# Improving Protection Orders: Consultation Paper for Family, Child Protection, and Civil Law

December 2025

LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

## About the Law Commission of Ontario

The Law Commission of Ontario (LCO) is Ontario's leading law reform agency. The LCO provides independent, balanced, and authoritative advice on complex and important legal policy issues. Through this work, the LCO promotes access to justice, evidence-based law reform, and public debate.

The LCO's reports are practical and principled long-term resources for policymakers, interested parties, academics and the public. Our reports have led to legislative amendments and changes in policy and practice. Our work is frequently cited in judicial decisions, academic articles, government reports and the media.

A Board of Governors, representing a broad cross-section of leaders within Ontario's justice community, guides the LCO's work.

More information about the LCO and our projects is available at www.lco-cdo.org.

LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

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## Case Law Review & Survey Design

This Consultation Paper includes research findings from the LCO's family court case law review. Laura Snowdon, Lillianne Cadieux-Shaw, Vanshika Dhawan and our student researchers designed our data collection instrument from two templates: one developed by Dr. Rachel Birnbaum, and the second created by Professors Jennifer Koshan, Janet Mosher, and Wanda Wiegers for their study of coercive control. Dr. Salina Abji leads our related survey design and analysis.

## Disclaimer

The opinions and points of view expressed in the LCO's research, findings, and recommendations do not necessarily represent the views of our Advisory Committee members, consultants, funders, or supporters.

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# 1 Introduction

## 1.1 The Law Commission of Ontario's Protection Order Project

This is the first of two Consultation Papers for the Law Commission of Ontario's (LCO's) Improving Protection Orders project.[1] The LCO is researching how to improve protection orders to better prevent intimate partner violence[2] and family violence[3] in Ontario.

Protection orders are legal tools that are supposed to keep people safe from violence. Protection orders try to prevent violence by placing specific conditions on a person causing harm. For example, a protection order might limit where that person can go, what they can do, and who they can contact.

Many different types of protection orders are used in cases of intimate partner and family violence in Ontario. Protection orders can include restraining orders, peace bonds, bail release orders or undertakings, exclusive possession orders, and criminal sentences (like conditional sentences or probation and parole orders) with protective conditions.[4] Some First Nations also have their own protection orders.

We know that when protection orders are working well, they can save lives. But in Ontario, reports about the inaccessibility and ineffectiveness of protection orders suggest the promise of safety they offer is an elusive one. The LCO has heard that Ontario's protection order landscape is too complex, too outdated, too slow, too expensive, and too biased to provide meaningful protection to everyone who needs it.

The LCO is working to untangle and modernize the maze of laws and policies governing protection orders in Ontario. The LCO is examining challenges relating to access, process, evidence, conditions, duration, and enforcement of different types of protection orders in Ontario. We are also exploring the lack of coordination across different protection order processes in the province, as well as the lack of coordination between the legal, policing, community service, and other sectors involved in protection orders. Our final report will recommend changes to help make protection orders more accessible and effective for everyone affected by intimate partner and family violence.

Our project is grounded in the reality that some communities of women and children experience disproportionately high rates of intimate partner and family violence, especially those who are marginalized within Canadian society because of historical and ongoing oppressions.[5] Indigenous women; Black and racialized women; Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, non-binary, and other sexually and gender diverse (2SLGBTQI+) people; people living in Northern, rural, and remote communities; people with disabilities; non-status and temporary status migrants, immigrants and refugees; children and youth; and seniors are more at risk of being targeted by gender-based violence.[6] People with these identities, and especially those with two or more intersecting identities, are also often underserved when they experience violence.[7] The LCO seeks to center the voices and experiences of the individuals and communities who suffer most from protection order failures throughout our work.

This Consultation Paper is one component of the LCO's Protection Order project. Our work also includes:

- A case law analysis of protection order decisions
- A comparative review of protection order strategies outside Ontario
- Data collection from authorities and organizations working with protection orders
- Interviews and focus groups
- Surveys for people in Ontario to share their personal and professional experiences with protection orders and their ideas for change

A consolidated list of consultation questions is included as Appendix A.

The LCO leads this project supported by our expert Advisory Committee, specialized consultants, and dedicated student researchers. A list of Advisory Committee members and project contributors can be found on page 3.

## 1.2 About the Law Commission of Ontario (LCO)

The LCO is Ontario's leading law reform agency. The LCO provides independent, balanced, and authoritative advice on complex legal policy issues. We evaluate laws impartially and transparently, in consultation with a wide range of affected individuals, organizations, and experts. We produce evidence-based recommendations that are tested through inclusive and comprehensive public engagement processes.

The LCO's reports are practical and principled long-term resources for policymakers, interested parties, academics and the public. Our reports have led to legislative amendments and changes in policy and practice. Our work is frequently cited in judicial decisions, academic articles, government reports and the media.

In addition to our Improving Protection Orders project, the LCO is also undertaking projects addressing AI in the Civil/Administrative Justice System, Criminal AI Lifecycle, Consumer Protection in the Digital Marketplace, and Environmental Accountability.

