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<p>CHAPTER VI – CHAPITRE VI : Particular Proceedings: Specific Offences Procédures particulières : Infractions spécifiques</p>	<p>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.</p>	

INTIMATE PARTNER VIOLENCE UNIT

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.

When a case involving Intimate partner violence is referred to Public Prosecution Services (PPS) it shall be, where resources and circumstances permit, referred to a member of the Intimate Partner Violence Unit (IPVU). Where this is not possible, members of the IPVU shall assist the Crown Prosecutor assigned to the case as necessary. In this document a reference to the Crown Prosecutor is a reference to a member of the IPVU or to the Crown Prosecutor assigned to the case.

3. Goals of the IPVU

The primary goal of the IPVU is to reduce intimate partner violence through a process of collaboration with key community partners that accelerates access to support services and intervention programs, thereby enhancing victim safety while emphasizing offender accountability. More specifically, the IPVU will seek to:

- improve the Public Prosecution Services', and thus the criminal justice system's response to victims' needs and safety planning;
- promote offender accountability and early intervention;

- accelerate prosecution and court processes; and
- offer timely access to services for both victims and offenders.

4. Expeditious Prosecution

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

- (a) give priority to charge assessment decisions for such matters;
- (b) make all reasonable efforts to emphasize to the court that earlier court dates including the trial are necessary;
- (c) consider with caution any request for an adjournment; and
- (d) oppose any request for an adjournment that appears to be frivolous or designed to delay the proceedings.

In addition to the directions above, the IPVU has sought the agreement of Law Enforcement Agencies to adhere to the following timelines:

- a) When deemed appropriate to release an accused, an undertaking to the peace officer (Form 10) will be provided requiring court appearance within 20 days from the date of the intimate partner violence incident being reported;
- b) Police officers shall forward their file to the Crown Prosecutor no later than 7 days after an incident of intimate partner violence being reported;
- c) The Crown Prosecutor shall, prior to the expiration of the remaining 13 days, complete the pre-charge screening to allow the information to be laid in Court prior to accused's appearance on the 20th day;
- d) The Crown Prosecutor shall provide disclosure to the accused and/or his/ her lawyer within the shortest time period possible.

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.

5. Charge Approval

As part of the pre-charge screening process the Crown Prosecutor shall

- (a) ensure that the police have submitted the Victim Referral Form to 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.

6. Peace Bonds

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 into a plea resolution that involves the withdrawal of criminal charge(s) in exchange that the accused enters into a peace bond pursuant to section 810, the Crown Prosecutor, before doing so, advise the victim, and, afterwards, seek a peace bond as appropriate.

7. Judicial Interim Release

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) the result of a completed risk assessment form
- (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 commission of the alleged offence(s);
- (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 any orders issued pursuant to the *Family Services Act*;
- (l) Whether there are any orders pursuant to the *Intimate Partner Violence Intervention Act*; and
- (m) any other areas of concern identified by the Crown Prosecutor.

Where the accused is detained pending a bail hearing, the Crown Prosecutor shall, unless in the Crown Prosecutor's discretion it is inappropriate, request a "no contact" condition pursuant to section 516(2) of the *Criminal Code*.

The Crown Prosecutor shall consider whether the accused is subject to a reverse onus bail pursuant to paragraph 515(6)(b.1) of the *Criminal Code* for having previously been convicted of an offence in the commission of which violence was used, threatened or attempted against any intimate partner of theirs.

Where the accused is to be released, either by the Police or by a Provincial Court Judge, the Crown Prosecutor shall, unless in the Crown Prosecutor's discretion it is inappropriate, request the following conditions be part of the undertaking or order:

- (a) a "no contact" condition and a "non-attendance" condition pursuant to paragraphs 501(3)(d) and (e) or 515(4)(d) and (e) of the *Criminal Code*;

- (b) a “no firearms” condition pursuant to paragraph 501(3)(h) or subsection 515(4.1) of the *Criminal Code*;
- (c) not to possess or consume alcohol, cannabis, non-prescribed drugs or any other intoxicating substances where the circumstances of the offence or offender merit such a condition in the opinion of the Crown Prosecutor.

The Crown Prosecutor may, when appropriate, request that a condition be imposed requiring the accused to report back to court at such times as are set by the court to monitor the accused’s compliance with the accused’s conditions of release.

Where the accused is to be detained in custody, the Crown Prosecutor shall, unless in the Crown Prosecutor’s discretion it is inappropriate, request a “no contact” condition pursuant to subsection 515(12) of the *Criminal Code*.

Where an accused requests to vary a condition with respect "no contact" or "non attendance" the Crown Prosecutor shall ensure that the victim has had at least one consultation session with Victim Services prior to any review hearing. Where a victim supports an accused's request to vary a condition the Crown Prosecutor shall ensure the victim states so clearly on the record. Regardless of whether the victim supports the accused's request, the Crown Prosecutor retains the final discretion whether to support or oppose the request.

Where an accused is charged with breaching a condition of release, the Crown Prosecutor shall rely on the reverse onus provisions under section 515(6)(c) of the *Criminal Code* and request that the court revoke the original release order pursuant to section 524 of the *Criminal Code* 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.

8. Victims and Witnesses

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, unless in the Crown Prosecutor’s discretion it is inappropriate, apply for an order that the accused not be permitted to cross-examine the victim pursuant to section 486.3 of the *Criminal Code* and request that a lawyer be appointed for said purpose.

The Crown Prosecutor shall consider applying for:

- (a) an order regarding the use of a testimonial aid; and
- (b) a publication ban.

The Crown Prosecutor will ensure, through Victim Services, that a copy of any court order relating to a victim shall be provided to the victim.

9. Reluctant Witnesses

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.

9.1 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.

9.2 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.

9.3 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 Executive Director of Prosecutions, as the case may be, request that the warrant be released.

9.3.1 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).

10. Sentencing

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.

The Crown Prosecutor may, when appropriate, request that the court sentencing an offender impose a condition on any probation order (pursuant to s. 732.1(2)(b)) and/or conditional sentence order (pursuant to s. 742.3(1)(b)) that the offender appear before the court at scheduled times for the purpose of the court monitoring the offender's progress in complying with court-ordered conditions. However, according to the Provincial Court Domestic Violence Operational Procedures Manual in Moncton, this requirement is mandatory.

11. Firearms

Where appropriate, the Crown Prosecutor shall request a firearm prohibition order pursuant to subparagraph 109(a.1) (i) or paragraph 110(2.1) (a), as per the directives set out in Policy 43, Firearms.

12. Mental Disorder

Where the accused person in a matter involving intimate partner violence has a mental disorder, the Crown Prosecutor shall follow the directives 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.

13. Alternative Measures

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 Executive Director of Public Prosecutions, as the case may be.

For further information, see Policy 9, Alternative Measures.

14. Domestic Violence Court

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.

15. Women Victims of Abuse Protocols

The Government of New Brunswick has published *Woman Victims of 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.

16. Related Documents

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 Disorder Accused Persons
Policy 43	Firearms
Domestic Violence Court <i>Operational Procedures</i>	
<i>New Brunswick Woman Victims of Abuse Protocols</i>	
<i>New Brunswick Child Victims of Abuse and Neglect Protocols</i>	



Office of Attorney General, Public Prosecution Services
Public Prosecutions Operational Manual