

PART C
CHAPTER 3
DOMESTIC DISPUTES

1. GENERAL

Many assaults take place in the home with a woman or child being the victim. Although such assaults occur in a variety of circumstances, there are a few characteristics that point out the seriousness of the offence and should influence the police response:

- 1.1 For the purposes of this Part, the meaning of victims of domestic violence shall be the same as those referred in Section 1 (q) of the Victims of Family Violence Act

Section 1(q) AVictim@ means

- (i) **a person who has resided with or who is residing with the respondent (alleged offender) in a family relationship, or**
- (ii) **a person who, with the respondent (alleged offender), is a parent of one or more children, regardless of marital status or whether the victim and respondent have lived together at any time**

who has been subjected to family violence by the respondent.

- 1.2 Intervening in a domestic crisis is always a potentially dangerous assignment for the police officer. Those involved may resent the presence of an officer and become even more violent and aggressive.
- 1.3 To effectively perform his/her duties, the officer must assess the emergency conditions and be able to quickly determine the possibility of violence occurring. At the same time, it must be demonstrated to the conflicting parties that he/she has a sincere interest in helping them. It is the responsibility of that police officer to determine an intervention strategy to bring the crisis to a resolution within a reasonable period of time.

The introduction of the Victims of Family Violence Act has advanced the abilities of officers to resolve such domestic violence situations. With the training received by all personnel, officers now have the ability to utilize specialized provisions of the Act to intervene and issue Emergency Protection Orders, as referenced in Section 4 of the V.F.V.A.

- 1.4 The investigation of domestic crisis is accompanied by highly emotional and often irrational behavior, which may be further augmented by the consumption of

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alcohol/drugs/other substances. What this means to the officer is that the victim is in real danger and the suspect typically is not in a condition to accept a reasonable resolution of the situation. In some situations where only the woman is intoxicated she may become the target of abuse.

- 1.5 If the offender is intoxicated and has already acted violently they are a threat not to be underestimated. This threat applies especially to the victim, but also to the police officer(s). Quite often both parties have been drinking, which increases the likelihood of either or both becoming violent towards the police. It is important to note that extreme violence can occur without the presence of alcohol, therefore the same risk is to be considered when investigating a dispute when the parties involved have not been drinking.
- 1.6 Domestic violence and assaults of females should be treated as any other criminal matter and therefore the onus is on the police and Crown, not on the victim, to initiate the criminal process. In all cases where a charge is warranted on the evidence, the police will lay a charge. At this point police mediation for reconciliation of the parties is not appropriate.

2. OBJECTIVES

While many areas will be discussed and covered in this Part, the following objectives are to be kept in mind:

- (a) Ensure the safety and security of the victims,
- (b) Stabilize the situation,
- (c) Apprehend and charge any alleged offender,
- (d) Prevent a breach of the peace,
- (e) Attempt to deter any future incidents of domestic violence, (EPO, Counseling Referrals etc.)
- (f) Inform all parties of their legal rights,
- (g) Promote and foster good public relations,
- (h) Notify Child and Family Services of the presence of children during the dispute, using Referral Form

3. GUIDELINES

The following guidelines have been developed to assist police forces in responding to complaints of domestic violence.

3.1 The dispatcher receiving the initial call can contribute significantly to the safety of the victim and the police officer. He/she has an opportunity to obtain, from the caller, valuable information concerning the nature of the assault and the emotional state of the parties involved. Failure to obtain such information makes the responding officers' task more difficult and more dangerous. By questioning the caller, the dispatcher should attempt to determine:

- (a) nature of assault and emotional state of parties involved;
- (b) determine whether there are injuries and what the state of injuries may be;
- (c) what type of medical assistance may be needed;
- (d) whether or not any of the parties are armed;
- (e) what kind of weapon(s) may be involved/available;
- (f) dispatcher should check to determine previously reported incidents involving the same parties, the probable danger involved and relay this information to responding unit(s);
- (g) by listening to the background noises, as well as the complainant's description of the incident, the dispatcher can make further determinations about the extent of the danger. Threats, screams, noises of glasses breaking etc. indicate the seriousness of the incident. In some cases the dispatcher may keep the caller on the phone or urge them to leave the premises and meet responding officers outside.

