity a defense?

Self-defense

Self-defense can be valid defense, depending on the circumstances. Under Section 34 of the Criminal Code, a person is not guilty of an offense if:

- they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person
- the act that constitutes the offense is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force
- the act committed is reasonable in the circumstances

The defense does not apply if the accused is responding to force that is used or threatened by a person for the purpose of doing something that the person is required or authorized to do to administer or enforce the law, unless the accused reasonably believes that the person is acting unlawfully.

Insanity

The Criminal Code and the courts recognize that there are circumstances when an accused may have suffered from a mental disorder, and, therefore, may not be held criminally responsible for an offense (such as assault). Section 16 of the Criminal Code establishes this concept, whereby an accused would not be found criminally responsible if the mental disorder rendered him or her incapable of appreciating the nature and quality of the offense, or of knowing that it was wrong.[156] If a judge or jury decides that an accused is "not criminally responsible on account of mental disorder," it means that the accused is guilty of the offense but might not be sentenced according to normal procedure. For example, instead of sending the convicted abuser to prison, the court might send him or her to a treatment facility.

Any party can allege that the accused had a mental disorder of this kind and consequence, and will then bear the burden of proving it on a balance of probabilities.[157] In order to reach this determination, it must first be established that a mental disorder or condition actually existed at the time of the act, and that the incapacity was associated with that condition.[158] Examples of a condition that may lead to such incapacity include schizophrenia, and severe forms of bipolar disorder or depression.[159]

Alleging noncriminal responsibility on account of mental disorder is not an uncommon practice in Canada, especially as it relates to allegations of assault. Between 2005 and 2012, 20% of cases where an accused was determined to be noncriminally responsible involved major assault crimes. In that same period, there were 210 major assault cases that resulted in noncriminal responsibility, compared to 118,288 that resulted in a standard guilty verdict; and 49 sexual assault cases ended in a finding of noncriminal responsibility, compared to 23,006 guilty verdicts.[160]

5.4 Witness status

5.4.1 What is a witness's duty to testify honestly and completely?

Every witness must tell the truth. A witness who is competent and is 14 years old or older will be required to swear an oath or affirm that the evidence they provide "shall be the truth, the whole truth and nothing but the truth."[161] A witness who is younger than 14 years old, or who is deemed to lack the appropriate mental capacity, will be asked to promise that they are telling the truth.[162]

5.4.2 Who may abstain from testifying in certain situations?

The only person who may abstain from testifying in a criminal matter is the accused in the trial itself. No other capable and competent person can abstain from testifying in a criminal case. If the court requests attendance of a witness, or issues a subpoena, the witness in question must go to court as instructed. If someone fails to come to court once requested, the court will have the discretion to commit that person to prison for a maximum of eight days.[163]

The requirement to testify also applies to the spouse of the accused.[164] However, while testifying, not every question will necessarily have to be answered. If a spouse of the accused is called on to testify, they will be allowed to decline disclosing any communication made to them by the accused during the course of their marriage.[165]

Section 714.1 of the Criminal Code allows for testimony by audio or video conference if the court sees it fit. The Criminal Code also recognizes that it may be difficult for certain witnesses to testify publicly and in the presence of the accused. This may also affect a witness's ability to give a full and honest account of their evidence. For this reason, Section 486 of the Criminal Code gives the court discretion to allow witnesses to testify behind a screen, or via other device, and ask members of the public to exit the courtroom. If the accused is representing himself or herself, the court may also decide that the accused cannot cross-examine certain witnesses; this is most often the case in sexual assault and criminal harassment claims.

5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Please see above.

5.4.4 What is the impact of domestic violence on witnesses who are children?

In the event that a child (under the age of 18) is called on to testify, the court might consider admitting video-recorded statements as part of their evidence;[166] that said, child witnesses must still be available for cross examination if requested by the defense. According to the Supreme Court of Canada, this accommodation serves two main purposes, the first being to provide an environment where the child will likely reach their best recollection, and the second reason being to avoid any infliction of further injury that the child might be exposed to in court proceedings.[167] Much like the case of any victim of domestic violence, compelling a child to relive their trauma through repeated recounting of events may lead to detrimental mental health impacts.

Child victims are more susceptible to influence, which is why the prosecution may request complete prohibition on any communication between the accused and the child witness for the duration of the criminal trial.[168] The issuance of a peace bond might accompany this request. However, if a case of domestic violence does not involve the child as a victim (and if there is no reasonable fear or threat of harm against the child), such a prohibition might impair the child's relationship with their parents, which too might have negative consequences. In this circumstance, contact between the accused parent and the child may be allowed only when supervised by a local child protection agency.

In any case of suspected domestic violence where children are present — whether or not they are victims — the likelihood of involvement of a child protection agency is fairly high. The police or the prosecution often contacts these organizations in cases involving domestic violence; they may also launch their own individual investigation that is separate from the criminal investigation.[169] Most of these organizations, which are governed under provincial statutes, are allowed to apprehend a child pending the completion of their investigation if they believe that the child is at risk of harm, both physically and emotionally.[170] After their investigation, the child protection agency could take steps to arrange for proper care with the parents, or commence a separate court case to arrange alternative housing. A child victim or witness is, therefore, very likely to encounter two parallel systems with the prosecution and with the child protection agency, which may lead to confusion and further damaging impacts on both the child and the trial. To best account for this, the police and child protection agencies will often try to work together when conducting their own investigations.

5.4.5 Can children be called upon to testify?

Yes, children have been recognized as reliable witnesses. Witnesses under the age of 18 will, in most circumstances, have the option of testifying outside the courtroom or by some method that would shield them from seeing the accused; they may also have a support person present during their testimony. [171]

5.4.6 What is the effect of a child victim on the charges against the offender?

As described in Section 3, the Criminal Code treats offenses against a family member as an aggravating factor that could lead to more severe sentencing. This principle would readily apply to child victims.

