
Intimate Partner Violence & Victimization

Alberta Crown Prosecution Service - Practice Protocol

EFFECTIVE: October 2, 2023

This Practice Protocol provides prosecutors with guidance and direction in relation to the exercise of their discretion in the prosecution of offences involving intimate partner violence and victimization.

Background

Intimate partner violence (IPV), also known as domestic violence (DV), continues to be a tragic, pervasive problem in our society. IPV is not a private matter. IPV is a serious crime with profound destructive consequences for victims, children, and our community as a whole. No one has the right to abuse an intimate partner, and any such abuse is intolerable and a breach of trust. An intimate partner includes a person's current or former: (a) spouse; (b) common-law partner; or (c) dating partner.

For the purpose of this Practice Protocol, IPV includes:

- A single act, or a pattern of violence and/or abuse, whether physical, sexual, or psychological, or any combination thereof;
- Any threatening conduct or communications, including electronic communications, that cause an intimate partner to fear for their safety or the safety of their family (i.e., criminal harassment);
- Criminal conduct toward or involving an animal (such as pets or livestock) that is aimed at the victimization of an intimate partner;¹
- Actual or threatened use of force toward an intimate partner, whether or not there is an injury or use of a weapon; and
- Breaches of protection orders and/or related criminal court orders meant to protect intimate partners.

Protocol

Where operationally feasible, every Crown Prosecution Office will designate an IPV prosecutor responsible for liaising with police services and any local IPV/DV committees or IPV/DV courts. Where there is no designated IPV prosecutor, the local Deputy Chief Prosecutor (DCP) will act as the designate. Given the seriousness of IPV prosecutions, prosecutors assigned to IPV prosecutions should consult on best practices with their designated IPV prosecutor or DCP.

¹ See *R v Zeller*, 1998 ABPC 19 at paras 12-13; *R v Carr*, 2022 ONCJ 22 at paras 46, 61-62. See also *R v Chen*, 2021 ABCA 382 at para 44.

Intimate Partner Violence & Victimization

Alberta Crown Prosecution Service - Practice Protocol

Prosecutors must consider a trauma-informed approach to IPV prosecutions. In addition, prosecutors must pay particular attention to the safety of victims and their families at all stages of the criminal justice process: bail, screening, trial, and sentencing. Communication with victims is a critical part of assessing the danger that exists. In addition, police services are required to complete a Family Violence Investigation Report (FVIR) for all IPV prosecution files, and in the case of some offenders, police services may also obtain a report from the Integrated Threat and Risk Assessment Centre (I-TRAC). These are valuable tools in considering what steps the prosecution can take to mitigate risk of harm.

IPV victims have the right to be informed about the status of the prosecution and to provide input for the prosecutor to consider at any stage of the proceeding. Victim Services Units (VSUs) are key partners with the local Crown Prosecution Office to ensure IPV victims' rights are respected in this manner.

General Considerations in IPV Cases

At all stages of an IPV prosecution, prosecutors should take into account the following specific factors and principles:

- The seriousness of IPV prosecutions, including breaches of court orders meant to protect IPV victims, whether pursuant to the *Criminal Code* or the *Protection Against Family Violence Act*;
- The particular vulnerability of all IPV victims, and the increased vulnerability of women, mothers, marginalized communities, LGBTQIA2S+ individuals, those living in rural locations, or who have Indigenous or racialized backgrounds;
- The increased vulnerability of IPV victims who are subject to coercive control² by the accused;
- The need to guard against myths and stereotypes about intimate partner violence, victims,³ and perpetrators;

² "Coercive control" refers to a pattern of conduct carried out by an abuser in order to control the actions of an intimate partner. Though the conduct itself is often not violent in nature, the threat of physical violence is omnipresent should the victim resist. The cumulative impact of the conduct causes psychological harm. Coercive control is not a specific criminal offence. However, some coercive conduct is captured in existing offences. See House of Commons, *The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships: Report of the Standing Committee on Justice and Human Rights*, (2021) at 6-12; 17, online (pdf): <https://www.ourcommons.ca/Content/Committee/432/JUST/Reports/RP11257780/justrp09/justrp09-e.pdf> [Shadow Pandemic Report].

³ See Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2022) Can J Fam L [forthcoming in 2023], online (pdf): [Social Science Research Network <papers.ssrn.com/sol3/papers?abstract_id=4307222>](https://papers.ssrn.com/sol3/papers?abstract_id=4307222).