3.2 *POLICE OFFICER PRE-ENTRY PROCEDURES*

3.3 To assess the extent of the danger, officers should stop at the scene and listen to determine if the disturbance is in progress and to pinpoint its location. Persons encountered in the immediate vicinity, should be briefly questioned about the incident and the parties involved.

- (a) The officers should always try to view the inside of the residence before announcing their presence, if at all possible.

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- (b) While one officer knocks at the door, another, if possible, should position himself/herself near a window where he/she can observe the person who answers the door.
- (c) The officer at the door should stand to the side to avoid gunfire or other attack. He/she should be prepared for any circumstances when the door is opened since he/she is often met with hostility or violence.
- (d) When conditions permit, the officer should introduce himself or herself, give an explanation of the police presence and request entry into the home. If entry is refused, the officer should calmly explain that they understand the citizens feeling, but they must ensure there is not serious trouble inside.

3.4 POLICE OFFICER PROCEDURES - IF ENTRY IS REFUSED

The emergent nature of the complaint and the refusal of the citizen to allow the officers into the home may require that a forced entry be made.

The officers may lawfully force entry into the home where they believe on reasonable grounds that it is in the public interest, having regard to all the circumstances including the need to prevent the continuation or repetition of the offence or in the commission of another offence. Such circumstances include:

- (a) information supplied in the call to Police;
- (b) cries for help;
- (c) unusual noises;
- (d) visible weapons;
- (e) obvious signs that a struggle has occurred;
- (f) an eye witness account that a crime has occurred and that the victim is still in the home.

3.5 POLICE OFFICER PROCEDURES - FOLLOWING ENTRY

Nothing positive, not even rendering first aid can be achieved until the officers have the emergent situation under control.

- (a) The officers should immediately locate all parties, determine whether they are armed, and determine the extent of their injuries, if any.
- (b) The parties should be separated so that they are out of normal hearing range of each other but within the continuous viewing range of the officers.

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- (c) The kitchen area should be avoided because of the many potential weapons located in this area of the home.
- (d) For their protection, children or others not directly involved should be separated from the parties and questioned later.

4. INVESTIGATION

- 4.1 The officer has an obligation to investigate to determine what has happened, therefore it is appropriate for the officers to encourage initial comments by simply asking, "What happened?"
 - (a) In these incidents, a party may also make spontaneous statements to convince the officer(s) that he or she is blameless.
 - (b) Spontaneous statements are those volunteered prior to police questioning and as such are admissible evidence. However, when a person becomes the target of direct questioning or begins to incriminate himself or herself, he/she should be stopped and given the Police Caution and Charter notice, circumstances permitting.
 - (c) Officers should also keep in mind the potential for use of KBG statements, which may deal with a potential recanting by witnesses at a later date.
- 4.2 The investigator must obtain statements from all persons involved (suspect, victim, witness(es)). If it is not feasible to do so at the time, they are to be obtained as soon as possible thereafter.
 - (a) In obtaining statements from victim/witness(es) efforts should be made to determine any past history. Questions should be directed in such a way as to inquire about past incidents or confirm officer's knowledge of past incidents, as victims will often downplay or forget past incidents.
 - (b) Statement verification should also be considered to be a means to corroborate statements of victim(s)/witness(es) or as a means to challenge negative statements by suspects.
- 4.3 Officers are also to make note of any children residing in the residence. If there are child residents, the Child & Family Referral form (appendix attached) is to be completed and faxed to Child & Family Services 368-6186.

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- 4.4 Warned statements of accused persons should be obtained whenever possible, including negative statements. The investigator should make notes of the time, place, date and contents of the conversation, particularly if no written statement is given. Notes should also indicate the fact that the Caution and Charter of Rights were given and understood. Where facilities are available, video and audio taped interviews should be considered. Should interviews be taped a written format should still be taken.

All statements should be treated as other physical evidence, whether or not they are taped or written.

5. VICTIM PROTECTION/REFERRALS

Incidents of domestic violence have far reaching effects on all victims. In addition to the remedies available through the criminal code, additional protection remedies are also available in the form of protection or assistance orders, available through the Victims of Family Violence Act (VFVA).