5.5 Penalties and sentencing; penalty enhancements

5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

Charges of a "domestic nature" are considered an aggravating factor on sentencing under Section 718.2 of the Criminal Code. The following may apply:

- It depends on the nature of the assault, such as sexual assault or an assault with a weapon.
- The sentence could be an absolute discharge or could be up to 10 years of jail time if the assault involved a weapon or caused bodily harm.
- The sentence imposed also depends on whether the Crown decides to proceed by way of summary conviction or indictment.
- Summary convictions are usually reserved for more minor assault cases.
- Assault with a weapon or causing bodily harm (indictable offense and liable to imprisonment for a term of no more than 10 years or is guilty of an offense punishable on summary conviction who, in committing an assault)

5.5.2 Are there criminal penalties?

There is no specific offense of family violence in the Criminal Code, however, most acts of family violence are crimes in Canada.[172] Relevant criminal offenses include the following:

Offenses related to the use of physical and sexual violence such as:

- assault (causing bodily harm, with a weapon and aggravated assault) (Sections 265-268)
- kidnapping and forcible confinement (Section 279)
- trafficking in persons (Section 279.01)
- abduction of a young person (Section 280-283)
- homicide — murder, attempted murder, infanticide and manslaughter (Sections 229-231 and 235)
- sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (Sections 271-273)
- sexual offenses against children and youth (Sections 151, 152, 153, 155 and 170-172)
- child pornography (Section 163.1)[173]

Offenses related to the administration of justice such as:

- disobeying order of court (Section 127)
- failure to comply with condition of undertaking (Sections 145(3))

- failure to comply with probation order (Section 733.1)
- breach of recognizance (peace bond) (Sections 811)

Offenses related to some forms of psychological or emotional abuse within the family that involve using words or actions to control, isolate, intimidate or dehumanize someone such as:

- criminal harassment (Sections 264)
- uttering threats (Section 264.1)
- making indecent and harassing phone calls (Section 372)
- trespassing at night (Section 177)
- mischief (Section 430)

Offenses related to neglect within the family such as:

- failure to provide necessaries of life (Sections 215)
- abandoning child (Section 218)
- criminal negligence (including negligence causing bodily harm and death) (Sections 219-221)

Offenses related to financial abuse within the family such as:

- theft (Sections 332, 328-330, 334)
- theft by person holding power of attorney (Section 331)
- misappropriation of money held under direction (Section 332)
- theft of, forgery of credit card (Sections 342)
- extortion (Section 346)
- forgery (Section 366)
- fraud (Section 380(1))

5.5.3 What is the result of a violation of an existing order for protection?

Section 127 of the Criminal Court creates the offense of disobeying an order of the court:

> 127 (1) Everyone who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of:
>
> (a) an indictable offense and liable to imprisonment for a term not exceeding two years; or
>
> (b) an offense punishable on summary conviction.[174]

Section 145(3)-(5) of the Criminal Code consider the failure to comply with a variety of orders that require accused persons to appear in court and to abide by certain conditions while they are waiting for their matter to be heard in court.[175]

Section 733.1 of the Criminal Code provides that it is an offense for failing to comply with a probation order. This provision may be relevant in the domestic violence context where no-contact conditions are included in these orders, and are breached by the accused persons.[176]

5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

An abuser could be subject to others orders such as:

- paying a fine
- paying restitution to cover victim's costs for property loss, damage or personal injury
- probation (not to contact the victim directly, not to come within certain distance, not to own or carry a weapon)

5.6 Post-release restrictions

5.6.1 Does the law notify the victim of the offender's release from custody?

In Canada, if the offender receives a sentence of two years or more, they will be sent to a federal prison. Correctional Service of Canada's (CSC) National Victim Services Program can provide victims of federal offenders with certain information about the offender who harmed them, either by phone or mail. However, victims do not automatically receive such information; it is only provided if a victim asks for it by registering with the CSC to receive ongoing information about the offender.[177]

If the offender receives a sentence of less than two years, they will be sent to a provincial prison. Most provincial correctional systems do offer victims, through provincial victim services, the possibility of receiving ongoing information about the offender. In most cases, the victim will need to register with the provincial corrections office in order to receive such notifications. The process for receiving such notifications and the information provided to the victim vary from between provinces.[178]

In addition to notifications from the correctional departments at the time of release from jail, victims may also, depending on existing local policies, receive additional notifications relating to the offender, through the Crown prosecutor, the local police department overseeing the victim's case, a victim assistance organization or a victim services program, during the court proceedings and/or at time of sentencing.[179] We note, however, that these parallel systems are not fail-proof and may not always be rigorously applied.

Of note, certain provinces have enacted legislation to allow police to warn victims, or potential victims, of domestic violence of someone's violent or abusive past. Indeed, under Saskatchewan's Interpersonal Violence Disclosure Protocol Act[180] and Alberta's Disclosure to Protect Against Domestic Violence Act,[181] also known as Clare's Law, residents can ask police to release information on an intimate partner's past violent or abusive behavior, including criminal convictions and a history of police responding to domestic violence complaints. The information can also be disclosed to people identified by police to be at risk.

Clare's Law is named after a similar law in the UK, itself named for Clare Wood, a young woman who was murdered by her ex-boyfriend in the Manchester area in 2009. Her family found out after her death that he had spent six years in prison for holding a woman at knifepoint for 12 hours.

The purpose of the law is to inform people who may not know they are in an intimate relationship with someone who has a history of violence.

The coming into force of these laws have brought some challenges as the RCMP has questioned its participation in the implementation and enforcement of said legislation because unlike municipal police services in Canada, the RCMP is bound by federal privacy legislation, which it argues restricts its capacity to comply with said legislation.[182]

6 Special issues

6.1 Battered woman syndrome

6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

While the fact that an accused person is a "battered woman" does not automatically entitle her to an acquittal, it may be relevant to existing affirmative defenses. In the 1990 decision of *R. v. Lavallee*,[183] the Supreme Court of Canada recognized that expert evidence about an accused's abuse may be relevant to determining the reasonableness of her belief that killing her abuser was the only way to save her own life (i.e., the defense of self-defense). In particular, the court said that "the mental state of an accused at the critical moment she pulls the trigger cannot be understood except in terms of the cumulative effect of months or years of brutality" (paragraph 52). The court also recognized that, because of the cyclical nature of abuse, a battered spouse may be able to accurately predict the onset of violence even before she is struck. Finally, the court accepted that, for a variety of reasons, battered spouses may not feel able to leave their abusers. Expert evidence about these realities is relevant for determining whether the accused had a reasonable apprehension of death and whether the accused felt incapable of escape, which are necessary factors for self-defense to apply.

In later cases, courts have also recognized that this type of expert evidence may be relevant to other defenses, such as duress.

6.2 Domestic violence in the workplace

6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Yes, there are a number of orders that courts can issue to protect victims of domestic violence and many of these can include terms requiring the abuser to avoid the victim's workplace. These orders include:

- **Criminal Code Section 810 peace bond** — See Section 4.1 regarding civil protection orders.
- **Common law peace bond** — See Section 4.1 regarding civil protection orders.
- **Bail conditions and variations** — While an accused is awaiting a resolution of their criminal case, the court may allow them to be released from custody, on certain conditions that can be varied upon request by the Crown or defense counsel. One of the conditions that the court can impose is to refrain from attending certain locations (e.g., the victim's home, school and workplace). Bail conditions will remain in place until the matter is resolved or the conditions are varied by the court.
- **Provincial civil protection order** (or emergency protection order) — See Section 4.1 regarding civil protection orders.