More information about the LCO is available at www.lco-cdo.org.

## 1.3 Catalysts for Reforming Protection Orders

Accessible and effective protection orders can deter violence or reduce the severity and frequency of violence; encourage safety planning; and allow for increased monitoring and quick intervention by authorities.[8]

It is clear, however, that protection orders are not fulfilling their potential. According to Ontario's Domestic Violence Death Review Committee, at least 434 people were murdered in acts of intimate partner violence across the province between 2003 and 2021.[9] Most victims were women and children. The overwhelming majority of these murders were preceded by a history of violence – and in a quarter of cases, the perpetrator was known to have breached an existing protection order or other court order.[10]

The epidemic of gender-based violence, the outdated nature of protection order laws and processes, and the fact that protection orders are often inaccessible and underenforced mean that protection orders are failing to prevent violence. This section explores these urgent reasons for reforming protection orders in Ontario.

### 1.3.1 The Epidemic of Gender-Based Violence

Gender-based, intimate partner, and family violence are among the most pressing human rights concerns in the world.[11] Such violence primarily targets women and causes profound, widespread, and sometimes deadly harm to individuals, their loved ones, and our shared communities.

These forms of violence are also public health emergencies. Over the past five years, inquiries, inquests, and the COVID-19 pandemic have underscored the excessive prevalence of gender-based, intimate partner, and family violence and the pressing need for a meaningful response to ending them.[12] Such a response is also required by Canada's international legal obligations to protect women and children from gender-based violence.[13]

In 2023, the Mass Casualty Commission (the joint federal-provincial public inquiry into the 2020 Nova Scotia mass casualty) recommended that all levels of government in Canada declare gender-based, intimate partner, and family violence to be an epidemic that warrants a sustained, society-wide response.[14] This recommendation amplified a similar call from the 2022 intimate partner violence-related inquest into the murders of Carol Culleton, Anastasia Kuzyk, and Nathalie Warmerdam (the CKW Inquest).[15]

In the wake of the Mass Casualty Commission and the CKW Inquest's recommendations, advocates across the country have lobbied for governments to declare gender-based, intimate partner, and family violence an epidemic and to provide funding for prevention and intervention that is proportionate to the scale of the problem. Many municipal governments in Ontario have answered the first part of this call,[16] though Ontario has not.[17]

However, Ontario has otherwise sought to strengthen legal protections for intimate partner violence while the LCO has been undertaking this project. The LCO contributed early research and findings about protection orders to support the Government's efforts. In August 2024, the LCO testified as an expert witness at the Standing Committee on Justice Policy's Study on Intimate Partner Violence and advanced several preliminary recommendations to improve protection orders.[18] One of the LCO's recommendations was that Ontario should allow designated representatives to apply for protection orders on behalf of, and with the consent of, people in need of protection. Ontario recently adopted this recommendation in a new law.

Ontario's *Protect Ontario Through Safer Streets and Stronger Communities Act* received Royal Assent in June 2025.[19] The new law will allow additional persons to apply for restraining orders in family court on behalf of people in need of protection. In late 2025, the Government launched consultations to determine who should be able to apply for restraining orders on behalf of survivors, and to consider potential new legislation to streamline the

enforcement of restraining orders made in other provinces and territories in Ontario.[20]

The Government has stated that Ontario is also exploring ways to enhance information sharing between family and criminal courts, and developing more supports for survivors.[21]

### 1.3.2 Confusing, Disconnected, and Outdated Protection Order Laws

Many different laws govern protection orders in Ontario. There are provincial laws (including family and child protection laws), federal laws (including the *Criminal Code of Canada*), and Indigenous laws that are intended to provide protection from intimate partner and family violence. These laws offer different types of protection orders that vary in terms of eligibility criteria, procedures, evidentiary standards, conditions, durations, and enforcement.[22]

Some protection order processes are initiated by people in need of protection (when a survivor applies for a restraining order, for example), while others result from related proceedings (such as bail release orders) and may be imposed despite survivors' wishes. These different processes are often complex and uncoordinated. There are also many police procedures, court rules, and other policies that may affect survivors.

The LCO has heard that many people in need of protection cannot navigate Ontario's complicated patchwork of protection order laws and processes. For example, it is not always clear what protections may be available to them, or under which type of law they can or should seek a protection order. This access to justice issue is especially concerning because many people targeted by intimate partner and family violence have urgent safety needs, and a high rate of people in need of protection are forced to interact with the legal system unrepresented.[23]

Another complication is the number of different courts in Ontario that are involved in protection order processes, and the procedural delays associated with moving through those courts. While some courts have the jurisdictional authority to grant protection orders that are governed by federal laws, others can only hear protection order applications under provincial laws. These jurisdictional limits mean that different protection orders are granted by different courts. In Ontario, the relevant courts include Superior Courts of Justice, Unified Family Courts, Ontario Courts of Justice, Toronto's Integrated Domestic Violence Court, and independent Indigenous courts. These courts may also have specialized processes or streams for cases of intimate partner and family violence.