Victim Services is available to ensure the needs of victims are addressed. An excellent working relationship exists between this Department and Victim Services, whereby files are reviewed to ensure victims are contacted. As this review is conducted on a weekly basis, Members should be cognizant of situations, which arise, wherein a more immediate contact is required. In these cases, members should endeavor to make an earlier referral to Victim Services.

5.1 Emergency Protection Orders

Section 4 of the VFVA provides for the application of a \n Emergency Protection Order (EPO);

Section 4.(1) A justice of the peace, on the application of any person pursuant to subsection (6), in the prescribed form and without notice to any other person, may make an emergency protection order if he or she determines
family violence has occurred and;
the seriousness or urgency of the circumstances merits the making of an order@

Section 4(2) outlines the factors the justice is to consider in determining whether an order will be issued.

Section 4(3) outlines the provisions which the justice may have contained within the order.

Any EPO issued may be subject to subsequent review, but in any event shall only remain in effect for a period of 90 days.

5.2 EPO Follow-up

- (a) Advise the victim of Emergency Protection Order
- (b) Confirm the need for the application
- (c) Contact Justice of the Peace
- (d) Outline situation to JP
- (e) Follow directions of the JP
- (f) Give victim a copy of the order
- (g) Serve the respondent
- (h) Have information entered on CPIC/PIRS

5.3 Victim Assistance Order

Section 7 VFVA also makes provisions for an application to made before a judge, for a Victim Assistance Order. After consideration, the judge may issue a Victim Assistance Order

Once satisfied that family violence has occurred, the judge may issue the order with provision specified in section 4 (3) VFVA. The application must be responded to within 10 days of receipt.

5.4 Offences

In addition to the orders and remedies available through the VFVA, officers should also be aware of offence and arrest sections 16 and 17 of the Act:

Section 16

Any person who

- (a) **fails to comply with the provisions of an emergency protection order or a victim assistance order;**
- (b) **falsely and maliciously makes an application under this Act;**
- (c) **obstructs any person who is performing any function authorized by an emergency protection order or victim assistance order;**
- (d) **publishes any information in contravention of an emergency protection order or victim assistance order,**

is guilty of an offence and upon summary conviction is liable in the case of a first offence, to a fine of not more than \$5,000. or to imprisonment for a term of not more than three months, or to both, and in the case of a second or subsequent offence, to a fine of not more than \$10,000. or to imprisonment for a term of not more than two years, or to both. 1996, c.47, s.16; 1998,c11,s.10.

Section 17

A peace officer may arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an order made pursuant to this Act. 1996, c.47, s.17; 1998,c11,s.11.

6. INJURIES

- 6.1 The absence of external visible injury does not mean that no assault occurred. Assault victims often sustain internal or external injuries, which are not apparent or do not become apparent for a period of several hours. Investigators should always inquire of the victim whether they have sustained any injury and note their response, as well as the investigators own personal observations.

Keep in mind domestic assault is often a means of control over the victim. Often time=s victims will have injuries to extremities, which are not necessarily obvious at first glance. Victims should be encouraged to move about in an effort to determine whether mobility of feet, legs etc have resulted.

In all instances of visible injuries, arrangements should be made to photograph injuries.

- 6.2 Should the victim require medical treatment, the officers shall ensure they are taken to medical facilities immediately. If the officer is unable to transport the victim for treatment he/she shall ensure transportation by some other means (ambulance, neighbour, or relative).
- 6.3 Should the victim refuse medical treatment for obvious injuries, the police should ensure the immediate safety of the victim. In these instances Emergency Protection Order may be utilized. However should the order not be granted, relocate the victim to a safe environment, transition house, friend=s home.

70 ARREST

Should evidence establish an offence has been committed or it appears the offence will continue, the police officer must now consider the provisions of the Criminal Code concerning the powers of arrest. Where the circumstances warrant, the offender is to be arrested and removed from the premises.

In exercising his/her discretion whether or not to arrest, the officer will consider whether there are reasonable grounds to believe an indictable offence has been committed or is about to be committed. In determining whether it is in the public interest to detain or release an offender, the officer should consider the following factors:

- (a) The seriousness of the assault including injuries to the victim;
- (b) Where forearms or other offensive weapons are threatened or used in the commission of the offence, the investigator is to exercise the search and seizure powers as prescribed by sections 101(1) or 103(2) CCC as applicable, followed by judicial hearing under Section 100(4) CCC, where necessary.