Intimate Partner Violence & Victimization

Alberta Crown Prosecution Service - Practice Protocol

- The need to guard against victim blaming⁴ of intimate partner violence victims who are women;
- The factors as outlined in any assessment provided by the investigating law enforcement agency, including the FVIR and I-TRAC report;
- The availability of court ordered conditions of release or sentence to address any safety concerns of the IPV victim and their family (e.g. no contact, no weapons, and any other restrictions necessary due to the particular circumstances of the case);
- The need to ensure appropriate court preparation is available for victims and witnesses, in coordination with local VSUs and police services;
- The importance of considering applications for counsel to be appointed to cross-examine the victim or witnesses where the accused is self-represented, if such an order would facilitate the giving of a full and candid account or would otherwise be in the interest of the proper administration of justice;
- The importance of considering applications for testimonial aids for the victim or other witnesses (e.g. child witnesses), if such an order would facilitate the giving of a full and candid account or would otherwise be in the interest of the proper administration of justice;
- The prosecutor's obligation to ensure that a victim's right to submit a Victim Impact Statement and Statement on Restitution have been complied with;
- The importance of pursuing aggravation of sentence where a child or an animal is used or abused in the course of committing an IPV offence;
- The fact that many IPV victims are financially dependent on, or share income with, the accused, and cash bail, or fines as part of a sentence, may impact the victim;
- In limited circumstances, the availability and use of a peace bond (preferably a *Criminal Code* section 810 peace bond, where feasible) to resolve an IPV matter, following consultation with the designated IPV prosecutor or DCP; and
- The benefits of seeking IPV/DV counselling, such as the Provincial Family Violence Treatment Program, another program approved by a bail or probation officer, or, if proposed by the accused, counselling provided by an appropriate professional through employment health benefits or paid for by the accused. In cases where the accused pursues private counselling, the prosecutor should request that the accused consent to the counsellor providing a letter confirming the nature and duration of the counselling.

⁴ Victim blaming refers to holding victims of intimate partner violence responsible for the accused's actions, whether in whole or part. It is the product of unfounded myths and stereotypes about gender-based violence. See "Turning the Tide Together: Final Report of the Mass Casualty Commission, Vol 3: Violence" at 299-303, online (pdf): *Mass Casualty Commission* <<https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-Volume-3-Violence.pdf>>.

Intimate Partner Violence & Victimization

Alberta Crown Prosecution Service - Practice Protocol

Specific Considerations in IPV Cases

1. Reluctance and Recantation

The dynamics of IPV are such that victims may be reluctant to cooperate with the prosecution of IPV charges. IPV offenders may use threats, intimidation, or other forms of physical, sexual, financial or emotional coercion to control intimate partners and their children. Prosecutors should consider all of these dynamics of IPV, along with the considerations outlined in the *Decision to Prosecute Guideline*, when exercising their discretion in the prosecution of IPV charges.

If an IPV victim is recanting, the prosecutor should ask the investigating law enforcement agency to follow up to obtain further information about the reason for the recantation and to provide further support to the victim if necessary. If the victim is not available as a witness at trial, the prosecutor should consider whether there is sufficient evidence to proceed without the victim as a witness. Prosecutors should only seek a material witness warrant for the arrest of an IPV victim following consultation with the designated IPV prosecutor or DCP, and only where it is necessary in the interests of justice.

2. Prosecuting an Accused who is also a Victim of IPV

The duty to guard against myths, stereotypes, and victim blaming also applies in circumstances where the accused person is a victim of IPV. Where prosecutors have information that the accused is an IPV victim, prosecutors should consider that information in the context of all of the circumstances of the case.

“Dual” or “mutual” charges, that is, when each intimate partner is both an accused and a complainant in the same incident, raise particular concerns. In these circumstances, prosecutors must attempt to distinguish between consensual physical contact, assaultive behaviour, and defensive acts. Prosecutors must carefully consider the context including all available information on the dynamic of power and control in the relationship, the potential presence of coercive control, the size and abilities of the individuals, previous conduct, the current allegations, and any other relevant factor.

Further, in any case where there is information that the accused may be the victim of intimate partner violence at the hands of the complainant, the prosecutor must carefully consider that context in evaluating self-defence and defence of a third party. Notably, these defences can

Intimate Partner Violence & Victimization

Alberta Crown Prosecution Service - Practice Protocol

arise in response to *any* otherwise criminal act—not only in response to assault.⁵ For example, an IPV victim’s act of theft of the abuser’s weapon may constitute pre-emptive self-defence.

The context of intimate partner violence and coercive control warrant additional consideration where an IPV victim is charged as a party along with their abuser, with aiding the abuser, or with an offence that supported the abuser’s illegal activity. The role of violence and/or coercive control in the offence may impact the public interest in proceeding with a prosecution against an IPV victim. Prosecutors should consider that context in evaluating moral blameworthiness and whether a prosecution would be unduly harsh or oppressive for the accused (IPV victim).

Additionally, prosecutors should be aware of the heightened potential for false guilty pleas when women are charged with IPV offences. Generally, women are at a higher risk of wrongful convictions and false guilty pleas.⁶ Research shows that women charged with domestic violence offences who are innocent or have a defence, may be motivated to plead guilty by wanting to be with their children, by a lack of financial resources, or by a need to protect someone else.⁷

Overall, when prosecutors become aware that the accused may be a victim of IPV, they must carefully evaluate that information along with the special considerations outlined above, in the context of the whole case, and in conjunction with the factors outlined in the *Decision to Prosecute Guideline*.

⁵ See *R v Khill*, 2021 SCC 37 at 40.

⁶ Federal Provincial Territorial Heads of Prosecution Subcommittee, “Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada” (2018) at 228-229, online (pdf): *Public Prosecution Service of Canada* <<https://www.ppsc-sppc.gc.ca/eng/pub/is-ip/is-ip-eng.pdf>>.

⁷ *Ibid* at 227-228.