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A GUIDE TO THE LAW IN ALBERTA REGARDING

DOMESTIC ABUSE & YOUR LEGAL RIGHTS

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GENERAL

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WHAT IS ABUSE?

Abuse can take many forms:

1. Emotional Abuse

Verbal behaviour that injures your security and/or your personal dignity. This behaviour can include threatening harm to you, your children, family pets or loved ones; constant insults and put-downs that damage your feeling of self-worth; threatening damage to your belongings.

2. Sexual Abuse

It is abusive, and illegal, for anyone—including your spouse or common-law partner—to force you to have sex, or perform sexual acts, against your will.

3. Physical Abuse

Any form of hostile physical contact, including pinching and pushing, is considered physical abuse—and a crime.

4. Financial Abuse

Using control of the household money to exert control over you. This behaviour can include forcing you to beg for money.

GETTING THE POLICE INVOLVED

Domestic abuse is against the law. Any person who abuses you is committing a crime even if that person is your spouse, partner or someone else that you are close to. The police can get involved when someone commits—or is threatening to commit—a crime. The following are offences under the Criminal Code:

Assault: intentionally applying force to another without that person's consent, or threatening to do so, when it is believed that they have the ability to carry out the threat. Injury is not required.

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Sexual Assault: unwanted sexual contact.

Criminal Harassment (stalking): harassment that causes someone to fear for their own, or another person's safety.

Uttering Threats: threatening to cause death or bodily harm, or to damage or destroy property. This also includes threatening injury to your pet.

Forcible Confinement: confining, forcibly seizing or imprisoning someone. This includes forcing someone to stay in bed or a chair for long periods of time.

If any of the above apply to your relationship, you should get the police involved as soon as possible to make sure that you are protected.

During an assault, or as soon as possible afterward, you should call the police. If you are in immediate danger, call 911 (or the emergency number for your area). If you can't call right away, you can talk to the police when it is safer for you to do so.

When you talk to the police, you should give them as much information as possible. They need to know if:

- a. Your life is in danger
- b. You are injured
- c. There are weapons involved
- d. There are drugs or alcohol involved
- e. There are children or others in the home
- f. There is a history of violence
- g. You have a restraining order or peace bond against your abuser

If the police come to your home, they will need to figure out what has been happening and to make sure that everyone is safe. The police may have some questions for you and it is important that

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you give them complete, factual information so that they can work to protect you. The police will probably want to know the details of the violence and any injuries that you have suffered. If you already have a peace bond or restraining order against the person who assaulted you, you should show a copy of it to the police.

The police can decide to lay a criminal charge against your abuser if they have reasonable and probable grounds to believe that a crime took place. This just means that they must think that your abuser committed a crime against you. They may decide to arrest your abuser and take him/her into custody. Within 24 hours of the arrest, an arrested person has the right to a bail hearing. At the bail hearing, a judge or justice of the peace will decide if it is safe for the arrested person to be released until the court date. If the arrested person is released, you can tell the police that you are afraid of your abuser and ask that conditions be placed on their release prohibiting that person from contacting you. The police have recently set guidelines for notifying victims of an accused's release. It is important that you know that the police or Crown Prosecutor **only** notify you when they believe you are at a high risk.

If the police decide not to arrest your abuser but do still charge him or her with assault, he or she will be given an Appearance Notice with information on it with required dates and times about reporting for fingerprints and the first court appearance. As many offenders are released with an Appearance Notice, victims should inform themselves as to the conditions of release. Victims can do so by contacting the police or the Crown Prosecutor's office. The victim should inform the police immediately of any breach of release conditions. If the police decide that there is not enough evidence to charge your abuser at all, you can ask that the decision be reviewed by the officer's supervisor or you can lay a private information against him/her. This is discussed later in this pamphlet under Your Legal Options - Criminal Assault Charges.

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THE FIRST COURT APPEARANCE (DOCKET COURT)

If charges are laid against your abuser, he or she will make a first appearance in court to enter a plea to the charge(s). If your abuser pleads guilty, he or she will either be sentenced that day or the judge may ask for a pre-sentence report and another court date will be set for sentencing. If your abuser decides to plead not guilty, a trial date will be set. The trial date could be weeks or months after the first appearance, depending on how busy your local courts are. It is also possible that your abuser may ask for an adjournment at the first appearance if he or she has not obtained legal advice yet. If your abuser has been held in custody, the first appearance may also include an application for Judicial Interim Release (i.e., bail) and the judge will have to decide if it is safe to release the individual. If released, the accused will likely be ordered to have no contact with the victim and report to a Probation Officer. Failure to comply may result in charges being laid against the accused.