The result of this landscape is that anyone seeking legal protection from intimate partner or family violence must know about protection orders, understand which type of protection order is applicable to their situation, determine which court to apply to, properly follow all the procedural requirements of that court, present evidence to prove their need for a protection order, advocate for conditions in the order that align with their safety needs and for an appropriate duration, report breaches of the order to the police, and hope for compliance and effective enforcement. The LCO has heard that Ontario's outdated protection order laws and processes are failing people in need of protection at each step in this sequence of events.

It is also common for people affected by intimate partner and family violence to be caught in parallel legal system proceedings, which can take years to resolve. This can drain their time, energy, and finances – precious commodities when lives and safety are at risk.

Parallel legal system involvement in these cases can also result in inconsistent or conflicting court orders, which can be impossible for protected people and individuals bound by the orders to understand and abide by, and for the police to enforce.

### 1.3.3 Inaccessible and Ineffective Protection Orders

The LCO has heard about many barriers preventing people from seeking and securing protection orders, including barriers to reporting violence;[24] lack of awareness that protection orders exist; lack of legal information and representation to pursue a protection order; knowledge or belief that protection orders will not work; the risk of retaliation; and urgent safety needs that cannot be met by lengthy and convoluted protection order processes.

There are also barriers in the courtroom. Applicants must meet a high standard of proof to get a protection order. The LCO's review of 76 reported Ontario family court decisions from 2021 to 2023 revealed that many women who seek restraining orders are not believed. Women's applications were dismissed more than half the time.[25]

In restraining order case law, judges frequently acknowledge an applicant fears her intimate partner will hurt her, but conclude her fear is not reasonable,[26] or that a restraining order would be an unjustifiable restriction on the respondent's liberty if imposed or breached.[27]

The LCO found that some judges are reluctant to impose restrictions on respondents even after making findings of violence.[28] And where children are involved, judges may prioritize a father's role as a parent over a mother and children's safety.[29]

Intimate partner and family violence experts in Canada have criticized judicial decisions on protection orders for failing to accord appropriate weight to the safety, equality, and related human rights of the women and children who predominantly experience these harms. In terms of the judicial balancing of applicants' and respondents' rights in civil protection order hearings, Professor Linda Neilson has suggested that the pendulum has swung too far in favour of respondents.

Following her review of recent case law, Professor Neilson reported:

> *One might expect the internationally recognized human rights of women and children to protection from violence to be the core consideration in civil protection cases. Yet, on balance, the pattern of Canadian civil protection case law continues in 2019 to reflect considerably more emphasis on concerns about restricting the liberty interests of perpetrators (associated with [section 7 of the Charter]), than on the rights of women and children to equality before and under the law and to equal protection and benefit of law (section 15 of the [Charter]) and the associated internationally-recognized human rights of women and children to freedom from violence.*[30]

For applicants who successfully prove their need for safety, the protection orders they receive often do not actually prevent violence. This is in part because protection orders may not contain the conditions necessary to keep people safe. For example, Canadian and American studies have documented a judicial reluctance to include provisions relating to children in protection orders granted to protect their mothers.[31]