- **Provincial statutory or common-law restraining order** — See Section 4.1 regarding civil protection orders.
- **Trespass notice/order** — Parties, including employers, can issue trespass notices under provincial or territorial property protection legislation (e.g., Ontario's Trespass to Property Act). A trespass notice is issued by a property owner (or person authorized by the property owner) to notify the recipient that they can no longer enter the property. The notice will remain in place until it is revoked.

Orders issued under the Criminal Code are generally available across Canada. The availability of other remedies varies across provinces. In addition, only some of these orders are available to employers seeking to protect their employees from domestic violence in the workplace.

6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

In Canada, all employment relationships are contractual and cannot be terminated by the employer unless the employer has "just cause" for dismissal (or, in Quebec, "serious reason") or the employer provides reasonable notice of termination (or pay in lieu of such notice). Note that, in certain provinces, even if an employer has "just cause," it may still be required to provide a minimum amount of statutory payments and benefits when dismissing an employee.

Whether a particular situation rises to the level of "just cause" for dismissal is fact-specific. Relevant factors include, but are not limited to the following:

- the employee's position, including their duties and responsibilities, whether they are a "public face" of the company, etc.
- the employee's prior disciplinary history
- the seriousness of the misconduct
- whether the victim is also an employee in the workplace
- whether the misconduct occurs in the workplace

Where the misconduct, or the character it reveals, is incompatible with the employee's duties and responsibilities, or there is some other nexus between the misconduct and the employment relationship (e.g., if the victim is also an employee or the violence took place in the workplace), there is a higher likelihood that just cause for dismissal exists. A nexus between the misconduct and the employment relationship/workplace is particularly important in provinces where human rights laws prohibit employers from discriminating against employees on the basis of criminal charges or convictions that are not directly related to their employment, or for which the employee received a pardon.

6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

Most Canadian jurisdictions have amended their employment standards laws to specifically allow employees to take a job-protected leave of absence if they (and, in some cases, specified family members) have been subject to domestic or sexual violence:

- **British Columbia**

Up to 10 individual days and 15 weeks of leave per calendar year are available if the employee, the employee's dependent child or a protected/dependent adult for whom the employee is a caregiver, is subjected to domestic violence or sexual violence (as defined in the Employment Standards Act) and time away from work is required for specific purposes, including seeking

medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. Up to five days of the leave are paid; the remainder is unpaid.

- **Alberta**

Up to 10 days of unpaid leave per calendar year are available if the employee, the employee's dependent child or a protected/dependent adult for whom the employee is a caregiver, is subjected to domestic violence (as defined in the Employment Standards Code) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least 90 days of continuous service with the employer.

- **Saskatchewan**

Up to 10 individual days of leave per a 52-week period are available if the employee, the employee's dependent child or a protected/dependent adult for whom the employee is a caregiver, is subjected to interpersonal violence (as defined in The Victims of Interpersonal Violence Act) or sexual violence, and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. Up to five days of the leave are paid; the remainder is unpaid.

- **Manitoba**

Up to 10 individual days and 17 weeks of leave per a 52-week period are available if the employee, the employee's dependent child or a protected/dependent adult for whom the employee is a caregiver, is subjected to interpersonal violence (as defined in The Employment Standards Code) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least 90 days of continuous service with the employer. Up to five days of the leave are paid; the remainder is unpaid.

- **Ontario**

Up to 10 individual days and 15 weeks of leave per calendar year are available if the employee or the employee's child is subjected to domestic or sexual violence (as defined in the Employment Standards Act, 2000) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least 13 weeks of continuous service with the employer. Up to five days of the leave are paid; the remainder is unpaid.

- **Quebec**

While Quebec's domestic or sexual violence leave only applies to situations where the employee is the victim, an employee may take up to 10 individual days of job-protected leave to fulfill obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of a relative or a person for whom the employee acts as a caregiver. Up to two days of the leave are paid; the remainder is unpaid.

- **New Brunswick**

Up to 10 individual days and 16 weeks of leave per calendar year are available if the employee or the employee's child is subjected to domestic violence, intimate-partner violence or sexual violence and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least 90 days of continuous service with the employer. Up to five days of the leave are paid; the remainder is unpaid.

- **Nova Scotia**

Up to 10 individual days and 16 weeks of leave per calendar year are available if the employee or the employee's child is subjected to domestic violence (as defined in the Labour Standards Code) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least three months of continuous service with the employer. Up to three days of the leave are paid; the remainder is unpaid.

- **Prince Edward Island**

Up to 10 individual days of leave per 12-month period are available if the employee, the employee's dependent child or a protected/dependent adult for whom the employee is a caregiver, is subjected to domestic violence, intimate-partner violence or sexual violence (as defined in the regulations to the Employment Standards Act) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least three months of continuous service with the employer. Up to three days of the leave are paid; the remainder is unpaid.

- **Newfoundland and Labrador**

Up to 10 individual days of leave per year are available if the employee or a person for whom the employee is a guardian or caregiver is subjected to family violence (as defined in the Labour Standards Act) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for this leave, employees must have at least 30 days of continuous service with the employer. Up to three days of the leave are paid; the remainder is unpaid.

- **Northwest Territories**

Up to 10 individual days and 15 weeks of leave per calendar year are available if the employee or the employee's child is subjected to family violence (as defined in the Protection Against Family Violence Act) and time away from work is required for specific purposes, including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. To be eligible for unpaid leave, employees must have at least one month of continuous service with the employer. Up to five days of the leave are paid if the employee has at least three months of continuous service; the remainder is unpaid.

- **Federally-regulated employers**

Up to 10 individual days of leave per calendar year are available if the employee or the employee's child is subjected to family violence and time away from work is required for specific purposes,

including seeking medical attention, obtaining services from a victim services organization, obtaining counseling, relocating or seeking legal or law enforcement assistance. Up to five days of the leave are paid if the employee has three months of continuous service with the employer; the remainder is unpaid.

6.3 Immigration

6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?

Although not extensive, there are some protections in place to prevent abusers who are citizens or permanent residents of Canada from using immigration laws[184] to perpetrate domestic violence against their spouse, based on the type of sponsorship application: (i) applications made outside Canada; and (ii) and applications made in Canada.

Applications made outside Canada

Sponsorship applications made from outside Canada will result in the sponsored spouse being granted permanent resident status before arriving in Canada; thus preventing sponsors from using immigration laws to perpetrate domestic violence against their spouses.

This current policy is a direct result of the abolishment of a prior policy. In April 2017, the government of Canada eliminated conditional permanent residence,[185] as it disproportionally put sponsored women at an increased risk of violence and abuse from their sponsor. Under this previous policy, sponsored spouses who had been in a relationship for less than two years with their sponsors or who had no children in common at the time of the sponsorship application were subject to a period of conditional permanent residence of two years. During these two years, the sponsored spouse was required to remain in a conjugal relationship and cohabite with their sponsor, or their permanent residence status could be revoked with the potential for deportation.