THE TRIAL

If your abuser decides to plead not guilty, there will be a trial to allow a judge to decide whether or not your abuser is guilty of a criminal offence. You will most likely be a witness for the Crown Prosecutor and, if so, you will be served with a subpoena to appear in court. Once you are subpoenaed you must appear in court and there are serious consequences if you do not show up, unless you have a very good reason. If you think that attending court on the set date could be a problem for you, phone the Prosecutor's office and let them know as soon as possible. They may be able to make arrangements to accommodate you and, if not, you will still have time to make your own arrangements to be in court.

Your child would only have to testify if he or she was an eyewitness and there was no other way to prove the charges

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against the accused, or if the child was himself/herself a victim of abuse or assault. Edmonton John Howard Society's Victims' Assistance Program and Victim Services Unit of the Edmonton Police Service offer specialized child witness court preparation programs.

The Crown Prosecutor handling the file might call you before the date of the trial to discuss the matter with you, or you might not speak to the Prosecutor until moments before the trial. When you get to the courtroom on the day of the trial you should report to the Prosecutor so that he or she knows you are there and so that you can be given any instructions that he or she has for you. At that time you can also ask the Prosecutor any questions you have about what will happen in court and what you should do. You may want to ask where to wait until you are called into court and whether or not you can stay in the courtroom after you have given your own testimony. Also, you can ask what kind of questions you might expect from the Prosecutor and the defence lawyer.

Testifying in a trial can be tough, but your testimony is very important so you should cooperate with the Crown Prosecutor as much as possible. You will be fine as long as you listen carefully to the questions asked by the Crown Prosecutor and the defence lawyer and answer them as well as you can, making sure that all of the information that you give is honest and correct. If you do not understand a question, ask that the question be explained to you before you answer it. If you do not know the answer to a question, just say that you do not know. It is important that you remain silent in court at all times, except when you are on the witness stand. Your abuser may testify and, even if you completely disagree with his or her answers, you cannot speak during his or her testimony. You may want to bring friends or family members with you to court for support.

The Victim Services Unit of the Edmonton Police Service and Edmonton John Howard Society's Victims' Assistance Program

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can assist victims of crime by providing assistance with completing a Victim's Impact Statement, information concerning the investigation, and court support.

If your abuser is found guilty at the end of the trial, he or she will be sentenced. The sentence given can vary a lot depending on the circumstances and the individual's prior criminal record, but possible sentences include jail time, fines and probation. If your abuser is found not guilty, he or she will be free to go and the case is over. It is possible that the decision made in court will be appealed by either the Prosecutor or your abuser. Notice of appeal must be served within 30 days of sentencing.

What if I'm an immigrant or a newcomer to Canada?

If a sponsored immigrant has to leave his/her sponsor due to abuse, the sponsored immigrant will not be automatically deported. A victim that has permanent resident status will not be deported regardless. Changing Together: A Centre for Immigrant Women may be able to provide further information and assistance. However, an immigrant or newcomer should consult a lawyer for advice on how to protect themselves from deportation.

Changing Together: A Centre for Immigrant Women

3rd Floor, 10010 - 105 Street

Edmonton, Alberta

T5J 1C4

Phone: (780) 421-0175

www.changingtogether.com

An immigrant that is convicted of an indictable criminal offence, such as assault, is in danger of deportation.

YOUR LEGAL OPTIONS

You have many legal options to consider if you are being abused.

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1. Criminal Assault Charges

If the police have decided not to press charges against your abuser, you can press charges yourself. To do so, call the Provincial Court - Criminal Division Clerk's Office and tell them that you want to "lay a private information" for assault. The Clerk's Office will set up an appointment for you to speak to a Justice of the Peace. During that meeting, you will get to tell your side of the story and the Justice of the Peace will decide whether there are reasonable and probable grounds to lay a charge of assault. If the Justice of the Peace allows you to proceed, he or she will forward your complaint to the Crown Prosecutor's Office. The Prosecutor's Office will then decide if there is enough evidence to go ahead with the charge and, if so, you will get a chance to tell your story in court. It is essential that everything told to the Justice of the Peace is honest and accurate; you may be charged if you lay a false information.

