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CHAPTER VI – CHAPITRE VI : <b>Particular Proceedings: Specific Offences Procédures particulières : Infractions spécifiques</b>	Readers are referred to the list of Related Documents at the end of this Policy for additional information.  Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.	

## INTIMATE PARTNER VIOLENCE

### 1. Introduction

Intimate partner violence is a prevalent and serious social problem. This Policy is intended to reflect the unique, serious, and emotionally charged nature of intimate partner violence.

When dealing with matters involving intimate partner violence, the Crown Prosecutor shall have particular regard for the safety of victims and the victims' family members, especially children.

### 2. Scope of Policy

Intimate partner violence means all forms of violence or abusive behaviour between persons who are or who have been involved in a personal or intimate relationship. A personal or intimate relationship includes, but is not necessarily limited to, a relationship between persons who are or have been married, who are or have been living together, and who are or have been dating. Violence includes, but is not necessarily limited to, sexual assault, physical assault or the threat thereof, intimidation, criminal harassment, and damage to property or the threat thereof.

### 3. Expedious Prosecution

Where a matter involves intimate partner violence, the Crown Prosecutor should proceed expeditiously. To accomplish this, the Crown Prosecutor should do the following:

- give priority to charge assessment decisions for such matters;
- make all reasonable efforts to emphasize to the court that an early court date is necessary because the matter involves intimate partner violence;
- consider with caution any request for an adjournment; and
- oppose any request for an adjournment that appears to be frivolous or designed to delay the proceedings.

Where a person is charged with breaching a court order or a police undertaking relating to a matter involving intimate partner violence, the Crown Prosecutor shall prosecute the offence without delay.

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#### 4. Charge Approval

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As part of the charge approval process the Crown Prosecutor shall

- (a) ensure that the police have contacted Victim Services; and
- (b) where a victim or witness is a child, ensure that the police have contacted Child Protection Services in the Department of Social Development.

#### 5. Peace Bonds

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Where the Crown Prosecutor determines that a proposed charge relating to intimate partner violence does not meet the charge approval standard, the Crown Prosecutor shall consider seeking a peace bond pursuant to section 810 of the *Criminal Code*, and shall consider whether the peace bond should include a firearms prohibition condition pursuant to subsection 810(3.1).

In appropriate circumstances, the Crown Prosecutor may enter into a plea resolution in accordance with Policy 30, Sentencing and Plea Resolution. Where the Crown Prosecutor enters a plea resolution, he or she shall, before doing so, advise the victim, and, afterwards, seek a peace bond as appropriate.

#### 6. Judicial Interim Release

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The policies set out in Policy 23, Judicial Interim Release, apply to matters involving intimate partner violence, except insofar as those policies conflict with this section of this Policy.

Where a matter involves intimate partner violence and the Crown Prosecutor is to determine whether to object to the release of the accused or what conditions of release to propose, the Crown Prosecutor shall consider the following:

- (a) any risk assessment forms;
- (b) any history of violence or threats of violence by the accused against the victim or others;
- (c) whether the victim fears further violence from the accused;
- (d) the nature of the offence and the degree of violence or threats of violence;
- (e) whether the offence involved the presence, use, or threatened use of a weapon;
- (f) whether the offence involved the use of drugs or alcohol;
- (g) whether children were present during the alleged violence;
- (h) the mental health status of the accused;
- (i) any concerns of the victim, including concerns about the likelihood of the accused obeying conditions of release;
- (j) the accused person's criminal history;
- (k) whether there are any court orders relating to custody and access, including protection orders issued pursuant to the *Family Services Act*; and
- (l) any other areas of concern identified by the Crown Prosecutor.

Where the accused is to be released, the Crown Prosecutor shall consider proposing a "no contact" condition pursuant to subsection 515(4.2) of the *Criminal Code*.

Where the accused is to be detained in custody, the Crown Prosecutor shall consider proposing a “no contact” condition pursuant to subsection 515(12) of the *Criminal Code*.

Where a victim supports a request to vary a condition of a “no contact” condition, the Crown Prosecutor shall ensure that the victim states this on the record.

Where an accused is charged with breaching a condition of release, the Crown Prosecutor shall rely on the reverse onus provisions under section 515 of the *Criminal Code* and request that the court revoke the original release order and order that the accused be detained in custody, unless detention is not warranted according to the considerations set out in section 2 of Policy 23, Judicial Interim Release. Where detention in custody is not warranted, the Crown Prosecutor shall propose appropriate conditions of release in accordance with sections 4 and 5 of Policy 23, Judicial Interim Release.

## **7. Victims and Witnesses**

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The policies set out in Policy 33, Victims and Policy 32, Witnesses apply to matters involving intimate partner violence, except insofar as they conflict with this section of this Policy.

Where a matter involves intimate partner violence, the Crown Prosecutor shall take all reasonable steps to provide an opportunity to the victim and other witnesses to meet with the Crown Prosecutor prior to the trial. The Crown Prosecutor shall ensure that a police officer, Victim Services Coordinator, or another suitable third party is present for any such meeting.

The Crown Prosecutor shall consider applying for one or more of the following:

- (a) an order that the accused not be permitted to cross-examine the victim;
- (b) an order regarding the use of a testimonial aid; and
- (c) a publication ban.