Applications made in Canada

In the case of application made in Canada (i.e., after arriving in Canada), a sponsor may withdraw their sponsorship at any moment prior to the granting of permanent resident status, which has the unintended effect of allowing sponsors to use immigration laws to perpetrate domestic violence against their spouses, as there are limited alternative options for a sponsored spouse to secure permanent resident status. However, in such cases, sponsored spouses may seek: (i) a refugee claim where eligible;[186] (ii) permanent resident status through a humanitarian and compassionate application;[187] or, notably, (iii) a family violence temporary resident permit.

Under the newly available family violence temporary resident permit (TRP), a sponsored spouse may apply for a temporary resident permit, which typically lasts six months (but which may be extended). The TRP is intended for cases of domestic violence and is subject to the following eligibility requirements:

- The sponsored spouse is physically located in Canada and experiencing abuse, including physical, sexual, psychological or financial abuse or neglect, from their spouse or common-law partner while in Canada.
- The sponsored spouse is seeking permanent resident status that is contingent on remaining in a genuine relationship in which there is abuse and if the relationship with the abusive spouse or common-law partner is critical for the continuation of the individual's status in Canada.

The TRP would generally apply to various cases, including sponsored spouses who have left their sponsor due to abuse, or not yet left their sponsor, due to fear of losing their immigration status; whose sponsorship has been withdrawn prior to the granting of permanent resident status; who have been misled and made to believe by an abusive spouse that their permanent residence application has been submitted and is in process when, in fact, no application has been submitted; and who are temporary residents intending to apply for permanent residence through a genuine relationship that has become abusive, but who may not yet have an application in process.

6.3.2 If battered immigrants cooperate with law enforcement in domestic violence can they obtain immigration remedies?

No, there are no such remedies under Canadian immigration laws. However, sponsored spouses that cooperate with law enforcement in domestic violence cases will not lose their permanent resident status and will not be deported.

6.3.3 Does domestic violence law discuss asylum accessibility?

Canada's main immigration law is the IRPA.[188] Under the IRPA, individuals seeking protection in Canada may be approved as a "convention refugee" or a "person in need of protection."

A convention refugee is an individual who meets the criteria set out in the UN's 1951 Convention Relating to the Status of Refugees, namely, a person who:

- by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion
- is outside their country or countries of nationality and is unable or, because of their fear, unwilling to avail themselves of those countries' protection
- is outside their country of former habitual residence (if they do not have a country of nationality) and is unable or, because of their fear, unwilling to return to that country

A "person in need of protection" is a person in Canada whose return to their country of nationality or former habitual residence would result in them being subjected to a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment. For the "risk" criteria to apply the following conditions must be met:

- the person must be unable or, because of the risk, unwilling to avail themselves of the country's protection
- the risk must not be faced generally by other individuals in or from that country
- the risk must be faced by the person in every part of that country
- the risk must not be inherent or incidental to lawful sanctions
- the risk must not be caused by the country's inability to provide adequate health or medical care

Canada's Immigration and Refugee Board, and its courts, have long recognized that being a victim of domestic violence can constitute "membership in a particular social group" for the purposes of a convention refugee determination. However, claimants must still meet the other criteria for convention refugee status, including being able to show their fear is well-founded, that they cannot seek protection in their home country (which presents a significant challenge if the claimant's country of origin has a functioning democracy), and that they sought asylum at the first available opportunity (which presents a significant challenge to claimants who may have passed through other countries before reaching Canada).[189]

In 2004, the Canadian and US governments entered into a Safe Third Country Agreement under which claimants who entered Canada from the US and sought refugee protection could be returned to the US unless they could prove that a specific exemption applied. On 22 July 2020, the federal court declared the Safe Third Country Agreement unconstitutional, but suspended its decision for six months to allow the federal government an opportunity to respond to the decision, including by passing new legislation.[190] The Canadian government appealed the decision. The appeal was heard by the federal court of appeal on 23 October 2020. A decision is pending.

Similarly, the Immigration and Refugee Board has determined, in at least one case involving domestic violence by a father against his son, that "the constant threat of abuse from a violent and unstable man is cruel and unusual."[191] The board also accepted that, in addition to being physically and verbally abused, years of witnessing abuse of other family members can cause harm. In that case, the board accepted that there was no state protection available, due to the abuser's influence with local leaders and the fact that the country did not enforce laws regarding domestic violence. Further, the board accepted that the abuser was likely to find his family no matter where they fled in the country. The son was found to be a "person in need of protection" and a convention refugee, and his mother and sister were found to be convention refugees. However, the threshold for proving that there is no "internal flight alternative" and no way to obtain state protection (e.g., police protection) is high, and can present a significant challenge for claimants, even if they can prove their identities and the potential for abuse.

6.4 Armed forces

6.4.1 Can a victim seek a military protective order if the abuser is in active military?

Where the abuser is in active military service, a victim of family violence can seek help through the local military police (MP) detective or the local Military Family Resource Centre. Military chain-of-command has a duty to react as per DAOD 5044-4.[192]

There are two options for obtaining a restraining order when an abuser is in active military service. The victim can pursue either or both of these options. The chain-of-command and MPs usually first seek a peace bond and may add a direct order to complement it, if needed, for example, to protect the victim's workspace, when she/he works on the base either in the military or as a civilian Department of National Defence employee.

(a) Obtain a direct order

The commanding officer can issue a direct order to the abuser based on DAOD 5044-4. If the person disobeys this direct order, then the abuser could be charged with disobedience of a lawful command pursuant to Section 83 of the National Defence Act, R.S.C., 1985, c. N-5.[193] The benefit of a direct order is that it is relatively easy and quick to obtain and can be flexible to adjust to circumstances (based on the MP report, a local legal officer provides legal advice to the commanding officer who issues the order). The downside of a direct order is that although the Supreme Court of Canada in *R v. Moriarity*[194] (confirmed in *R v. Stillman*[195]) that the Military Code of Service Discipline applies even outside the military context, a commanding officer's jurisdiction outside that context might be challenged.[196] Another disadvantage is that if the abuser is released from the military, the commanding officer's order becomes obsolete as military jurisdiction cannot be, unless in exceptional circumstances, exercised over civilians.

(b) Criminal Code peace bond

The chain-of-command, through the local MP detective liaison officer with civilian prosecution and with the assistance of the local legal officer, can seek a restraining order from a provincial court

pursuant to Section 810 and following of the Criminal Code.[197] For additional information about peace bonds issued pursuant to the Criminal Code please refer to Section 4.1 above. The benefits of such a peace bond in a military circumstance is that the peace bond is enforceable anywhere in Canada, many conditions can be attached to it, and breaching a peace bond is a criminal offense. The downside is that it has a one-year term and it is more difficult to obtain as it requires the involvement of a civilian prosecution/judge for initial issuance and any further change.

