

Sexual Violence within a Family

How the *Protection Against Family Violence Act* can help

Jamie lives with their partner. Sometimes, Jamie's partner demands that Jamie have sex with them even though Jamie does not want to. Jamie's partner will sometimes force Jamie to have sex.

Alex's parent has a new partner who lives with them. That partner touched Alex in a sexual way but told Alex not to tell anyone.

If you have had an experience like Jamie or Alex with a family member, you are not alone. You have options.

In Alberta, there are protections for family members from family violence.

The *Protection Against Family Violence Act* defines a family member and family violence, and describes two protection orders for family members to keep away the person who caused harm.

Produced in collaboration with:



This tip sheet describes legal responses to sexual violence. It does not cover all responses available to those who have experienced sexual violence. Read on for more info on organizations that can provide support. The other tip sheets in this series are available at: www.cplea.ca/sexual-violence/

Who is a family member?

A family member is:

- a current or former spouse
- a current or former adult interdependent partner
- a person you are living with or have lived with in an intimate relationship
- a parent of a child (regardless of the marital status or living arrangements of the parents)
- a person related by blood, by marriage or adoption
- a person related because of an adult interdependent relationship
- a child in the care of the above persons
- a person you live with where one of you has care and custody over the other under a court order

A family member does **not** include someone you are dating if you do not live together or if you do not have children together. A family member also does **not** include someone you live with but are not intimate with, such as a roommate. You have other options available in these situations. For more information, see the other tip sheets in this series.

An **adult interdependent partner** is a person in an adult interdependent relationship. An adult interdependent relationship is a term unique to Alberta for relationships outside of marriage and governed by Alberta's *Adult Interdependent Relationships Act*. For more information, see CPLEA's **Living Together** tip sheet.

“If I am not a Canadian citizen, how will reporting family violence affect my immigration status?”

You may be scared to report family violence because of how it will affect your immigration status. See CPLEA's **Leaving an abusive relationship ... if you are not a Canadian citizen** tip sheet for more information.

What is family violence?

Family violence includes:

- any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member. This includes punching, kicking, breaking personal items, and damaging doors or walls.
- any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member
- forced confinement
- sexual abuse (including a romantic partner or spouse forcing you to have sex with them)
- stalking

Family violence does not include correction toward a child if the force does not exceed what is reasonable in the circumstances.

Emergency Protection Orders (EPOs)

An EPO is a **no contact order** for emergencies. You can get one 24 hours a day, seven days a week. A judge in Provincial Court or a justice of the peace will hear your application and decide if an EPO is appropriate. If they grant an EPO, it will include terms that meet your specific needs.

An EPO can:

- require an abusive family member to:
 - stop entering or going near your home, workplace, children's schools and other places you regularly go
 - stop contacting or communicating with you and others
- give you and other family members the right to live in your home without the person who caused harm (even if your name is not on the lease or title)
- give police the authority to:
 - remove the person causing harm from your home
 - seize and store weapons used or threatened to be used in family violence

Am I eligible for an EPO?

You can apply for an EPO if **all** these three statements are true:

1. You are experiencing family violence.
2. You have good reason to believe your family member (the person who caused harm) will continue to carry out family violence.
3. The situation is serious or urgent such that you need an order to immediately protect you and other family members living with you.

If the situation is not urgent, then a QBPO (Queen's Bench Protection Order) may be more appropriate.

How do I apply for an EPO?

You can apply for an EPO at any time of day, seven days a week in many ways:

- You or your lawyer can apply in person at your local courthouse during business hours.
- You can contact Legal Aid Alberta's Emergency Protection Order Program (EPOP) during business hours. Staff will arrange for you to meet with a lawyer who can provide free advice about EPOs and other protection orders. The lawyer can make the application for an EPO on your behalf. Call 1.866.845.3425 for more information.
- In Edmonton or Calgary, visit the Bail Hearing Office. It is open 24 hours a day, seven days a week.
- Contact the Victim Services Unit in your area. Visit <http://bit.ly/2N77nbi> for locations across Alberta.
- In emergencies, call the police. Police can make applications on your behalf. They can also press criminal charges against the person causing harm, if appropriate.
- Call the Family Violence Info Line at 310.1818 (24 hours a day) for information about services in your area.

The application can be in person or by telephone. The judge or justice of the peace will hear your story and then make a decision.

You do not have to give the person advance notice of your application for an EPO. This is a *without notice* or *ex parte* application.

An EPO is not enforceable until the person causing harm gets a copy. Do not give a copy to them yourself. The police or another third party (such as a process server) will give a copy to them.

How long does an EPO last?

Within nine working days of the EPO being issued, the Court of Queen's Bench will review the EPO. The EPO will say the date, time and location of the review hearing.

At the review hearing, the justice will have a copy of the EPO, the application and a transcript of what was said when the EPO was first granted. The justice will consider any additional evidence submitted by you or the respondent. Usually this evidence is in an affidavit – a written statement made under oath.