## **8. Reluctant Witnesses**

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In matters involving intimate partner violence, victims often request that a prosecution be discontinued, recant their allegations, refuse to testify, or fail to appear for trial. As there is a societal interest in addressing the problem of intimate partner violence, the victim’s views and concerns alone are not a sufficient basis upon which to discontinue a prosecution.

### **8.1 Request for a Discontinuance**

Where a victim requests that the prosecution be discontinued, the Crown Prosecutor shall consider the views and concerns of the victim and determine whether the discontinuation of the prosecution is in the public interest.

### **8.2 Recantation of Evidence or Refusal to Testify**

Where a victim recants or refuses to testify, the Crown Prosecutor shall consider doing one or more of the following:

- (a) request that the police conduct inquiries into the background of the victim’s recantation or refusal to testify to determine the cause;
- (b) request that the police take a statement from the victim concerning the recantation or refusal to testify;
- (c) request that Victim Services or another support service assist the victim with the court process;

- (d) attempt to meet with the victim, in the presence of a police officer, Victim Services Coordinator or another suitable third party, to discuss the reasons for the recantation or refusal to testify;
- (e) consider the availability of other evidence;
- (f) request leave to cross-examine the victim as to a previous statement pursuant to subsection 9(2) of the *Canada Evidence Act*; and
- (g) attempt to have the victim's statement to police admitted into evidence.

### **8.3 Failure to Appear**

Where a victim fails to appear for trial in response to a subpoena, the Crown Prosecutor shall take all reasonable steps to ensure that the Crown retains, and appears to retain, control of the prosecution. The Crown Prosecutor shall consider doing the following:

- (a) request an adjournment;
- (b) request that a warrant be issued and held for sufficient time to determine the reason the victim failed to appear; and
- (c) where appropriate, and with the approval of the Regional Director or the Director of Specialized Prosecutions, as the case may be, request that the warrant be released.

#### **8.3.1 Where Court Refuses Adjournment**

Where the Crown Prosecutor requests an adjournment and the court refuses to grant one, the Crown Prosecutor shall

- (a) offer no evidence; or
- (b) enter a stay of proceedings, after obtaining the consent of the Director of Public Prosecutions (for more information, see Policy 15, Stay of Proceedings and Recommencement of Proceedings).

## **9. Sentencing**

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The policies set out in Policy 30, Sentencing and Plea Resolution apply to matters involving intimate partner violence, except insofar as those policies conflict with this section of this Policy.

Under subparagraph 718.2(a)(ii) of the *Criminal Code*, evidence that the offender abused his or her spouse or common-law partner is an aggravating circumstance that should result in an increased sentence. The Crown Prosecutor shall, where appropriate, bring this provision to the court's attention.

Where an accused is to be sentenced for a matter involving intimate partner violence and the Crown Prosecutor is seeking a term of incarceration of two (2) years or less, the Crown Prosecutor shall consider proposing, in addition to the term of incarceration, a period of probation with appropriate conditions, including the condition that the offender participate in treatment related to intimate partner violence, subject to program availability.

## **10. Firearms**

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Where a matter relating to intimate partner violence involves the use or possession of a firearm, the Crown Prosecutor shall follow the policies set out in Policy 43, Firearms.

## 11. Mental Disorder

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Where the accused person in a matter involving intimate partner violence has a mental disorder, the Crown Prosecutor shall follow the policies set out in Policy 41, Mentally Disordered Accused.

In the event that a matter is referred for disposition to the review board pursuant to sections 672.1 to 672.95 of the *Criminal Code*, the Crown Prosecutor shall, where appropriate, request Victim Impact Statements in court prior to the court referral to the review board. This will facilitate the immediate referral to the Victim Services Branch of the Department of Public Safety to make contact directly with the victim for the preparation of the statement in time to meet the forty-five (45) day time limit for a disposition hearing by the review board.

## 12. Alternative Measures

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The Crown Prosecutor shall not refer a matter involving intimate partner violence to an alternative measures program except where recommended by the Regional Director or the Director of Specialized Prosecutions, as the case may be.

For further information, see Policy 9, Alternative Measures.

## 13. Domestic Violence Court

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Where the Crown Prosecutor appears before the Domestic Violence Court, he or she shall follow the guidelines set out in the Domestic Violence Court publication, *Operational Procedures*, except insofar as they conflict with any policies set out in this Manual. The Crown Prosecutor shall disregard the document reproduced as Annex C of the *Operational Procedures* as it has been replaced by this Policy of this Manual.

## 14. Women Abuse Protocols

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The Government of New Brunswick has published *Woman Abuse Protocols* as a government-wide and public resource guide. The Crown Prosecutor should review and follow the guidelines set out therein except insofar as they conflict with any policies set out in this Manual.

## 15. Related Documents

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Policy 9	Alternative Measures
Policy 11	Pre-charge Screening
Policy 15	Stay of Proceedings and Recommencement of Proceedings
Policy 23	Judicial Interim Release
Policy 30	Sentencing and Plea Resolution
Policy 32	Witnesses
Policy 33	Victims
Policy 40	High Risk Offenders
Policy 41	Mentally Disordered Accused Persons
Policy 43	Firearms
Domestic Violence Court <i>Operational Procedures</i>	
<i>New Brunswick Woman Abuse Protocols</i>	
<i>New Brunswick Child Victims of Abuse and Neglect Protocols</i>	