6.5 Child custody and child/spousal support

6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?[198]

At the national level, the recent amendments to the Divorce Act, which came into force in March 2021 (explained in Section 1 of this report), requires that primary consideration be given to achieving physical, emotional and psychological safety and security for children and adds "family violence" (as defined in Section 3.2 of this report and which is defined broadly to include psychological and financial abuse and coercive control and indirect exposure of children to violence) as a relevant factor in making orders that allocate parenting time and decision-making responsibility. However, judges are also required to consider providing as much parenting time with each spouse as is consistent with a child's best interests (interpreted widely as a maximum parenting time principle in the previous version of the act) and to consider a parent's willingness to "support the development and maintenance of the child's relationship with the other spouse" (a friendly parent provision).

The following factors must be considered by the court in determining the best interests of the child: a) the child's needs, given the child's age and stage of development, such as the child's need for stability; b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life; c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse; d) the history of care of the child; e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained; f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage; g) any plans for the child's care; h) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child; any family violence and its impact on, among other things: i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and i) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child.[199] According to Professor Koshan:

> Disclosures of domestic violence may thus come with the risk that, if they cannot be substantiated, victims will be viewed as unfriendly parents and their own claims to custody may be placed in jeopardy.[200]

At the provincial and territorial levels, courts have **parens patriae jurisdiction**, meaning the court has the power and authority to protect those who cannot act on their own behalf. In family law, Canadian courts can take necessary action to protect children. Many jurisdictions stipulate that domestic or family violence is a factor to be considered in assessing the best interests of children and determining parenting, custody and access and/or contact orders, but how this violence is defined varies quite widely across these jurisdictions.[201]

At the same time, many jurisdictions appear to presume the equal division of parental authority where the parents have cohabited, subject to a court order, agreement or, in some jurisdictions,

consent or acquiescence of one parent to the child's residence with the order.[202] Many also include a maximum contact or friendly parent principle similar to that in the current Divorce Act.[203]

Only British Columbia explicitly excludes a presumption of equal parenting responsibility and equal time in making court orders. British Columbia also provides that a denial of parenting time or contact with a child is not considered wrongful where the guardian reasonably believed that the child might suffer violence if contact with the child was exercised.[204]

British Columbia — Assessing Family Violence, Rule 38[205]

Alberta — Section 33.[206]

Saskatchewan — Rule 23.5[207]

Manitoba — Rule 39(2.1)[208]

Ontario — Rule 20[209]

Quebec — Section 18 [210]

New Brunswick — judges' discretion

Nova Scotia — Rule 18(8)[211]

Prince Edward Island — Rule 5[212]

Newfoundland and Labrador — judges appear to have the discretion to decide based on specific considerations such as special needs, etc.

Northwest Territories — judges' discretion based on specific considerations such as special needs, child's normal routine etc.

Nunavut — Rule 7(2)(h)[213]

Yukon — Rule 37.1[214]

6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

If the child is older, emotionally mature and able to give their views and wishes, a judge uses a "best interests of the child" legal test. The Office of the Children's Lawyer can prepare a custody and access assessment "voice of the child report" is prepared if the child is over the age of 7.

6.5.3 Information around coercive family violence under the Divorce Act.

Bill C-78 has brought coercive controlling violence (CCV) into effect.[215] Coercive and controlling behavior is included in the definition of family violence to the Divorce Act.[216] In considering the "best interests of the child," the court must now consider the impact of family violence on parenting and contacting arrangements. This includes its impact on the ability and willingness of the person who engaged in family violence to care for and meet the needs of the child.[217] In considering the impact of any family violence, the court will take into account whether there is a pattern of coercive and controlling behavior in relation to a family member.[218] Generally, the most serious type of violence in family law is coercive and controlling violence.[219]

6.6 Housing rights of domestic violence victims

Residential tenancy law

Housing and real property rights are dealt with on a provincial basis. The provincial statutes differ as to how domestic violence is proven and what procedures are used to terminate tenancies. The responses below are a general overview of the trends in the provinces and territories.

Regarding tenancies, most provinces have amended their residential tenancies statutes to specifically provide victims of domestic violence with certain protections in relation to their tenancies. In jurisdictions that have not amended their residential tenancy legislation, there is civil protection legislation available that may provide some remedies. Residential tenancy statutes also create specialized administrative tribunals or dedicated government agency to determine disputes between landlords and tenants. These tribunals or agencies aim to provide a less costly and more expeditious process for resolving issues. As a result, landlord and tenant disputes rarely make it to the courts and most of the tribunals/agency decisions are not available to the public, therefore, researching trends in this area is a challenge.

Under family law acts and marital property acts or other similar statutes dealing with the distribution of property when a spousal relationship break down typically do not include domestic violence as a relevant factor.[220] There is, however, judicial discretion to grant exclusive possession of the family home if the circumstances warrant it (including domestic violence).

Summary of relevant tenancy statutes (or civil protection acts)

- Residential Tenancy Act, SBC 2002, c 78, Sections 45.1-45.3 (**British Columbia**)
- Residential Tenancies Act SA 2004, c R-17.1, Sections 47.1-47.7 (**Alberta**)
- Residential Tenancies Act SS 2006, c R-22.0001, Sections 64.1-64.3 (**Saskatchewan**)
- Residential Tenancies Act, CCSM c R119, Sections 92.2-92.4 (**Manitoba**)
- Residential Tenancies Act, *2006*, SO 2006, c 17, Section 47.1-47.4 (**Ontario**)
- Civil Code of Quebec, Article 1974.1 (**Quebec**)
- Residential Tenancies Act, SNB, Section 24 (**New Brunswick**)
- Residential Tenancies Act, RSNS 1989, c 401, Section 10 (**Nova Scotia**)
- Rental of Residential Property Act and Victims of Family Violence Act (PEI), Section 12 (**Prince Edward Island**)
- Residential Tenancies Act, 2018, SNL 2018, c R-14.2, Sections 25-26 (**Newfoundland & Labrador**)
- Residential Tenancies Act, RSNWT 1988, c R-5, Section 54.1 (**Northwest Territories**)
- Residential Landlord and Tenant Act Section 45 (**Yukon**)
- Residential Tenancies Act (**Nunavut**)

Housing on Canadian reserves (First Nations) and military housing (Canadian Forces Housing Agency) are subject to separate governing principles**.**

