Policy:		
Intimate Partner Violence		
Policy Code: **IPV 1**	Effective Date: May 20, 2022	Cross-references: ALT 1 BAI 1 CHA 1 FIR 1 REC 1 RES 1 VIC 1 VUL 1

Principle

Intimate partner violence constitutes a very serious, prevalent, and complex problem requiring a special response which is pro-active, coordinated, and vigorous.

Intimate partner violence is different from many other crimes:

- it is prevalent in all sectors of society
- the physical, emotional, mental, and financial effects are often long-lasting and significant
- it tends to be repetitive, and the risk to the victim may increase upon external intervention (e.g., police or court involvement)
- the victim is often financially and emotionally connected with the offender so that any sanctions imposed upon the offender may adversely affect the victim as well
- the degree of violence can be extreme, with one in five homicides in Canada involving the killing of an intimate partner

Application of this Policy

For the purpose of this policy:

"intimate partner" includes any person – regardless of gender or sexual orientation – with whom the accused/defendant has, or has had, an ongoing close and personal or intimate relationship, whether or not they are legally married or living together at the time of the alleged criminal conduct.

"intimate partner violence" (IPV) includes:

- an offence involving physical or sexual assault, or the threat of physical or sexual assault, against an intimate partner
- an offence other than physical or sexual assault, such as criminal harassment, threatening, publication of intimate images without consent, or mischief, where there are reasonable grounds to believe the offence was carried out in order to cause or did in fact cause fear, trauma, suffering, or loss to an intimate partner
- an offence where the intimate partner is the target though not the direct victim of the criminal action of the accused, for example, where the accused has committed an offence against someone or something important to the intimate partner such as an assault on the intimate partner's child or new partner
- circumstances relating to the above which warrant an application for a section 810 recognizance
- an offence for a breach of the following court orders relating to the above circumstances:
  - bail, probation, or conditional sentence orders made on "K" files
  - restraining orders made under the former *Family Relations Act*
  - protection orders made under the *Family Law Act*
  - recognizances made under section 810

For administrative and record-keeping purposes, the BC Prosecution Service (BCPS) identifies and designates every intimate partner violence case approved for prosecution as a "K" file by including a "K" in the registry number of the court and Crown file.

Charge Assessment

Under the *Crown Counsel Act*, once a Report to Crown Counsel (RCC) has been received from the police, Crown Counsel are responsible for the decision to prosecute in accordance with the policy *Charge Assessment Guidelines* (CHA 1). This cannot be determined solely by the victim's wishes.

In intimate partner violence cases, where the evidentiary test is met, it is generally in the public interest to proceed with a prosecution.

Crown Counsel should assess charges on intimate partner violence cases without delay.

As a breach of a court order is an identified risk factor for future violence, it is important for Crown Counsel to consider approving charges, where appropriate, for breaches of bail, conditional sentence orders, and probation orders. For any breach involving harm or threats to, or intimidation of, an intimate partner, if the evidentiary standard of a substantial likelihood of conviction is met, generally there is a strong public interest in favour of prosecution. Even where the accused is not convicted of the substantive charge giving rise to the court order, in situations identified by the police as "highest risk", any provable breach of court order should be prosecuted.

Where there is an allegation of a breach of a protection order made under the *Family Law Act* (FLA), the *Child, Family and Community Service Act*, or a restraining order under the former *Family Relations Act* (FRA), Crown Counsel should consider a breach prosecution where the circumstances of the non-compliance are safety related. Protection orders under the FLA may be enforced by charging disobeying a court order pursuant to section 127 of the *Criminal Code* and restraining orders under the FRA may be enforced under the provisions of that previous Act and the *Offence Act*.

Where there is a decision not to lay a charge or where a stay of proceedings becomes appropriate, Crown Counsel should consider whether the safety of a victim or their family requires an application for a recognizance under section 810 of the *Criminal Code* (*Recognizances and Peace Bonds* (REC 1)). Crown Counsel should consider whether participation in the "*Respectful Relationships Program,*" or similar program administered by BC Corrections, would be appropriate as a condition of the recognizance, which for practical reasons requires a period of community supervision of at least a year (Appendix A).

Mutual charges should rarely be approved and mutual recognizances are rarely appropriate. In circumstances where mutual violence is alleged, Crown Counsel should attempt to distinguish assaultive behaviour from defensive or consensual conduct.

Alternative Measures

In appropriate circumstances, alternative measures may be considered if the most important objectives of prosecution in an intimate partner violence case can still be achieved (*Alternatives to Prosecutions - Adults* (ALT 1)).