2. Peace Bonds

A peace bond is a court order that requires someone to "keep the peace" and obey any other conditions that the court places on the order. "Keeping the peace" basically means that the person has to stay out of trouble and not get charged with any criminal offences. Conditions that the court may place on a peace bond may include forbidding someone from having any contact with you and requiring the abuser to attend counselling sessions. If your abuser is charged with a criminal offence and you are frightened for your own safety, or the safety of your children or property, you may want to speak to the Crown Prosecutor about applying for a peace bond. In situations where your family or friends have also been harassed, they may also be included on the peace bond. It can take weeks or months to get a peace bond—but the bond can be granted for a maximum of 12 months. A violation of a peace bond is a criminal offence—but the police must be informed of the breach.

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You can also get a peace bond in much the same way that you lay a private information and you do not need a lawyer to get a peace bond. In Edmonton, start by calling the Provincial Court - Criminal Division Clerk's Office and tell them that you need to make an appointment with a Justice of the Peace to request a peace bond. The Justice of the Peace will take down the details of your complaint and will forward the information to the Crown Prosecutor's Office to be dealt with if there are grounds for a peace bond. The Justice of the Peace will set a court date and your abuser will be served with a summons to appear in court. If your abuser does not show up in court on the set date after being served with a summons, the peace bond might be issued *ex parte*, which means in your abuser's absence. If you live in Alberta but outside of Edmonton, you will need to go to the police station first where they will give you a file number to take to the Justice of the Peace.

3. Restraining Orders

A restraining order is a court order like a peace bond, but they are not exactly the same. A restraining order is issued from civil court, rather than criminal court like a peace bond, and **you will need a lawyer to help you get a restraining order**. A restraining order can be attached to another action like a divorce or a civil action for assault, or you can ask for a restraining order alone. A lawyer should be able to get you a restraining order within 48 hours of meeting with them.

Many orders are granted without notice to the abuser of the hearing. However, the Respondent must be served with a copy of the order. There is generally an automatic review of the order within two weeks at the Court of Queen's Bench. The Respondent and you will likely have to be present at this hearing. At this hearing, the Judge will decide if the order will remain in effect.

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Your restraining order must be very carefully worded to make sure that you get the protection that you need. You must make sure that you tell your lawyer what you want in the restraining order.

Some important things to remember include:

- a. The order should say that the police 'shall' make an arrest if your abuser does not follow the conditions in the restraining order, not that the police 'may' make an arrest. You want to make sure that the police will have the authority to make an arrest if the order is being violated.
- b. Make sure that the restraining order mentions all of the places that your abuser could try to contact you. You will want to have your abuser prohibited from coming near you at your home, your place of work, and anywhere else you spend time on a consistent basis. If your order also prohibits your abuser from seeing your children, make sure that their schools and/or daycares are listed as well. You may also want your order to prohibit your abuser from contacting you by telephone, mail or email.
- c. If your abuser is going to have visitation rights with your children, the times that he or she is able to see the children should be clearly laid out in the order. As well, you may want the order to say that if your abuser is intoxicated when he or she comes to see the kids, you have the right to deny the visit.

A restraining order usually lasts for 6 months—but may be extended, if necessary. You should keep a copy of your order with you at all times so that you can show it to the police if the order is violated. In addition, the restraining order should be registered with the police and given a case number. This will enable the police to have immediate access to the order's provisions. Breach of a restraining order results in civil contempt charges, and the abuser being arrested.

4. Protection Orders (Protection Against Family Violence Act)

These orders offer the most protection. They are similar to peace bonds and restraining orders; however, they provide additional protections that the others cannot offer. A breach of either an EPO or a QBPO is an indictable offence and the police should be contacted immediately.

a. Emergency Protection Orders (EPO)

The police can apply for an EPO at any time of the day and night—and can get this order immediately. The police can only apply with the consent of the victim. A review hearing will take place within 7 working days, at which time the order will be terminated or confirmed. Any order coming out of the review is called a Queen's Bench Protection Order. An EPO can be granted in the absence of criminal charges being laid—and the police are still free to lay charges at any time.

b. Queen's Bench Protection Orders (QBPO)

A review of an EPO may result in a QBPO. A QBPO may also be applied for by direct application to the Court of Queen's Bench. A person may appear in court without a lawyer; however, it is advisable to get a lawyer. It is similar to an EPO, but a QBPO may also:

- i. Require that the abuser reimburse the victim for any financial losses resulting from the abuse;
- ii. Instruct that property not be dealt with;
- iii. Instruct the abuser to post a bond to ensure compliance with terms;
- iv. Require that either party attend counselling; and
- v. Require temporary possession of specified personal property (i.e., keys, bank cards, vehicle, etc.).