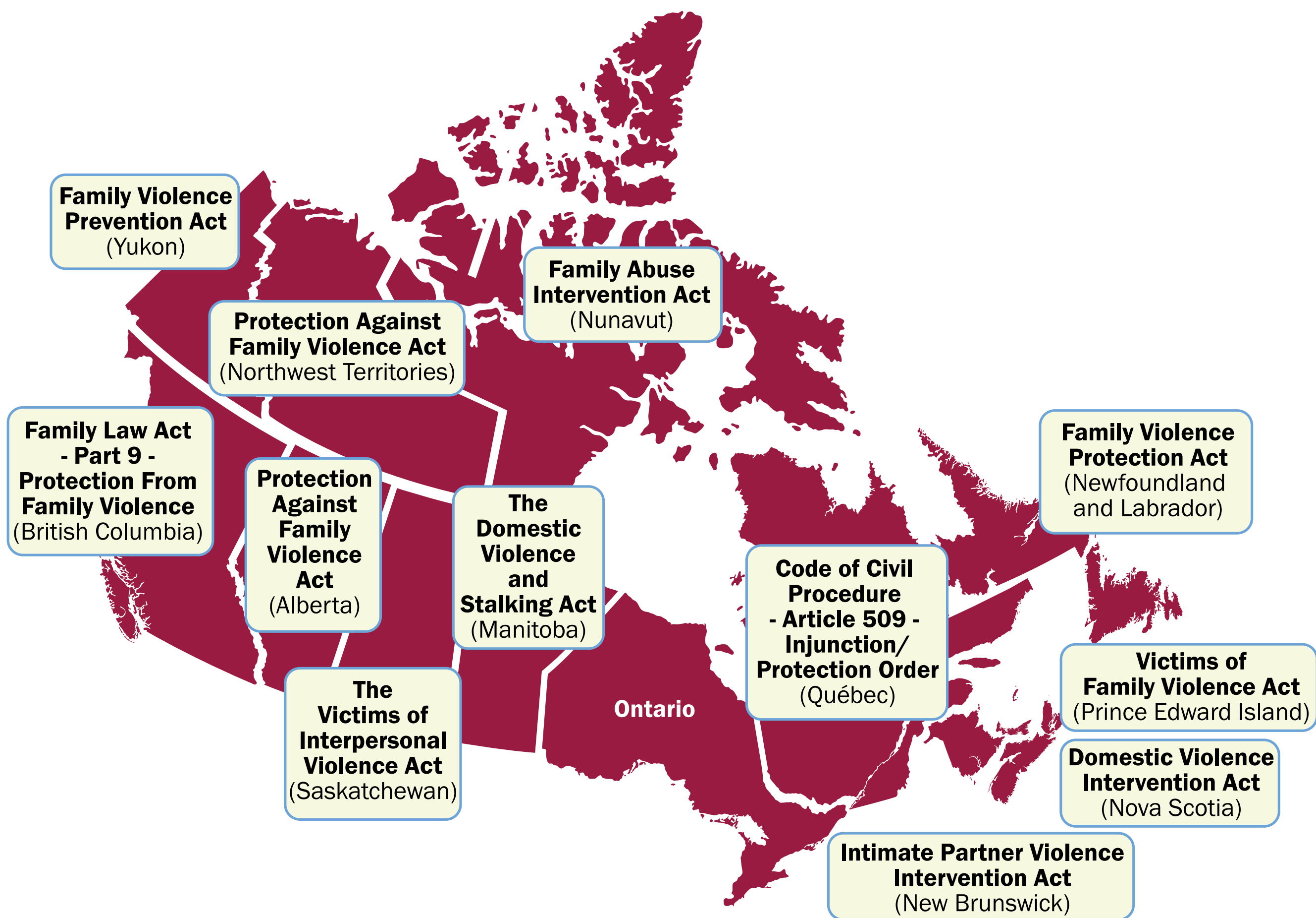
There are also significant issues with non-compliance and a lack of adequate enforcement. Protection orders in Canada are breached so often that they have been described as "a piece of paper [that] does not stop a knife or a bullet",[32] "a joke",[33] and "not worth the paper they're written on."[34] One legal clinic the LCO spoke to advises their clients that even if you can get a protection order, "it's not a magic shield."[35]

In 2022, Ontario's CKW Inquest brought the deadly consequences of protection order enforcement failures into focus. The CKW Inquest examined the murders of three women by a man who was deemed a high risk to recommit intimate partner violence. The perpetrator was supposed to be monitored by Ontario's probation service at the time he committed the murders. He had repeatedly breached the conditions of his probation order, including by stalking one of the victims and refusing to attend a court-mandated treatment program for men who have used violence against their intimate partners. Probation staff were aware that the perpetrator had prior convictions for intimate partner violence involving two of the women he murdered and that he was not attending the required treatment program, but did not charge him for breaching the conditions of the protection order.[36] This is only one of many reports of underenforced protection orders in Ontario.

### 1.3.4 More Advanced Protection Orders in Other Jurisdictions

When it comes to protection order legislation, Ontario is behind the rest of Canada. Ontario is one of the only provinces or territories in Canada that does not have civil protection order legislation for intimate partner and family violence.[37]

## Mapping Protection Order Legislation Across Canada



In most provinces and territories, civil protection orders are created by standalone legislation that specifically addresses intimate partner and family violence.[38] Survivors can pursue protection orders through that legislation rather than being limited to family, child protection, and criminal statutes, and Indigenous laws where applicable. Orders are generally available on an emergency basis, in recognition of the serious nature of the harms facing people in need of protection. Emergency protection orders are particularly important because they can prioritize safety and enhance protection at a time when violence is known to escalate.[39] In Ontario, however, it can take people in need of protection months to years to obtain a protection order.[40]

Ontario almost had its own standalone civil protection order legislation. Bill 117, the *Domestic Violence Protection Act, 2000*, was assented to in December 2000, but never came into force because it was not proclaimed.[41]

Over two decades since the *Domestic Violence Protection Act* was proposed in Ontario, this Consultation Paper draws on promising practices in other jurisdictions to explore whether Ontario should have standalone civil protection order legislation, and what that legislation might look like.

Other Canadian practices to examine include British Columbia's Protection Order Registry, Saskatchewan's *Interpersonal Violence Disclosure Protocol (Clare's Law) Act*, and Nova Scotia's *Intimate Images and Cyber-Protection Act*.