In an intimate partner violence case, alternative measures should not be considered without careful consideration of the concerns of the victim and should only be pursued if:

- there is no significant physical injury
- there is no previous history of intimate partner violence

- Crown Counsel has no reasonable grounds to believe there is a significant risk of further intimate partner violence offences, taking into account relevant risk factors, and any risk assessment information provided by BC Corrections
- the use of alternative measures is not contrary to the public interest

It is important to note that BC Corrections program aimed specifically at intimate partner violence offenders, entitled the "*Respectful Relationships Program*," is not available on an alternative measures referral (Appendix A).

While an alternative measures referral may be considered at any stage of the proceeding, Crown Counsel should consider approving a charge and having conditions of release in place before making the referral.

Bail Considerations

Seeking Appropriate Conditions of Release or Detention

Crown Counsel should request a warrant whenever it is necessary to seek a detention order or conditions of release to protect the victim or other potential victims.

When formulating a position on bail, Crown Counsel should have particular regard for the safety of the public, including victims and other family members, especially children (*Bail – Adults* (BAI 1)). Crown Counsel must consider all available information regarding the risk factors, particularly those associated with an increase of intimate partner violence. If Crown Counsel has reasonable grounds to believe additional relevant information is available, they should request it from the police before making submissions at a bail hearing and, if necessary, ask for a remand.

For certain offences, section 515(4.1) of the *Criminal Code* requires a court to prohibit the accused from possessing firearms and other weapons in a release order unless the court considers that such a condition is not required to ensure the safety of the accused, or the safety and security of a victim or any other person. Crown Counsel should consider whether continued access to firearms, knives, and other weapons is appropriate, mindful that public safety, particularly that of the victim, is paramount.

When formulating a position on bail for accused persons who have previously been convicted of an IPV-related offence, Crown Counsel should consider the impact of the reverse onus provision in section 515(6)(b.1) of the *Criminal Code*.

If Crown Counsel has reasonable grounds to believe the circumstances of an intimate partner violence case involve court orders affecting the accused person, Crown Counsel should confirm the investigative agency has included those orders in the RCC. Possible relevant

orders include those made under the former *FRA,* the *FLA*, the *Child, Family and Community Service Act,* and the *Divorce Act*. Crown Counsel should review each of the orders and provide the relevant information concerning those orders to the court to minimize possible conflicts with bail conditions.

Substantial Likelihood of Severe Bodily Harm or Death – Mandatory Position

Where Crown Counsel has reasonable grounds to believe there is a substantial likelihood that the accused will cause severe bodily harm or death to another person, Crown Counsel must seek a detention order along with a "no contact" order pursuant to section 515(12) or 516(2) of the *Criminal Code*. Where a detention order is not made in such cases, Crown Counsel must ask the court to impose conditions to protect the victim, the victim's family, and other members of the public. Crown Counsel should give immediate consideration to a bail review in consultation with Administrative Crown Counsel.

Review of Bail Conditions

Where an accused has been arrested and released by the police, Crown Counsel should review the release documents to ensure there are adequate, enforceable conditions in place to protect the victim and the public. If necessary, where the accused has been released on an undertaking, Crown Counsel should follow the process in section 502(2) to apply to a justice to replace the undertaking with a judicial release order under section 515(1) or (2) containing the appropriate conditions. This process may require seeking a warrant under section 512.

If an accused person asks for a review of police-ordered conditions before the first appearance date, Crown Counsel should review the RCC from the police and, where necessary, contact the police and victim before formulating a position.

If the victim or an accused person requests the removal of a bail condition prohibiting contact between the accused and the victim, Crown Counsel should seek further information about the history of the relationship between the accused and the victim, and about the background of the accused, from available sources such as the victim, bail supervisor, or the police. In determining whether to consent to a bail review, including any change in "no contact" or other conditions, Crown Counsel should consider any relevant change in circumstances as well as the nature of the changes being requested; the power dynamics in the relationship; the needs and safety of the victim, the victim's family, and other members of the public; and any history of intimate partner violence. Crown Counsel should only consent to a review of bail conditions where there has been a change in circumstances.

Difference of Opinion on Bail – Consultation with Police (including "Highest-Risk" Cases)

The police may decide to initiate a risk assessment of the accused when they have concerns that an intimate partner violence case may be "highest risk." Where the police have identified

the case as "highest risk," and Crown Counsel has reasonable grounds to believe detention is not necessary or that any bail conditions recommended by the police are not necessary, Crown Counsel should consult with the police before the bail hearing and should give the police an opportunity to provide any further relevant evidence or information.

If, after such consultation, the police and Crown Counsel still disagree about whether detention or any bail conditions recommended by the police are necessary, Crown Counsel should consult a Regional Crown Counsel, Director, or their respective deputy before conducting the bail hearing.

In cases not identified as "highest risk", if Crown Counsel disagrees with the police about whether detention or any bail condition recommended by the police is necessary, and Crown Counsel has reasonable grounds to believe that the police may have further relevant evidence or information to support an application for detention or the imposition of a particular condition, Crown Counsel should make a reasonable effort to consult with the police before conducting the bail hearing.