NOTE: This action must be initiated within thirty (30) days after seizure.

7.1 In preparing for the judicial review, under Section 100(4) the following should be highlighted for the Court:

- (a) Past history of violence;
- (b) Degree of intoxication or apparent substance abuse by the parties;
- (c) Attitude of offender including threats of further violence;
- (d) Any other factors that the investigator from his observations at the scene believes are important in the exercise of his/her discretion;

7.2 When an arrest has been made, the police must now ensure the rights of the offender are protected. The offender must have a Court appearance within a reasonable time limit when he may be released by the Court upon a written undertaking with appropriate conditions or be subject to a show cause hearing. The offenders release by the police at the time of arrest may be made by one of the following methods:

- (a) Appearance notice
- (b) Promise to appear

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- (c) Recognizance; or
- (d) The offender could be summonsed by the Court at a later date.

Although these options are open to the investigator, it is highly recommended that release be made by way of a recognizance to ensure prohibition orders may be put in place.

- 7.3 If the police believe an offence has been committed, they must prepare a complete Court Brief containing all statements, photos (if available), certificates, medical reports and any other information that may be of benefit in the determination of charges.
- 7.4 Where circumstances warrant, the investigator shall bring to the attention of the Crown, the need to request an order of prohibition from the Court with regards to Sections 100(1), 100(2), 515(4.1) or 810(3.1) as applicable.

80 SUPERVISORY RESPONSIBILITY

Shift supervisors should review occurrence reports and follow up with officers who have not laid a charge to determine the reason. Where necessary, a police officer should be reminded of the charging policy. This review should also ensure, where appropriate, that Child & Family Services Referrals are being completed and forwarded.

90 STATISTICS

To assist in tracking situations of Domestic Violence all such incidents will receive additional line scoring as follows:

- DQ33 **B** Domestic Violence Complaint
- DQ34 **B** Emergency Protection Order Issued
- DQ35 **B** Child & Family Referral

100 VICTIM SERVICES

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The Victim Services Program is established and administered as per the Victims of Crime Act.

The Charlottetown Police Department will ensure Victim Services are available through a working agreement established with the Province of Prince Edward Island.

110 CROWN PROSECUTOR

It is essential that liaison be maintained with the Crown Prosecutor, particularly in cases where serious violence is involved and the accused has been detained in order to prevent the continuation or repetition of the offence. Consideration may be given to requesting a **A**show cause@hearing to enable the Court to make an informed decision on the issue of the detention or release of the accused. Also, the Crown Prosecutor will play an important role on those occasions where the victim wishes to discontinue proceedings following a **A**not guilty@plea by the accused.

120 SOCIAL SERVICES

Effective communication must exist between Social Services, the Police and the Crown Prosecutor. Situations may arise where Social Services will become involved. As such a liaison will be maintained with Social Services to ensure relevant information is shared, such as:

- (a) **Child & Family Referrals B** Referrals are to be made in every instance where a child or children reside in the home. Subject to the degree of the assault, an on call worker should be notified at the time of the incident, rather than waiting to forward information by fax form.

130 AGENCY CONTACTS

A listing of various agencies, personnel and contact numbers has been furnished as an appendix to this Part.

140 ENFORCEMENT OF RESTRAINING ORDERS

The term **ARestraining order@** is basically a generic term, which may refer to several types of Courts Orders.

- (a) A Recognizance or Undertaking B issued by a Justice when an accused is released with conditions to have no contact or communications with the victim, and/or a condition not to attend at the victim's residence, workplace. This order is generally in place during the period the charge is outstanding. Section 145(3) CCC forms the offence section for a breach of the order whether or not it is signed by the accused.

While the above is with regard to a Recognizance or Undertaking issued by a Justice, Section 498 CCC, also provides for the release upon conditions by an officer in charge upon issuing of a Form 11.1. This area is seldom used as the conditions generally only apply until the date of arraignment, while in matters issued by a Justice they may remain in effect until dealt with by law.