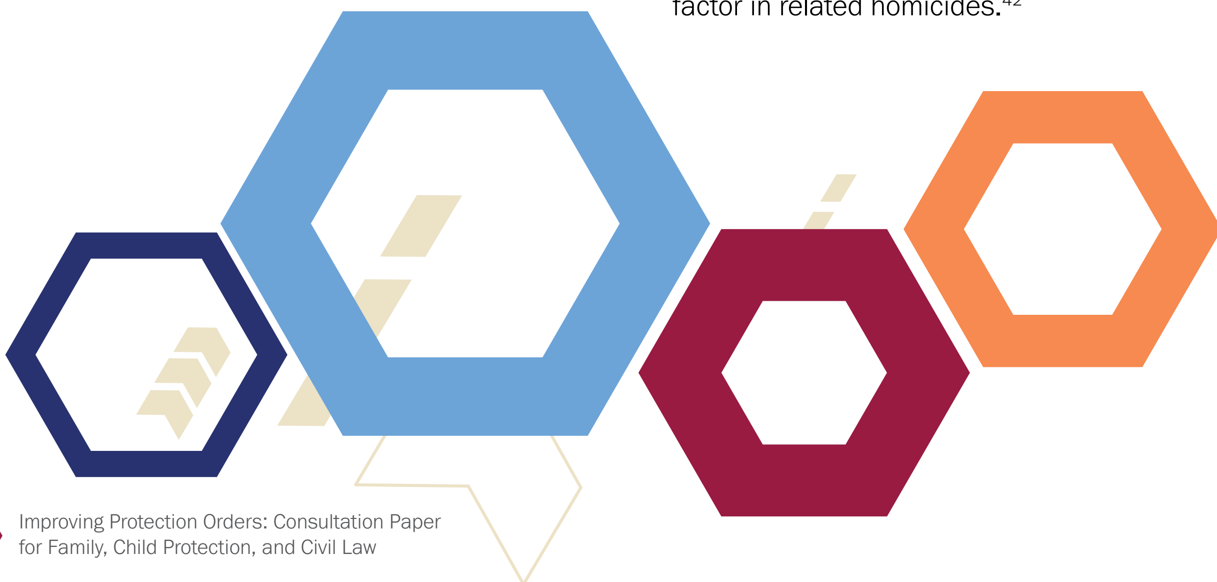
## 1.4 The LCO's Protection Order Consultation Papers

This is the first of two LCO Consultation Papers about protection orders. This Consultation Paper considers how to improve protection orders in family, child protection, and civil law. The second Consultation Paper will explore how to improve protection orders in criminal law. This paper will be released in 2026.

In addition to the Consultation Papers, the LCO has commissioned a report studying protection orders in Indigenous and Aboriginal law. This report is authored by Pape Salter Teillet LLP, a law firm that specializes in providing legal advice to Indigenous communities.

The LCO has chosen to separate criminal and non-criminal protection orders into two Consultation Papers because they often have significantly different eligibility criteria, procedures, evidentiary standards, conditions, durations, and enforcement mechanisms.

That said, the LCO emphasizes that the siloing of criminal and non-criminal legal systems in Ontario is a concern among intimate partner and family violence advocates. Many families affected by violence are involved in multiple legal proceedings which are often not well coordinated. This can obscure important information about a family's experience, the history of violence, risk levels, and safety needs, and can result in conflicting orders. Domestic violence death reviews, inquiries, and coroner's inquests have identified the existing lack of coordination between legal system responses to intimate partner and family violence as a contributing factor in related homicides.[42]



### 1.4.1 Consultation Paper on Protection Orders in Family, Child Protection, and Civil Law

This Consultation Paper considers protection orders in family, child protection, and civil law. It was prepared by the LCO following extensive research and informal consultations with over 100 individuals and groups representing diverse perspectives.

The Consultation Paper addresses nine topics:

- Accessing protection orders
- Protection order processes
- Evidence in protection order proceedings
- Protection order conditions
- Protection order duration
- Enforcing protection orders
- Coordination across Ontario's protection order landscape
- Whether Ontario needs new civil protection order legislation
- Supplementary strategies for improving protection orders

The first six topics are loosely chronological in that they follow a typical protection order process in family or child protection law in Ontario. Each topical discussion covers relevant issues, law reform options, and detailed consultation questions. The final three topics discuss broader issues relating to Ontario's protection order architecture.

## 1.5 Responding to the Consultation Paper

The sequence of questions in this Consultation Paper does not reflect the LCO's priorities or assumptions about the project. The LCO seeks input and advice on all questions equally.

The LCO acknowledges that people who seek, grant, are bound by, enforce, or are otherwise involved in protection order processes may be able to respond to some questions and not others. Participants may address all questions or concentrate their responses on one or more areas.

Readers will know that protection orders and the forms of violence they seek to respond to are complex and deeply personal. The topics we are examining can be difficult, and we encourage readers to move through the paper at their own pace. Mental health and wellness supports are available, including the following province-wide, toll-free, and 24/7 helplines:

- **Assaulted Women's Helpline**: 1-866-863-0511 and TTY 1-866-863-7868
- **Fem'aide for French-speaking women**: 1-877-336-2433 and TTY 1-866-860-7082
- **Talk4Healing for Indigenous women**: 1-888-200-9997
- **Kids Help Phone**: 1-800-668-6868
- **Canada Suicide Crisis Helpline**: Call or text 9-8-8

A complete list of consultation questions is attached as Appendix A.