In all cases, Crown Counsel should make written notes on the file outlining the basis of the disagreement and the reasoning behind the position taken by Crown Counsel.

Breach of Bail

If Crown Counsel has reasonable grounds to believe an alleged breach of a bail condition raises concerns for the safety of any person on a "highest risk" case, Crown Counsel should apply to revoke bail and seek a detention order. In all other cases, if Crown Counsel has reasonable grounds to believe an alleged breach of a bail condition raises concerns for the safety of any person, Crown Counsel should consider applying to revoke bail in accordance with the process set out in section 524 of the *Criminal Code*.

Child Protection – *Child, Family and Community Service Act*

Section 14 of the *Child, Family and Community Service Act* requires that every person who has reason to believe that a child "needs protection," as that is defined under section 13 of the Act, must promptly report the matter to a Director or child protection worker designated by the Director. It is generally reasonable to expect that the police will have made a report where required. If there is reason to believe that the police have not made a report or where Crown Counsel receive additional information not contained in the RCC that provides reason to believe that a child needs protection as defined by the Act, Crown Counsel are required by law to make a report.

Providing Information to Victims (including "Highest-Risk" Cases)

All victims should be advised of the availability of victim services.

Crown Counsel or designated BC Prosecution Service personnel should provide timely information to the victim about any charges laid, release conditions, or other developments in the case as required by the BC *Victims of Crime Act*, the federal *Canadian Victims Bill of Rights* and the policy on *Victims of Crime – Providing Assistance & Information to* (VIC 1).

In cases identified by police as "highest risk," Crown Counsel or designated BC Prosecution Service personnel should ensure the victim and police are notified of release, conditions of release, and court disposition as soon as possible. This will assist the victim to be in a position to contact the police if necessary. It will be for the police to notify other justice/child welfare partners (e.g., BC Corrections, Ministry of Children and Family Development) as soon as possible unless there is an agreed practice in the community for Crown Counsel to do so.

Reluctant Witnesses

The prosecution of intimate partner violence cases often involves a reluctant victim or other witness. The accused and others may exert inappropriate influence at any stage of the court process, and victims often minimize the severity, or deny the existence, of violence in the relationship. Crown Counsel should try to ascertain the reasons for any reluctance to testify and develop strategies to respond. When there are reasonable grounds to believe the victim or a witness has been subjected to threats or interference, Crown Counsel should refer the matter to the police for investigation.

Victim services, or cultural or Indigenous victim support organizations may assist victims through the court process.

Victims should be personally served with a subpoena to testify, but only in limited circumstances should a material witness warrant be sought for a victim who has failed to appear. Before applying for a material witness warrant, Crown Counsel should consult with Administrative Crown Counsel and consider all of the circumstances, including the likelihood the victim will testify and any explanation for the victim's failure to attend court, the severity of the alleged intimate partner violence, and the need to protect children and others. Crown Counsel should also consider the potential to further alienate the victim from the criminal justice system, or adversely impact their dependents. Crown Counsel should also consider the increased vulnerability of female victims, giving particular attention to the circumstances of Indigenous female victims.

Where Crown Counsel is unable to confirm that the victim will testify, they should consider whether other evidence is available.

Testimonial Accommodations and Publication Bans

Sections 13 and 19 of the *Canadian Victims Bill of Rights* provides that every victim has the right to request testimonial aids when appearing as a witness in proceedings, through the mechanisms provided by law.

Crown Counsel should consider whether testimonial accommodations or a publication ban are available under sections 486 to 486.5, and 486.7. In appropriate circumstances, the court can make an order for:

- the exclusion of the public or the witness to be out of the public view (section 486(1))
- a support person or subject to availability a courtroom dog (sections 486.1 and 486.7)
- the witness to give testimony from a different room or behind a screen or other device (section 486.2)
- cross examination by appointed counsel (where the accused is unrepresented) (section 486.3)
- a publication ban regarding the victim's identity (sections 486.4 and 486.5)

In rare cases, where appropriate, Crown Counsel may also consider applying for an order under section 486.31 of the *Criminal Code*, directing that any information that could identify a witness not be disclosed in the course of the proceedings or an order under 486.7 of the *Criminal Code*, to protect the security of a witness. Prior to making such an application, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy.

Preparation for Hearing

Where there are reasonable grounds to believe there is a significant potential for serious bodily harm or death, or if there is a vulnerable victim (*Vulnerable Victims and Witnesses* (VUL 1)), the file should be assigned to trial counsel at an early date. The assigned Crown Counsel should:

- increase communication and coordination with the victim, police, victim services, Ministry of Children and Family Development, and Indigenous organizations
- seek an early trial date
- ensure early identification and notice to the victim of any testimonial accommodations or publication bans that may be available under sections 486 to 486.31 and 486.7 of the *Criminal Code*

Resolution Discussions

Prior to engaging in resolution discussions or directing a stay of proceedings in an intimate partner violence case, Crown Counsel should consider the policy on *Resolution Discussions* (RES 1).