After considering all the evidence, the justice can do one or more of the following:

- revoke (cancel) the EPO
- direct an oral hearing to be held
- confirm the EPO
- grant a QBPO instead

You do not need a lawyer for the review hearing but you should consider having one. Legal Aid Alberta will provide you with a free duty counsel lawyer for the review hearing regardless of your financial situation. If the justice orders another oral hearing, you will no longer be eligible for free help from a duty counsel lawyer. You will need to apply for legal aid or hire a lawyer to help you.

Queen's Bench Protection Orders (QBPOs)

A QBPO is like an EPO except that:

- it is for situations that are not emergencies
- you must notify the person causing harm that you are applying for a QBPO
- a judge can include more terms in a QBPO
- it is granted by a justice of the Court of Queen's Bench during regular court hours

Am I eligible for a QBPO?

You can apply for a QBPO if you have experienced family violence by a family member.

How do I apply for a QBPO?

You can apply for a QBPO during courthouse hours.

1. **Fill out two court documents:**

- Originating Application – Protection Against Family Violence Act
- Queen’s Bench Protection Order Questionnaire

You can find these forms on the Alberta Courts website:

<http://bit.ly/3rc9Klq>

Someone else can apply for you, if you give them consent to do so.

2. **Take your completed forms and a photocopy of them to the courthouse and go to the Court of Queen’s Bench counter.** You must swear that the contents of your Questionnaire are true before a commissioner for oaths or notary public. Court clerks can help you with this. Make sure you have photo ID with you.
3. **File the documents with the court clerk.** The court clerk will help you pick a date for the court hearing (called an application).
4. **Give (serve) filed copies of the documents to the family members who are abusing you and who you have named in the court documents.** You can hire someone to serve copies of the documents on the person causing harm so that you do not have to see them. This person is a process server. For more information on serving documents on an abusive party, see CPLEA’s information sheet called **Serving Documents on an Abusive Party** at www.cplea.ca/publications
5. **Go to court on the scheduled date.** If you need legal advice on the day of the hearing, you can talk to duty counsel at the courthouse. During the court hearing, the person causing harm has the right to challenge your version of events. They may say things you do not agree with. Do not interrupt, make faces or roll your eyes. Try not to be confrontational or sarcastic. The judge may ask you to respond to what the other person says. You can bring a trusted friend or family member, or other supporter, with you for support. After the judge hears from both sides, they will decide whether to issue a QBPO.
6. **If the judge issues a QBPO, it does not take effect until it is filed and served on the person causing harm.** A peace officer or process server can give a copy of the QBPO to the person. Once the person has a copy, the order is enforceable.

How long does a QBPO last?

The order will say how long it is valid for. It can last for up to one year, and the court can extend it for additional one-year periods. If you would like to extend the QBPO, you must apply to court to have it extended. You should do this before the original order expires.

Exclusive Possession Orders

A judge can order that you be allowed to live in your home without your family member. The judge grants you exclusive possession of the family home. An EPO or QBPO can give you exclusive possession. You can also apply for exclusive possession under Alberta's *Family Law Act* or *Family Property Act*.

For more information, see CPLEA's **What you need to know about ... Exclusive Possession Orders** tip sheet. This resource and more are freely available on CPLEA's website at www.cplea.ca/publications

Often sexual violence is one part of bigger family law issues, such as parenting, separation or dividing property. For more information on domestic violence, see CPLEA's **Domestic Violence** series. For more information on family law, see CPLEA's **Families and the Law** series. These resources and more are freely available on CPLEA's website at www.cplea.ca/publications

Do you need help?

If you are in danger, call 911 immediately.

There are support services available to help you. These include counselling services, and support before, during and after the legal process.

To connect with supports in your area:

- Call the **Family Violence Info Line** at 310.1818 to get help anonymously
- Call or text **Alberta's One Line for Sexual Violence** (1.866.403.8000)
- Call the **Canadian Human Trafficking Hotline** (1.833.900.1010) or chat live at www.canadianhumantraffickinghotline.ca
- Call or text **Alberta 211** (2-1-1) or chat live at www.ab.211.ca
- See a list of sexual assault centres across Alberta at aasas.ca/get-help

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It provides general information on Alberta law only.

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The other tip sheets in this series are available at:
www.cplea.ca/sexual-violence/

Sexual Assault Centre of Edmonton

SACE supports children, youth, and adults who have experienced sexual abuse or assault, and educates the public about sexual violence.

www.sace.ca

Elizabeth Fry Northern Alberta

EFry supports women and girls who are or may be at risk of becoming criminalized.

www.efrynorthernalberta.com

Centre for Public Legal Education Alberta

CPLA makes the law understandable for Albertans by providing reliable and free legal information.

www.cplea.ca