## 1.6 Project Final Report, Materials, and Funding

This project will produce an independent, evidence-based, and comprehensive analysis of protection orders in Ontario. The LCO's final report will recommend reforms to laws, policies, and practices where appropriate.

The final report and accompanying materials will be distributed widely. The LCO will also publish user-friendly and accessible online materials explaining the project, final report, and recommendations. In early 2026, the LCO will share the results of our province-wide surveys about improving protection orders. We heard from over 300 individuals affected by protection orders and professionals who work in Ontario's protection order landscape about their experiences and ideas for change. All project materials will be available on the LCO's project webpage: https://www.lco-cdo.org/en/our-current-projects/improving-protection-orders/.

Dedicated funding for this project is provided by the Law Foundation of Ontario and the Rt. Hon. Beverley McLachlin Access to Justice Fund.

## 1.7 Consultation Process and Next Steps

The LCO believes that successful law reform depends on broad and accessible consultations with individuals, communities, and organizations across Ontario. This Consultation Paper's release launches our public consultations to improve protection orders.

### Written Submissions

The LCO encourages written submissions. Written submissions can be sent to the LCO's general email address at LawCommission@lco-cdo.org.
**The deadline for written submissions is Friday March 13, 2026.**

The LCO is committed to sharing ideas and building constructive dialogue. Accordingly, we will post written submissions on our project webpage, subject to limited exceptions. Individuals or organizations wishing to provide a written submission may contact the LCO for further information prior to their submission.

### Meetings/Forums/Workshops and Partnerships

The LCO will organize meetings, forums, and workshops on protection orders to discuss the issues in this Consultation Paper over the next several months. The LCO is strongly committed to partnering with individuals and organizations to develop consultation initiatives. We encourage anyone interested in working with the LCO to contact our Project Lead.

Project updates will also be posted on the LCO's project webpage: https://www.lco-cdo.org/en/our-current-projects/improving-protection-orders/.

### Project Lead and Contact Information

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# 2 Background

## 2.1 What are Protection Orders?

Protection orders are legal tools designed to reduce the risk of future violence by one person who has been found to pose a threat to another. They are commonly used in cases of intimate partner and family violence across Ontario.

Protection orders have been described as tools of "preventive justice".[43] Protection orders try to prevent violence by imposing restrictions or conditions on the bound person, including about what they can do, who they can contact, and where they can go. "No-contact" and "no-go/non-attendance" are the most common conditions in protection orders.

There is no universal definition of a "protection order", and there is no technical court order in Ontario called a "protection order". The LCO considers orders to fit within the definition of a "protection order" for the purposes of our project if they are commonly sought or routinely imposed for a primary (not residual) purpose of providing protection from intimate partner violence, and if they can be crafted with a range of protective conditions that restrict what the bound person can do in relation to the protected person.

In Ontario, there are several different types of protection orders:[44]

- **Protection orders in family law** include restraining orders and orders for the exclusive possession of the matrimonial home
- **Protection orders in child protection law** include restraining orders
- **Protection orders in criminal law** include peace bonds, bail release orders and undertakings, and criminal sentences with protective conditions (like conditional sentences, probation orders, and parole orders)
- **Protection orders in Indigenous and Aboriginal law** include protection orders enacted by First Nations and federal guarantees of emergency protection orders (not currently available in Ontario) and exclusive occupation orders

## 2.2 Types of Protection Orders in Ontario

Ontario has a patchwork of protection order laws and processes that developed in different areas of law and do not operate together as a coherent system of protection. Carol Barkwell, former Executive Director of Luke's Place, has described how Ontario's disconnected laws cause access to justice problems:

> *The current protection order system in Ontario is a maze, with some kinds of orders available to women involved in family law cases, others for those with whom child protection services have become involved and still others available through the criminal court, in the form of bail or probation orders or peace bonds. Each requires a different process, provides different kinds of protection and involves different approaches to enforcement.*[45]

The following tables summarize the variety and sources of protection orders in Ontario:

| | | |
|---|---|---|
| **Family Law** | **Restraining orders** | Restraining orders under s. 46 of Ontario's *Family Law Act* |
| | | Restraining orders under s. 35 of Ontario's *Children's Law Reform Act* |
| | **Exclusive possession orders** | Orders for the exclusive possession of the matrimonial home under s. 24 of Ontario's *Family Law Act* |

| | | |
|---|---|---|
| **Child Protection Law** | **Restraining orders** | Restraining orders under s. 137 of Ontario's *Child, Youth and Family Services Act* |
| | | Restraining orders under s. 102(3) of Ontario's *Child, Youth and Family Services Act* that are deemed to be restraining orders made under s. 35 of Ontario's *Children's Law Reform Act* |

| | | |
|---|---|---|
| **Criminal Law** | **Peace bonds** | Peace bonds under s. 810 of the *Criminal Code* |
| | | Common law peace bonds |
| | **Bail release orders and undertakings** | Bail release orders under s. 515 of the *Criminal Code* and releases by police on an undertaking |
| | **Sentencing orders** | Probation orders attached to a conditional discharge, a suspended sentence, or an intermittent sentence |
| | | Conditional sentences |
| | | Parole orders |