A QBPO can be ordered for up to one year—and may be extended.

5. Your Home and an Exclusive Matrimonial Home Possession Order

If you decide that you want to leave your abusive relationship, you may want your abuser to move out of your home. The police can not force your abuser to leave the home if he or she has the legal right to be there. For instance, if your abuser owns the home or is on the lease/rental agreement, he or she has the legal right to live in that home—even if you are also an owner, renter or lessee and no longer want your abuser to live there. The police will help you to get to a safe place, like a shelter or the home of a friend. The police can also escort you back to your home to pick up your personal belongings and anything that you need for your children. You will be allowed to take your own clothing, house keys, identification, credit cards, bank books and medication, as well as your children's clothing, toys and bedding. You will not be allowed to take anything that is owned by both you and your abuser: the police do not want to get into the middle of any disputes over property ownership.

If you are legally married to your abuser, you may be able to get an Exclusive Possession Order regarding the matrimonial home under the Matrimonial Property Act and Family Law Act. You can get an Exclusive Possession Order for either a home that you own or that you rent together, and your order may also give you possession of the furniture in the home and the family vehicle under some circumstances. An Exclusive Possession Order requires one spouse to leave the family home and prohibits him or her from entering the home or being near the home. Even if you have an Exclusive Possession Order, you may still want to get a restraining order because the Exclusive Possession Order only protects you in and around the home, whereas a restraining order can be used to protect you away from your home and from unwanted telephone calls.

You will probably want to have a lawyer if you are making a request for an Exclusive Possession Order. The legal procedures

involved can be complicated and the courts prefer to see people represented by lawyers. After you and your lawyer make an application for an Exclusive Possession Order, your spouse will be notified that a court hearing will take place and he or she will be given an opportunity to oppose the order. In rare cases where there appears to be an immediate threat of violence, the court may make the order without notice of a hearing being given to the abusive spouse. In deciding whether or not to grant an Exclusive Possession Order, the court will consider: availability of other accommodations for both spouses, needs of the children, financial circumstances of each of the spouses, and the conduct of the two spouses (if the court finds that it is relevant). It is unlikely that you will be able to get an Exclusive Possession Order if you do not have children that will be remaining with you and there has not been any violence.

If you invite your spouse to the house, it is a breach of the order and the police may not enforce it. You should keep a copy of the order on you at all times.

Note: If you are living on a reserve, you cannot get an Exclusive Possession Order. Property on a reserve is controlled by Band Council, pursuant to the Indian Act.

6. Civil Actions

You can sue your abuser, no matter who they are, with a civil action for assault. You may be able to get money from your abuser to compensate you for the harm you have suffered. If you would like to discuss your chances of success if you sue your abuser, you should contact a lawyer as soon as possible. Furthermore, there are time limits on bringing a civil action, so you should not wait to start an action. You may also be able to bring a claim yourself if the claim is under \$25,000. Contact the Provincial Court-Civil Division to get more information about the process.

7. Compensation

The Victims of Crime-Financial Benefits Program compensates victims of violent crimes for the financial losses directly incurred as a result of the crime (i.e., not pain and suffering or disfigurement). You may be eligible if the crime and injury occurred in Alberta, is reported to the police within a reasonable time and an application is submitted within one year of injury. You must be willing to cooperate fully with the police investigations, and any inquiries of the compensation board. You must also provide documentation (receipts, pay stubs, etc.) substantiating your claim.

If the abuser has been charged with a crime, you may want to speak to the Crown Prosecutor about applying for a Restitution Order. The Victim Services Unit of the Edmonton Police Service will be able to assist victims with the process.

FAMILY LAW ISSUES

Leaving a relationship often means that you have to think about some family law issues. You may be concerned about what will happen with your children and property, and may want to get maintenance from your abuser. If you have children and you are the guardian of those children, you have the **responsibility** to take them out of violent situations.