First Nations

Under Canadian law, the FHRMIRA,[221] recognizes the authority of First Nations to pass laws related to the use, occupation and possession of family homes on its reserves; and the division of property on reserves between spouses and common-law partners.[222] Additional laws deal with the use, occupation and possession of family homes on First Nation land under the First Nation Land Management Act (Section 20(1)(c)(i)).[223] Remedies under this regime are available to current or former married spouses and common-law partners (Section 2(4)). FHRMIRA is applicable if either the applicant or respondent is a First Nation member, or an Indian as defined under the Indian Act (FHRMIRA, Section 6).[224]

6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

There is nothing in law that specifically prevents landlords from evicting victims of domestic abuse. Certain provisions may even make it difficult for tenants who are victims of domestic violence to remain in their rental premises because they are at risk of eviction on the basis of their abusers' behavior. Residential tenancy legislation typically allows landlords to terminate tenancies for breach of the promise to avoid significant interference with the rights of the landlord and other tenants if a person permitted on the residential property by the tenant has or is likely to engage in illegal activity, cause damage to the landlord's property or affect the physical well-being of another occupant of the residential property.[225] Acts of domestic violence constitute illegal acts justifying the termination of tenancies, as do breaches of no-contact orders.[226]

There are some mechanisms that may provide victims with relief from eviction or to provide longer eviction deadlines if, looking at the circumstances surrounding the eviction, it would be unfair to enforce the eviction. For example, in Ontario, evictions under the Residential Tenancies Act[227] are implemented by the Landlord and Tenant Board (Ontario)("**Board**"). The Board has the discretion to refuse to grant an application for an order to evict a tenant, unless satisfied, having regard to all the circumstances, that it would be unfair to refuse it.[228] The Board also has the discretion to issue an order that the enforcement of an eviction order is postponed for a period.[229] Domestic violence is not specifically contemplated as a reason to refuse an application for eviction. In Prince Edward Island, the Victims of Family Violence Act (PEI) prohibits landlords from evicting victims with protection orders solely because they are not a party to the lease.

6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

Yes. However, not all types of tenancies can be terminated early in all jurisdictions. Most provincial residential tenancy statutes include provisions that allow tenants to end their tenancy and cancel their lease (including fixed-term tenancy agreements) if, because of the violent behavior of a spouse or former spouse or because of sexual aggression, the safety of the tenant or of a child living with the tenant is threatened. The tenancy is terminated by delivering written notice to the landlord citing the termination due to family or household violence. This notice must be given one month in advance and a tenant is responsible for rent payment during the notice period. The termination date, even due to domestic violence, must be the day before the monthly rent is due.

The notice to terminate delivered by the victims of domestic violence must include supporting documents to substantiate the grounds for termination. The documentation required in each province is different but it may include providing a copy of a peace bond or restraining order or a statement or certificate from a third-party professional confirming the existence of domestic violence. The third party verifiers may include social workers, child welfare workers, victim service workers, psychologists, police and health practitioners. In Quebec, the termination of a fixed-term lease takes effect two months after a notice is sent to the landlord or one month after the notice is sent, if the lease is for an indeterminate term or a term of less than 12 months. The threshold

requirements for what qualifies as "domestic violence" is usually connection to civil protection order legislation dealing with orders for exclusive possession of rented housing.[230]

Under provincial law, subject to narrow exceptions, all information received for an early termination due to domestic violence by the landlord or third-party professional must be kept strictly confidential. Exceptions include a request from a law enforcement agency.

If one tenant ends a tenancy, all tenants subject to the same tenancy agreement will be required to vacate the rental unit when the tenancy ends, unless the remaining tenants enter into a new tenancy agreement with the landlord. When a tenancy is terminated in these circumstances, the landlord is not entitled to compensation or damages for any rent that would have been payable if the tenancy had not been terminated. Liability for rent and damages up to the termination date will follow victims when they leave. Women in public housing who terminate their lease to get away from an abuser but may have to pay all rent owing up to the termination date before they can qualify for public housing again.

One of the barriers to accessing all of the above rights to terminate is that it can be difficult to identify who qualifies as the "tenant" under the residential tenancies legislation, especially when there is no written lease in place. Most jurisdictions have a standard form of residential lease that applies to all tenancies.

Quebec:

Yes. Under the Civil Code of Quebec (Section 1974.1), a lessee may renounce the lease if, because of the violent behavior of a spouse or former spouse or because of sexual aggression, even by a third person, the safety of the lessee or of a child living with the lessee is threatened. The renunciation takes effect two months after a notice is sent to the lessor or one month after the notice is sent, if the lease is for an indeterminate term or a term of less than 12 months. The notice must be sent with an attestation from a public servant or public officer designated by the minister of justice, that there exists a situation involving violence or sexual aggression, and that the renunciation of the lease is a measure that will ensure the safety of the lessee or of a child living with the lessee.

6.6.3 Can an order exclude the abuser from the residence?

Yes. Provincial laws provide a number of different mechanisms to exclude abusers from the residence, such as restraining orders, emergency protection orders, exclusive home possession orders, civil protection orders and peace bonds for reasons of family or domestic violence. The application process differs depending on the type of order sought, and certain orders may be obtained without notice to the respondent. Additional conditions may also be added to the order, where applicable, and may include no contact orders, instructions to report to court, etc. Depending on the type of order sought, applications may generally be made by the at-risk person, by another person on behalf of the at-risk person or at the court's own initiative. [231]

First Nations

FHRMIRA allows spouses or common-law partners who are victims of family violence to apply for either of the following:

(i) Emergency protection orders (EPOs) for exclusive occupation of family homes on reserves and other remedies.[232] Applications for an EPO do not require notice to the parties and can be submitted directly to a judge, they are typically short-term solutions. EPOs are currently authorized only in New Brunswick, Prince Edward Island and Nova Scotia.

(ii) Exclusive occupation orders (EOOs) provide for exclusive occupation of the family home. EOO applications generally require notice to the other party, and can be made only to superior courts.[233]

Factors that will be considered by the court in exercising its discretion to issue the EPO or EOO include: (a) the best interests of any children habitually resident in the family home; (b) the nature and history of the violence; (c) financial and medical condition of each party; (d) any psychological abuse; and (e) exceptional circumstances.[234]

6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

Yes. Spouses or adult partners may apply to the court for an order restraining their other spouse or partner from disposing of any property in the family domicile. Courts will generally grant such orders if they are satisfied that the spouse or adult partner intends to transfer property that may defeat the other spouse or partner's legitimate claim to the property.

The definition of "spouse" or "partner" varies by province and may include persons who live in a marriage-like relationship for at least two[235] or three years,[236] have a child with the other person or may include a former spouse. In some jurisdictions, some remedies and provisions for dealing with the valuation and distribution of family property when a relationship breaks down, do not apply to nonmarried spouses.