- (b) Section 810 or 810.1 Recognizance B Generally referred to as a **APeace Bond@** which has been signed by a defendant as a result of an application filed by the victim based on fear. Again such orders will stipulate a condition to have no contact or communication with the victim and/or a condition not to attend the victim's residence or workplace. Such orders are in place for the term indicated within the order and a breach of such an order is referenced at Section 811 CCC.
- (c) Probation Orders B Issued at sentencing, a Judge may add probation conditions which direct the accused to have no contact or communication with the victim and additional conditions not to attend the victim's residence or workplace. Such orders are in place for the term prescribed and a breach of such an order is referenced at Section 733 CCC.

- 14.1 Where there are reasonable grounds to believe a breach of a **ARestraining Order@** has occurred, members shall investigate and charge the suspect immediately or as soon as reasonably possible.

NOTE: A photocopy of a validly appearing **ARestraining Order@** coupled with the victim's description of the conduct which breaches the order shall constitute reasonable grounds. Victims shall be questioned as to whether they are aware of any subsequent Orders issued by the Court. In some instances it may be necessary to contact other sources to seek additional clarification.

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- 14.2 Where a breach has occurred and the accused is still present, he/she may display a willingness to leave the premises with their personal assurance of no further contact. In such instances the willingness or assurance is to be considered irrelevant with regard to charges.
- 14.3 Where a victim is not in possession of a copy of the Order, or an order cannot be verified through other electronic means member(s) shall contact the Clerk of the Court or victims= legal counsel (if known) in order to obtain a copy of the order. Once grounds have been established, proceed as soon as possible with the charging process.
- 14.4 It is imperative that a copy of the Order be obtained and attached to the file. Exact wording of the Order is required prior to the laying of any information.

150 BREACH OF NON-COMMUNICATION ORDERS

- (a) In many instances where Criminal Code Orders contain references to non-communication, breaches often occur via phone rather than personal contact, particularly when parties do not reside in the same area or Province. Where a non-communication reference is made, a breach of the Order still exists when the contact is made by phone. In such instances a victim will generally file a complaint with the local police agency. Unfortunately, in many instances the complainant is advised the local agency has no jurisdiction in the matter as the call originated from another area. Members are advised this is not correct, as an offence committed in one jurisdiction, which is received in another jurisdiction, is deemed to have been committed in both jurisdictions. Where the call originates within the confines of this Province but involves an Order issued by a Court outside PEI, the Order should be confirmed and Crown Counsel consulted prior to any breach charge being considered.
- (b) Where the call has originated from our of Province, member(s) should record the complaint, advising that it would be unlikely that a charge would result from this jurisdiction. The information should be passed on to the agency where the call originated, for their information and attention, should they choose to action the complaint.;

- (c) Should a resident of the City of Charlottetown make a complaint of this nature, the Charlottetown Police Department shall undertake responsibility for the investigation.

160 OFFENCES

While not limited, the charges, which may be considered in instances of Domestic Violence, may be one or more of the following:

- (i) Physical Assault (pushing, shoving, hitting, punching, slapping, kicking) Sections 265-269 CCC
- (ii) Sexual Assault Section 271 B 273 CCC
- (iii) Uttering Threats Section 264.1 CCC
- (iv) Mischief Section 430 CCC
- (v) Intimidation Section 423 CCC
- (vi) Forcible Confinement Section 279 CCC
- (vii) Possession of a Weapon Section 87 CCC
- (viii) Breach of any Court Order, including restraining orders, probation orders etc.

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RESPONSE TO NON-CRIMINAL DOMESTIC DISPUTES

In situations where there is no suspicion of domestic violence, or where through investigation, it appears that the dispute is non-criminal in nature or does not violate the provisions of the Victims of Family Violence Act, member shall:

- (a) Refer parties to the appropriate helping agencies for individual or family counseling.
- (b) Where circumstances are such that the provision of the CCC do not apply, and an EPO is not obtainable, advise parties who are or have been married or have been in a common law relationship, that they may be eligible for a restraining order issued through Family Court. Parties should be advised to contact legal counsel in regards to such orders.

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- (c) Referrals to individual legal counsel shall not be done. Where parties may require counsel to obtain an order or legal separation information etc. they are to be referred to telephone listings or lawyer referral service through Community Legal Information Association. (CLIA).
- (d) If the dispute centers on the failure of one party to pay maintenance in accordance with an existing Order or Separation Agreement, parties are to be referred to Maintenance Enforcement personnel at the Law Courts.