You should deal with custody and access issues as soon as possible. You are required to allow any other guardians of the child to exercise their right to access: basically this means that other guardians have the right to have contact with the child. You will probably want to make an application for custody and to have access provisions set out in an order—or prohibited—if you feel that your abuser is also a threat to your children. Contact Family Court Services to get more information about the process. If you are planning on getting a divorce, you will want to speak to a

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lawyer about getting an Interim Custody and Access Order in conjunction with the divorce.

You should also be making arrangements to get court-ordered child maintenance as soon as possible. Even if you and the other parent of the children agree to the amount of maintenance payments, you should still get a court order to make it easier to enforce the maintenance agreement through the Maintenance Enforcement Program. Contact Family Maintenance to get more information about the process.

Student Legal Services of Edmonton has pamphlets that may be useful for you. You can get copies of the pamphlets by contacting Student Legal Services of Edmonton at (780) 492-2226.

FINDING THE RESOURCES YOU NEED

There are a number of community-based programs that enable those in abusive situations to get the assistance they require. Some of the organizations and the services they provide are:

Edmonton Community Services (780) 496-4777

Offers individual counselling and support groups for victims of abuse, an opportunity to speak to a professional social worker about developing a safety plan and connecting people with required resources. Childcare is provided at no cost.

Drop-in Support Group for Women In/out of Abusive/violent Intimate Relationships (780) 496-4939 496-4777

Offers a free drop-in support group for women who are experiencing abuse in their intimate relationships. Free childcare is provided.

Silent Witness: Ending the Cycle of Abuse (YWCA)

(780) 423-YWCA (423-9922)

www.mwcaofedmonton.org

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Offers a ten-week program for children/adolescents that have witnessed domestic violence.

Hope Mission Women's Centre (780) 422-2018 -

www.hopemission.com

Offers a safe and structured environment, education on how to develop internal fortitude and encouragement to take ownership of your life.

Family Violence Prevention Centre (780) 423-1635 - Edmonton

John Howard Society (780) 428-7590

www.johnhoward.org

Connects people experiencing abuse to community resources and offers outreach support. It also offers a furniture/moving assistance program that delivers furniture donations to people leaving abusive relationships and helps to move household items.

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REFERRAL NUMBERS

Assistance Programs

Victims Programs: Public Security Division (780) 427-3460
Changing Together: A Centre for Immigrant Women
. (780) 421-0175
Edmonton Sexual Assault Centre (780) 423-4102
 Crisis Line (780) 423-4121
Family Violence Prevention Centre - Edmonton John Howard
Society (780) 423-1635
Institute for the Advancement of Aboriginal Women (780) 479-8195
. toll free 1-877-471-2171
Mental Health Crisis Line toll free 1-800-255-3353
 Support Network Crisis Line (780) 482-4357
 Salvation Army Crisis Line (780) 429-0230
Native Counselling Services of Alberta - Addictions Program
. (780) 451-4002
Parents Help Phone toll free 1-888-603-9100
Victims' Assistance Program - Edmonton John Howard Society
. (780) 422-0721
Victims of Crime - Financial Benefits Program
. dial 310-0000 then dial 427-7217
Victim Services Unit - Edmonton Police Service . (780) 421-2760

Legal Resources

Crown Prosecutor's Office (780) 427-4859
Family Maintenance (780) 415-6400
Family Court Services (780) 427-8343
Lawyer Referral Service 1-800-661-1095
Legal Aid Society (www.legalaid.ab.ca) (780) 427-7575
Maintenance Enforcement Program (780) 422-5554
 Hearing Impaired 1-800-232-7215
Provincial Court - Criminal Division, Clerk's Office (780) 427-7863
Provincial Court - Civil Division, Clerk's Office . . (780) 422-2508

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Student Legal Services of Edmonton (www.slsedmonton.com)
. (780) 492-2226
Civil/Family Law (780) 492-8244

Shelters

A Safe House (Sherwood Park) . . . (Crisis Line) (780) 464-7233
Edmonton Women's Shelter (WIN House - <http://winhouse.org>)
. (Crisis Line) (780) 477-9181
Edmonton Seniors Safe Housing (780) 423-5510
Lurana Shelter (Crisis Line) (780) 424-5875

Second Stage Shelters

La Salle Residence (780) 482-2190
Wings of Providence (780) 426-4985