This project is not evaluating protection orders in First Nations laws or federal Aboriginal law. Instead, we have commissioned a dedicated report on this topic. By way of background, readers should know that at least five First Nations in Ontario have enacted their own community-specific matrimonial real property laws which contain different types of protection orders.

| | | |
|---|---|---|
| **Indigenous Law** | **Protection orders in First Nations matrimonial real property laws** | Mitaanjigamiing First Nation: emergency protection orders, emergency safe housing orders, and orders for the exclusive occupation of the family home |
| | | Alderville First Nation: protection orders and exclusive occupation orders |
| | | Mohawks of Akwesasne: emergency orders for the exclusive occupation of the matrimonial home |
| | | Pikwàkanagàn First Nation: orders for the exclusive possession of the family home |
| | | Whitefish River First Nation: exclusive occupation orders and emergency exclusive occupation orders |
| **Aboriginal Law** | **Protection orders in federal legislation** | Emergency protection orders under s. 16 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (not available in Ontario) |
| | | Exclusive occupation orders under s. 20 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* |

# 3 Accessing Protection Orders

## 3.1 Overview

This Consultation Paper focuses on protection orders in Ontario's family and child protection laws, which are restraining orders and exclusive possession orders.

Restraining orders are available under s. 46 of Ontario's *Family Law Act* (*FLA*), s. 35 of Ontario's *Children's Law Reform Act* (*CLRA*), and ss. 102(3) and 137 of Ontario's *Child, Youth and Family Services Act* (*CYFSA*).[46] Most restraining orders can be issued to applicants who have "reasonable grounds to fear" for their safety or the safety of their child(ren), except s. 137 *CYFSA* restraining orders which can be ordered when it is in the child's best interests. Exclusive possession orders are available under s. 24 of the *FLA*.

The statutes usually define who can apply for which orders, though courts granting *CYFSA* restraining orders can also do so of their own motion. Most provisions define applicants narrowly, and do not specify the forms of violence that can give rise to an application.

The LCO has heard that these legislative restrictions and other barriers (such as limited legal aid) are preventing access to protection orders in Ontario. Accordingly, we are consulting on several reforms that might better address the circumstances and legal needs of potential protection order applicants. This section considers:

- Establishing emergency orders
- Expanding statutory eligibility criteria for protection orders to include more intimate and family relationships
- Broadly defining violence for the purpose of protection order applications
- Determining which additional persons should be able to apply for protection orders on behalf of people in need of protection
- Allowing courts to consider the need for a protection order without an application
- Strengthening legal aid, legal information, and protection order advocates

## 3.2 Emergency Orders

Intimate partner and family violence happen at all hours. And when individuals and families need protection from violence, that need is often urgent. Current wait times for protection orders in Ontario, however, can be months to years.[47]

Most protection orders in Ontario are not available on an emergency basis,[48] and very few interim protections are available for people navigating lengthy and often unsafe protection order legal processes.

The lack of emergency protection orders is especially concerning given the lesson repeatedly learned from lived experiences, research, death reviews, and inquests into femicide: women and children are at heightened risk of intimate partner and family violence at separation.[49] Separation is also a time when many partners turn to the legal system to secure their safety. However, pursuing legal remedies like protection orders can lead to more violence. Many women applying for protection orders therefore face a risk of “double retaliation”.[50]

At present, Ontario’s protection order processes do not account for the high risk of retaliation and the need for urgent decisions on protection orders. Although there are ways to bring urgent motions with restraining order applications in family courts, province-wide court delays mean the timeline for “urgency” is in flux. The LCO has heard that lawyers bringing urgent motions on all aspects of family law disputes are having to wait months for decisions.[51] The LCO has also heard there is no standardized process in Ontario for triaging or expediting restraining order applications in relation to all other family law matters. Finally, the LCO is aware that limited court counter service hours in Ontario hinder applicants who cannot apply online or in person outside of their own work hours, particularly those in rural, remote, and First Nations communities without reliable internet access.[52]

In contrast, many other Canadian jurisdictions have created emergency protection order legislation and processes to expedite applications. This usually involves authorizing more decision-makers to grant protection orders, simplifying application procedures and evidentiary rules, requiring decisions within a certain timeframe, and providing for subsequent review by a court.