180 PROPERTY B OWNERSHIP/TITLE

Property ownership is a matter, which is generally established in Civil Law. Therefore, when disputes arise with respect to property, it is advisable to have these resolved by a Civil Court. Members involved in such calls should calmly and patiently explain our role in such situations as being simply a presence to ensure there is no breach of the peace and to act in an advisory capacity.

Where the parties involved are rational and can calmly discuss the matter in the presence of officer(s), alternate measures may be discussed. In such situations, officer(s) may be able to assist in working out some form of arrangement with the parties as an interim measure, or referrals to outside mediation may be suggested.

Where there is an obvious question as to ownership, parties can peaceably resolve the issue through a civil process.

190 CLAIMING PROPERTY

In domestic situations, members will often be called upon to assist in claiming personal property which parties have a lawful right to. The police role in such situations is to ensure there are no breaches of the peace.

Where an assistance request is made, officer(s) of the Charlottetown Police Dept. will assist. However, such assistance will be for the retrieval of personal property items only and will be carried out in accordance with the following:

- 19.1 Personal property shall mean **B** clothing, toiletries, jewelry, toys (in the case of children)
- 19.2 An assistance report will be filed with regard to the request.

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- 19.3 If a Court Order is in place, a copy shall be obtained and added to the file.
- 19.4 Police personnel shall not:
- (a) Provide transportation to and from the address in question. Complainant is to be met at the address where they will claim the property.
 - (b) Assist in removing the property. Nor shall any opinions be expressed in favour of either party involved.
- 19.5 Officer(s) shall attend and explain to all parties the reason for the police presence. Where questions arise over real property issues, parties are to be referred to Civil Courts.
- 19.6 Where the other party refuses to surrender property, other than rationally discuss the matter in an effort to resolve it, no other action can be taken without a Court Order.

200 REMOVAL OF PROPERTY BY SPOUSE/COMMON -LAW

- (a) Where a mutual agreement between parties cannot or is likely not to be reached, with the departing spouse insistent on removing an item or the other insistent on retaining same, the conditions specified in Section 38 CCC may apply:
 - A38.(1) Every one who is in peaceable possession of moveable property, and every one lawfully assisting him, is justified:**
 - (a) in preventing a trespasser from taking it, or**
 - (b) in taking from a trespasser who has taken it, if he does not strike or cause harm to the trespasser.**
 - (2) Where a person who is in peaceable possession of moveable property lays hands upon it, a trespasser who persists in attempting to keep it or take it from him or from any one lawfully assisting him shall be deemed to commit an assault without justification or provocation.@**

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(b) Peaceable Possession

In order to determine who has peaceable possession it is a simple matter of logic and common sense. It would usually be the spouse or person having possession of the item(s) since the separation, and who is attempting to retain the item(s).

(c) Trespasser

Where the spouse is attempting to remove the item from the other and is in fact separated and maintaining a separate residence, they would in fact be a trespasser for the purposes of this section.

Logic dictates that where in the first instance, a person enters a premises lawfully, upon invitation or other like concession for the purpose of resuming possession of their moveable property and subsequently abuses their authority, over the objection of the other party, begins to remove item(s), they become, in law at section 38, a trespasser.

Where section 38 applies, the trespassing spouse should be told that should they persist in attempting to remove the item(s) of contested property they could, by their actions, be deemed to have committed an assault and be subject to charge under section 265(1) CCC.

210 DISPUTES CONCERNING CUSTODY/ACCESS ISSUES

- (a) In cases where Police attend a call involving a domestic dispute about the custody of or access to children, in addition to dealing with any suspicion regarding domestic violence by providing the initial response as per Section 3, member(s) shall also be mindful of the following:
- (b) Where a Family Court Order has established custody to one parent, with or without access to the other part, any complaint received which refers to the abduction or attempted abduction of a child by the non-custodial parent, shall be the subject of an immediate investigation with a view to prosecution under the provisions of section 282 CCC, Abduction in Contravention of Custody Order.
- (c) Where a Family Law Court Order gives custody to one parent with access at times and under certain conditions set by the Court, any unreasonable breach of the access provisions by the non-custodial parent shall be the subject of an investigation. A reasonable breach of access

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provisions may be the belief on the part of the custodial parent that the child is in fact in need of protection. Where a child is not returned within three hours of the time specified within the Order or that expressly agreed upon by the parents, an investigation will be commenced with a view to prosecution under section 282 CCC Abduction in Contravention of Custody Order. However, where police have received information, which reasonably leads to the inference that the child is being abducted, and/or removed from the jurisdiction, immediate investigation shall commence.