The courts have broad powers to make a general restraining order (an injunction) which may include an order stopping someone from taking out a mortgage on their property, incurring more debt, etc. According to case law,[237] in applying for an injunction, an applicant must prove: (1) there is a serious issue to be tried; (2) the applicant will suffer irreparable harm if the injunction is not granted; and (3) they stand to suffer more inconvenience if an injunction is not granted than their spouse will suffer as a result of the injunction.

6.6.5 Other considerations for housing

Social housing

Some provinces have social assistance and community planning statutes that include provisions dealing with housing issues faced by victims of domestic violence. For example, in Ontario, the Housing Services Act (HSA) sets out the guidelines to address homelessness and includes regulations under this act requiring that housing plans address the need for accessible housing for victims of domestic violence. [238]

The primary challenge for victims of domestic violence is getting access to and qualifying for social assistance housing. The demand for such housing significantly exceeds the amount of housing available, making wait times to access housing lengthy across Canada. Some provinces have special priority housing [239] that would give priority to victims of domestic violence. provided they can meet the strict reporting requirements. In terms of barriers for qualifying, if the victim has arrears or an amount owing in connection with a previous tenancy in social housing then the household is ineligible for rent-geared-to-income assistance.[240]

In Ontario, victims of domestic violence approved for special priority status also have the option of either rent-geared-to-income housing or a portable housing benefit (PHB).[241] The PHB is a monthly subsidy provided to the household to secure rental accommodation in the private rental market.[242]

6.7 Privacy and confidentiality laws

6.7.1 What is the impact of privacy restrictions on domestic violence situations?

In Canada, there are a variety of statutes, regulations and codes of ethics across the various federal, provincial and territorial jurisdictions that govern privacy and the protection of personal information. One of the complexities to the systems that deal with domestic violence matters is that access to information and privacy legislation may restrict the sharing of information between the criminal, family and child protection systems unless disclosure is necessary to protect a person's mental or physical health or safety, or for law enforcement purposes. In some cases, there is a clear recognition that privacy considerations can and should give way to a duty to share information when doing so would prevent harm to children and/or intimate partners. For example, all provincial and territorial child protection legislation, without exception, requires anyone with information about a child in need of protection to report to the relevant agency.

The following is a summary of the types of access to information and privacy statutes that govern the collection, use and disclosure of personal information in Canada that may be impacted by domestic violence:

- Certain legislation applies specifically to public sector actors,[243] while other legislation applies to private sector actors.[244] These statutes typically prevent the disclosure of personal information, except: (i) with the consent of the person to whom the information relates (consent can sometimes be deemed consent); (ii) for the purpose for which it was obtained or compiled, or for a consistent purpose, (iii) by law enforcement institutions to another law enforcement agency, or (iv) for an emergency or compelling circumstances that threaten the life, health or security of an individual.
- The federal Personal Information Protection and Electronic Documents Act (PIPEDA) is the primary legislation application to most private sector actors, the only exception is provinces or territories where they have replaced PIPEDA with a province/territory specific privacy legislation provided that legislation substantially complies with PIPEDA requirements.[245] PIPEDA governs the collection, use and disclosure of personal information by "organizations," which include associations, partnerships and persons. PIPEDA does not explicitly mention domestic violence, but creates obligations for organizations that could be relevant in the domestic violence context.[246] In particular:[247]
    - Section 7(2(b)) provides that organizations may use personal information "for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual."
    - Section 7(3)(e) allows for disclosure "to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure."
    - Organizations must not give individuals access to personal information about third parties where "to do so could reasonably be expected to threaten the life or security of another individual" (Section 9(3)(c)), unless "the individual needs the information because an individual's life, health or security is threatened" (Section 9(4)).
- Employment legislation, civil protection order legislation and residential tenancy legislation may also create specific privacy obligations in some circumstances. For example, employers are required to protect the confidentiality of records given to, or produced by, the employer related to the employee's domestic violence leave.

Similarly, a landlord who receives a notice to terminate early due to violence or abuse is required to keep information confidential.[248]

- Most jurisdictions have specific legislation governing personal health information, which establishes the rules for disclosure of health information by "health information custodians" (those who have access to health information due to their jobs). [249]
- Some jurisdictions like Ontario allow for the disclosure of personal information by law enforcement for purposes such as the protection of the public, protection of victims of crime, keeping victims informed or administration of justice.[250]
- Confidentiality provisions are prominent in family law legislation and child, youth and family services legislation.[251] Persons must not disclose, or be compelled to disclose, information obtained in a family conference, mediation or other alternative dispute resolution mechanism under the CFCSA, except in certain circumstances (Section 24(1)).

There is ongoing tension among the systems as they struggle to find a balance between the benefits of improved information-sharing with the need to respect privacy when intimate or confidential information is being held by local, provincial and federal public agencies, boards, commissions and corporations, victim services, police services, community programs, advocacy organization, and health and other professionals.[252] Some provinces have introduced information sharing protocols to help bridge this gap and avoid the pitfalls of a siloed approach to the legal issues raised in domestic violence cases.[253] These protocols are between specific identified officials and agencies, who have come together to identify desired outcomes and provide protocols to supplement the discretion that exists in provincial and other privacy legislation to share information in high-risk situations.

While there has been some progress through these information-sharing initiatives, addressing domestic violence is still hindered as a result of privacy protection concerns. For example, privacy concerns (for the rights of the abuser) act as barriers to victims' access to criminal records (such as release dates and past criminal history), which in turn can hinder the ability to construct a realistic safety plans or influence the custody and access orders that may be granted to an abuser, especially given the evidence that past criminality may be a risk factor for family violence.[254] Police and victim services struggle when making referrals for support because they must respect federal privacy law when releasing victim information to victim services in order to ensure that victims receive appropriate services.[255]

British Columbia is the only province to specifically note domestic violence in its privacy legislation as the British Columbia Freedom of Information and Protection of Privacy Act (FOIPP Act) provides that it is appropriate to collect, use and disclose information for the specific purpose of reducing the risk that an individual will be a victim of domestic violence, if such violence is reasonably likely to occur.

Endnotes

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3 *Ibid*.

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15 Civil Marriage Act, 2005 SC c 33.

16 Divorce Act, RSC 1985 c 3 (2nd Supp).

17 Divorce Act, RSC 1985 c 3 (2nd Supp) at Section 16(3). Section 16(4) then lists the factors that a court should consider with respect to the impact of any family violence.

18 Most of the information contained in this Indians/Indian Reserves section was taken from Jennifer Koshan, Janet Eaton Mosher and Wanda Anne Wiegers, "The Costs of Justice in Domestic Violence Cases: Mapping Canadian Law and Policy" (11 May 2020) at 8-9.

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26 *Ibid*.

27 *Ibid*.