Sentencing

Victims should be given the opportunity to provide a victim impact statement and information pursuant to section 4 of the *Victims of Crime Act*, and sections 15 and 19 of the *Canadian Victims Bill of Rights*.

Crown Counsel should bring to the attention of the court any aggravating circumstances and any previous convictions for IPV-related offences.

Evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or offender's family is an aggravating circumstance for which the sentence should be increased. Section 718.2(a)(ii) of the *Criminal Code* requires a court sentencing the offender to take it into consideration.

When formulating a position on sentence for accused persons who have previously been convicted of an IPV-related offence, Crown Counsel should consider the impact of section 718.3(8) of the *Criminal Code* which may permit the sentencing judge to impose a term of imprisonment that is more than the maximum provided for some indictable offences. Crown Counsel should be mindful of section 718.201, which requires the court to consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Indigenous female victims.

Where community supervision is appropriate, Crown Counsel should consider the need for the offender to participate in the program offered by BC Corrections entitled the "*Relationship Violence Prevention Program*" (Appendix A) and request a Pre-Sentence Report if appropriate.

Crown Counsel should seek conditions that will protect the victim. These may include a "no contact" and reporting requirement, as well as attending, participating in, and successfully completing any counselling or program.

Crown Counsel should consider requesting an order under section 743.21 prohibiting the offender from communicating, directly or indirectly, with any victim or witness during the custodial period of a sentence.

Crown Counsel should consider seeking a DNA order under section 487.051.

Crown Counsel should consider whether a weapons prohibition is mandatory or discretionary under section 109 or 110 of the *Criminal Code*, having particular regard for the provisions under either section 109(1)(a.1) or 110(2.1), which deal specifically with intimate partner violence. Weapons prohibitions should cover the enumerated items in section 109, 110, or 810(3.1) plus imitation firearms (*Firearms* (FIR 1)).

Where a prohibition order has been made, Crown Counsel should also seek an order under section 114 that a firearms licence be surrendered at the same time that firearms are forfeited under section 115.

Crown Counsel should consider whether a restitution order is appropriate under section 738 or 739 of the *Criminal Code* and take reasonable steps to provide victims with an opportunity to indicate whether they are seeking restitution for their losses and damages.

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons (First Nations, Métis, and Inuit), whether as a result of overtly racist attitudes or culturally-inappropriate practices, extends to all parts of the criminal justice system.

The history of colonialism, displacement, and residential schools in Canada has translated into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.[1]

The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.[2]

The continuing consequences of colonialism for Indigenous persons in Canada provide the necessary context for any charge assessment involving an Indigenous person as a victim or potential accused. These consequences "must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views".[3]

Indigenous persons have a unique position within Canadian society, requiring culturally-appropriate and legally-informed policies, practices, and procedures at all stages of the criminal justice process.

For cases involving Indigenous persons as victims, Crown Counsel should ensure that their positions reflect the gravity of the problem of violence against Indigenous persons in our

1 *R v Ipeelee*, 2012 SCC 13
2 *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016
3 *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58; *R v Barton*, 2019 SCC 33 at paras 198-200

society, particularly Indigenous women and girls, and the serious injustices they have faced.[4] Crown Counsel should recognize that there is a strong public interest in favour of prosecution of intimate partner violence cases involving Indigenous women or girls as victims. However, alternatives to prosecutions may be considered in accordance with ALT 1, particularly when a traditional or culturally based Indigenous program is available.

For cases involving the abuse of an intimate partner, section 718.201 of the *Criminal Code* also requires a court, when imposing a sentence, to consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Indigenous female victims.

Crown Counsel should also recognize that in cases that involve the abuse of a person who is vulnerable because of personal circumstances, including because a person is Indigenous and female, section 718.04 of the *Criminal Code* requires that the court must give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence (*Vulnerable Victims and Witnesses* (VUL 1).

4 *R v Barton*, 2019 SCC 33 at para 198

APPENDIX A

BC Corrections Respectful Relationships Program

BC Corrections provides the *Respectful Relationships Program* to medium- and high-risk intimate partner violence offenders and other persons (e.g., section 810 defendants) ordered by the court to attend. The program is comprised of two consecutive components: *Respectful Relationships (Part One)*, a 10-week program delivered by BC Corrections staff, and the *Relationships (Part Two)*, a 11-week program that is delivered by contracted service providers.

The combined length of *Respectful Relationships* is 21 weeks (approximately five months). Taking into account program scheduling realities, a minimum one year's community supervision is recommended to ensure completion of both programs.