- (d) Where no Family Law Court Order is in existence and one parent has taken or detained the child from the other parent, who has lawful care and possession of the child, any complaint of abduction or attempted abduction shall be the subject of an investigation, with a view of prosecution under section 283 CCC Abduction Where No Custody Order.
- (e) The CCC provides that where no Order is in place, no proceedings may commence without the approval of the Attorney General. In such instances the Crown's Office shall immediately be contacted to determine whether such proceedings shall be commenced.

220 ENFORCEMENT OF CIVIL COURT ORDERS

Occasionally police personnel may be called upon to aid in ensuring compliance with Civil Court Orders. When such requests are made the following shall be borne in mind by personnel:

- (a) Police personnel have no legal authority to enforce the provisions of a Civil Court Order (Judgments, Domestic Access, Child Custody) unless it contains specific provision to that effect. Where no express direction is made to Police in the Order, there is no obligation to aid in its enforcement or service. In such instances, the parties involved are expected to personally exercise their rights without police intervention. However, personnel shall attend to prevent a Breach of the Peace, and attempt to have the parties rationally discuss and resolve the problem.
- (b) Where a Civil Court Order makes mandatory reference to police in such terms as **As shall or Amust** there is a legal duty to carry out the functions as stipulated and all reasonable efforts must be made to comply. Failure to do any less may be construed as Contempt of Court. When carrying out such duties, unless the Order expressly authorizes the Police Authority to forcibly enter a premises, such authority does not exist.
- (c) Before any action is taken in regards to a Civil Court Order the following is to be followed:

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- (i) the Order is to be produced for inspection by police personnel to determine the validity by:
- (ii) ensuring the Order has been issued by a Court in the Province of PEI
- (iii) that the date of the Order has not expired
- (iv) that the Order appears valid on its face and from the information available is the most recent Order issued by the Court
- (v) that there are specified provisions within the Order directing the police functions whether the spouse who must comply with the Order has been served a copy.

23. CRIMINAL HARASSEMENT (ANTI-STALKING LEGISLATION)

- (a) While this legislation has been in effect for a few years, the criminal behaviour referred to, as **stalking** is not a new form of activity. Special attention should be paid to such incidents, given the violent and sometimes tragic consequences, which can arise if timely and appropriate attention is not made.

The Criminal Code defines this behaviour as Criminal Harassment:

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

Prohibited conduct under this section is defined as:

Repeatedly following from place to place, the other person or anyone known to the;

repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

besetting or watching the dwelling house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be;

engaging in threatening conduct directed at the other person or any member of their family.@

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- (b) The following will serve to assist in situations of criminal harassment. More in-depth information specific to criminal harassment is contained in the Criminal Harassment Handbook, produced by the Federal Justice Dept. which has been made available, to all personnel, for reference purposes.

Criminal harassment is an unwanted attention directed towards another that often manifests into obsessive efforts to intimidate and control. Once the victim/complainant has established to the offender, personally or through police authority, that such attentions are unwanted, should the behaviour persist, then a charge under section 264 (3) may be laid.

23.1 Harassment Investigation

When a complaint of stalking is filed member(s) shall:

- (a) Immediately conduct a thorough investigation.
- (b) Obtain detailed statements from the victim and any witnesses.
- (c) Ensure the safety of the victim and any children, which may be involved. Remind the victim that the potential threat remains notwithstanding the fact that it has been reported to the police and /or is in possession of a restraining order. The victim should be also be reminded that they play a primary role in ensuring their own safety. While it may not be fair the victim may have a requirement to alter their lifestyle and usual routines, schedules, transportation routes etc.
 - (i) Victim should not initiate contact or agree to meet with the suspect.
 - (i) Victim should be versed on the available telephone services with respect to call trace capabilities and caller identification.
 - (ii) Victim should also advise family, friends, co-workers, neighbours etc of the problem. This will assist with additional means of security and may afford additional witness information.
 - (iii) Should the victim wish to relocate to a safe haven i.e. shelter or residence of friends or relatives, escort the

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victim(s) to their residence where they may wish to pick up personal items.