28 *Ibid*.

29 Government of British Columbia, Ministry of Public Safety and Solicitor General For Your Protection: Peace Bonds and Restraining Orders (August 2003).

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31 See Feminist Alliance for International Action Canada, CEDAW and Ontario Human Rights Commission, Re: Implementing recommendations of the UN Committee on the Convention on the Elimination of all Forms of Discrimination Against Women (3 February 2017).

32 Canadian Feminist Alliance for International Action, Report to the Committee on the Elimination of Discrimination against Women on the Occasion of the Committee's Eight and Ninth Periodic Review of Canada, October 2016.

33 Views adopted by the Committee at its fifty-first session, 13 February to 2 March 2012, CEDAW 53rd session, Annex, Communication No. 19/2008, UN doc CEDAW/C/51/D/19/2008.

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35 Criminal Code, RSC 1985, c C-46.

36 *Ibid* at Sections 265-268.

37 *Ibid* at Sections 271-273.

38 The Criminal Code, RSC 1985, c C-46 recognizes this sentencing principle in Section 718.2(a)(ii): "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, […] (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family, […]."

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40 Charter of Human Rights and Freedoms, CQLR c C-12 at Section 10.

[41] *Ibid* at Section 2.

[42] Domestic Violence Protection Act, 2000, SO 2000, c 33.

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[44] For more information see Government of Canada, Department of Justice, "Peace Bonds Fact Sheet" Victims' Rights in Canada (2015).

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[46] For the contact information of each province's legal aid program see Department of Justice, Legal Aid Program.

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[58] *Ibid.*

[59] If applying in the Supreme Court, the following documents are required: Notice of Family Claim (Form F3), unless one has already been filed; Notice of Application (Form F31); Affidavit (Form F30); Protection Order (Form F54); Requisition for Consent Order or for Order without Notice (Form F29). If applying in the provincial court, the following documentation is required: Application to Obtain an Order (PCF3 Form 1); Notice of Motion (PCFR Form 16); Affidavit (PCFR Form 17). See Government of British Columbia, Ministry of Public Safety and Solicitor General, For Your Protection: Peace Bonds and Family Law Protection Orders (2017).

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[123] Amanda V. McCormick, Irwin M. Cohen, and Raymond R. Corrado, University of the Fraser Valley Centre for Public Safety & Criminal Justice Research, Enhancing Surrey RCMP Detachment's Domestic Violence Unit at page 14.

[124] See for example RCMP, Intimate partner violence and abuse; RCMP, Victims services.

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[127] In the province of Quebec, members of the Chambre des notaires may act as legal advisers, but cannot represent victims in court.

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[130] The principles of proof beyond a reasonable doubt have been outlined by the Supreme Court of Canada in *R v. Lifchus* [1997] 3 S.C.R. 320, an important case that describes the process of defining this standard in jury instructions.

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[136] *R. v. Ryan* [2013] 1 S.C.R. 14.

[137] *R. v. Ruzic* [2001] 1 S.C.R. 687.

[138] *R. v. Latimer* [2001] 1 S.C.R. 3; *Perka v. R.,* [1984] 2 S.C.R. 232.

[139] *Perka v. R.* [1984] 2 S.C.R. 232.

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[141] *R. v. Humaid* [2006] O.J. No. 1507.

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[144] *R. v. Sullivan* 2020 ONCA 333; *R. v. Tatton* [2015] 2 S.C.R. 574; *R. v. Daviault* [1994] 3 S.C.R. 63; *R. v. Daley* [2007] 3 S.C.R. 523.

[145] *Malanik v. R. (No. 3)* [1952] 2 S.C.R. 335.

[146] *R. v. Daviault* [1994] 3 S.C.R. 63.

[147] *R. v. Pappajohn* [1980] 2 S.C.R. 120.

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[150] *R v. Ewanchuk* [1999] 1 S.C.R. 330.

[151] *R v. A.(J.)* [2011] 2 S.C.R. 440.

[152] Criminal Code (R.S.C., 1985, c. C-46) at Section 273.1(2).

[153] *R. v. M. (M.L.)* [1994] 2 S.C.R. 3.

[154] Criminal Code (R.S.C., 1985, c. C-46) at Section 273.2.

[155] See *R v Jobiden* [1991] 2 S.C.R. 714, which discusses fist fights as a socially nonacceptable activity and, therefore, the harm is not consented to.

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[198] Most of the information in this family law section was taken from Jennifer Koshan, Janet Eaton Mosher and Wanda Anne Wiegers "The Costs of Justice in Domestic Violence Cases: Mapping Canadian Law and Policy" (11 May 2020) at 7-8 and 15-16.

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[200] *Ibid*. at 8.

[201] **British Columbia:** Family Law Act, SBC 2011, c 25 Part 4; **Alberta:** Family Law Act, SA 2003, c F-4.5 at s. 18; **Manitoba:** The Family Maintenance Act, CCSM c F20 at Section 39(3); **Ontario:** Children's Law Reform Act, RSO 1990, c C.12 at Sections. 24(4)–(5); **Nova Scotia:** Parenting and Support Act, RSNS 1989, c 160 at Sections. 2(da), 18(6)(j), (7)–(8); **Newfoundland and Labrador:** Children's Law Act, RSNL 1990, c C-13 at Section 31(3); **Northwest Territories:** Children's Law Act, SNWT 1997, c 14 at Section 17(3); **Nunavut:** Children's Law Act, SNWT 1997, c 14 at Section 17(3). In **Saskatchewan**, the provisions of Bill 205, An Act respecting Certain Family Law Matters concerning Children and making consequential amendments to other Acts, 4th Sess, 28th Leg, 2019 (assented to 16 March 2020), will, when in force, mirror the amendments to the Divorce Act in mandating consideration of family violence in assessing the best interests of children.

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[225] Residential Tenancy Act, SBC 2002 c 78 at Section 47.

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[233] FHRMIRA, S.C. 2013, c.20.

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[236] Applicable in Alberta and Manitoba.

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[245] PIPEDA, SC 2000, c 5.

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[247] *Ibid* at Ch. 12.

[248] *Ibid* at Ch 12.4.

[249] Personal Health Information Protection Act, 2004 SO 2004, c 3, Sch A.

[250] See Police Services Act, 1990, RSO 1990, c P15 at ss. 41(1.1)-(1.2).

[251] For example, to ensure that children in care have the right to reasonable privacy, to privacy during discussions with members of their families and to privacy during discussions with a lawyer and certain public officials, and disclosure cannot be compelled (subject to certain exceptions) for information obtained in a family conference, mediation or other alternative dispute resolution mechanism. The most common exception where disclosure may be compelled without consent is when disclosure is necessary to ensure the safety or well-being of a child or the safety of another person.

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