- (d) Provide the victim with telephone numbers of service agencies, which may supply some supportive role.
 - (e) Seize any weapons used in the commission of the offence and where firearms are present or are readily available to the suspect, the seizure provision as stipulated at section 103 CCC should be used, Application for Warrant to Seize with particular reference to section 103(2). Should the suspect also possess a Firearms Acquisition Certificate (FAC), it along with any permits or registration certificates should be seized by the investigating member(s).
- (c)iii Upon conclusion of a thorough investigation and the member has reasonable grounds to believe that an offence has been committed, in violation of section 264 CCC, the member shall immediately review the matter with the NCO i/c. At the conclusion of this review, and the NCO i/c is satisfied an offence has been committed, the NCO i/c will then authorize the arrest of the offender.
- (d)iii Upon arrest the accused is to be lodged at the Correctional Centre and brought before a Justice as soon as is practicable for the purposes of seeking conditions for release. Should there be any questions with regard to the release of the individual the Crown Attorney should be consulted.
- (e)iii In some instances charges may not be contemplated, as the matter may be of such a nature that a face to face meeting to deter the subject may resolve the matter. This type of deterrent concept should only be used after careful consideration has been given to all the information at hand.
- In some instances this may well be the final resolution to the situation. However in all instances a report shall be prepared where the warning has been clearly documented. This will enable other Members and the Crown to reference the information in the future, if required.
- (f)iii A brief is to be prepared for presentation to the Justice outlining:
- (iv) the history of the relationship between the victim and the accused,
 - (v) any previous incidents of abuse, or threats of violence (include police reports if any),

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- (vi) whether the accused has an FAC,
 - (vii) if the complainant has been subject to significant harassment from an unidentified subject, likely to be the accused,
 - (viii) details of any significant harassment (include police reports if any).
- (g) In situations where the offender cannot be located prior to the end of shift, the investigating member through the NCO i/c should make arrangements for the file to be passed on to an oncoming member, for the continuation of the investigation and possibility of obtaining a Warrant to Arrest. If obtain ensure the information is immediately entered on CPIC.

24. SUPERVISORY RESPONSIBILITY

The NCO i/c shall ensure all such reported incidents are investigated immediately and thoroughly and shall:

- (a) Review the progress of the investigation and where appropriate authorize the arrest of the accused.
- (b) In the absence of the Court Clerk, ensure the accused is brought before a Justice.
- (c) As with all files, ensure appropriate documentation has been completed, including the outcome of the appearance before the Justice, whether released or not. If released, what conditions apply.
- (d) If released ensure Records Section or in their absence, Dispatch personnel have entered the subject on CPIC.
- (e) At the end of shift, if the accused has not been arrested, ensure the information has been passed on to the oncoming supervisor through Briefing Report and that another officer will be detained to follow up on the investigation.

25. COUNTER CHARGES

- (a) In many instances persons, the subject of an investigation of domestic assault, will claim self-defence or complain of themselves having been the victim of an assault. Quite often these accusations are unsubstantiated. Careful consideration must be given to such allegations. Where such allegations arise, member(s) should investigate further bearing in mind the following:

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- (i) Visible marks or injuries.
 - (ii) Relative size, strength, and demeanour of the parties, including gender.
 - (iii) Statements of witnesses, including children.
 - (iv) Reasonableness of counter accusation and timing.
 - (v) Intoxication levels of the parties.
 - (vi) If self-defence claimed, was force reasonable?
- (b) Prior to laying any charges with regard to a counter accusation, the Crown Attorney shall be contacted and the matter reviewed. Should there be reasonable grounds to believe the counter accusation has actually occurred, member(s) shall proceed as per section 3 of this Part.
- (c) Charges, which may be considered, would be those as listed in section 15 (I) - (viii) of this Part.