In some provinces and territories, people can apply for *ex parte* emergency protection orders on a limited evidentiary record over the phone or by fax, including outside of regular court hours. For example:

- Nova Scotia provides 24/7 access to protection orders. People can make applications by phone between 9:00 am and 9:00 pm, and designated persons (police officers, victim services officers, and transition house staff)[53] can apply on behalf of survivors by phone at any time.[54] Justices of the peace are on-call to hear emergency protection order applications outside office hours.[55] Applicants can provide evidence over the phone. Decision-makers must determine whether, on a balance of probabilities, intimate partner violence has occurred and the order should be made immediately.[56]
- In Alberta, emergency protection orders are typically available without notice and at any time of day from judges or justices of the peace, and applications may be made by telecommunication.[57]

Nova Scotia and Saskatchewan also require judicial officers to conduct emergency protection order hearings within 24 hours after an application is made.[58] New Brunswick and Newfoundland and Labrador require decisions within that timeframe.[59]

## 3.3 Statutory Eligibility

The LCO has heard that many people are unable to apply for protection orders because their intimate and family relationships do not meet the limited statutory eligibility criteria for *FLA*, *CLRA*, and *CYFSA* protection orders.[60] The LCO's consultations have underscored the importance of broad eligibility criteria for protection orders to include all types of intimate and family relationships, and all forms of intimate partner and family violence.

Currently, restraining orders in Ontario's *FLA* are only available to spouses, former spouses, or people who have cohabitated with each other.[61] Any other form of intimate partnership or family relationship in which violence can arise is excluded from this definition. People in dating relationships and extended family relationships, for example, are not eligible for *FLA* restraining orders. This is a problem because there is no singular experience of intimate partner and family violence.

Exclusive possession orders under the *FLA* similarly restrict eligibility criteria. Common law couples are excluded from Ontario's property-sharing regime under the *FLA* and generally cannot access the exclusive possession orders that are available to married spouses.[62]

The statutory language of restraining orders in the *CLRA* says they are available "against any person" to protect the applicant or their child, though given the nature and purpose of the legislation this may not extend to many types of relationships,[63] like child-free couples.

Protection orders in other Canadian jurisdictions are accessible to a broader range of applicants. Current and former married spouses are always able to apply for protection orders, but statutes vary as to how they define intimate relationships beyond that, including whether cohabitation is required[64] and whether family members can apply.[65] For example:

- In Manitoba, people can apply for protection orders if they are a current or former cohabitant in a spousal, conjugal or intimate relationship as well as if they have a child together or were in a family or dating relationship, regardless of whether they have ever lived together.[66]
- Protection orders in Saskatchewan are available to victims of "interpersonal violence", including people who have lived together or are living together in a family relationship, spousal relationship, or intimate relationship; people who have a child together; and people who are in "an ongoing caregiving relationship", regardless of whether they have lived together.[67]
- Protection orders in British Columbia are available to "at-risk" family members, which can include the person's current or former spouse or someone they have lived with in a marriage-like relationship or have a child with, as well as relatives who live together and children.[68]
- In Alberta, people can apply for protection orders if they have been the subject of family violence by a "family member", which includes people who are or have been married to each other, who are or have been adult interdependent partners of one another, or who are living or have lived together in an intimate relationship; people who have a child together; people who are related to each other by blood, marriage, or adoption or by virtue of an adult interdependent relationship; and any children in the care and custody of anyone referred to above.[69]

## 3.4 The Definition of Violence

Ontario's *FLA*, *CLRA* and *CYFSA* do not specify the forms of violence an applicant may have experienced that give them recourse to a restraining order.[70] In contrast, protection order legislation in other provinces and territories defines "violence" broadly to capture the wide range of harms inherent in intimate partner and family violence, including physical, sexual, psychological, and emotional abuse, as well as:

- Stalking[71]
- Sexual exploitation[72]
- Coercive control[73]
- Depriving necessities of life[74]
- Financial abuse[75]
- Harm to children[76]
- Vicarious responsibility for indirect abuse[77]
- Threats about pets[78]
- Forced confinement[79]
- Tech-facilitated violence[80]

Some jurisdictions explicitly exclude self-defence[81] or "the use of reasonable force to protect oneself or others from harm"[82] from the definition of violence.

Protection order laws that account for the complexity, nuance, and diversity of people's experiences of violence can more effectively respond to their safety needs.

## 3.5 Third-Party Applications and Court's Own Motion

Currently, only people who have a reasonable fear of violence can apply for an *FLA* or *CLRA* restraining order for themselves or their children. However, many potential applicants are prevented from seeking restraining orders because there is not enough legal information, advice, and representation to help them apply. They cannot navigate Ontario's lengthy and convoluted protection order processes on their own.

A new law in Ontario will expand access to restraining orders by amending the *FLA* and the *CLRA* to allow additional persons to apply for restraining orders on behalf of people in need of protection. Ontario's *Protect Ontario Through Safer Streets and Stronger Communities Act* received Royal Assent in June 2025.[83] Additional persons would include anyone prescribed by the regulations who is acting on behalf of, and with the consent of, the person in need of protection, or any person acting on behalf of the person in need of protection with leave of the court. These proposals are consistent with earlier LCO recommendations to Ontario's Standing Committee on Justice Policy's Study on Intimate Partner Violence in August 2024.[84] They may also resolve a jurisdictional access issue for some *CYFSA* restraining order applications brought by child protection authorities.[85]

The new amendments bring Ontario more in line with other Canadian jurisdictions, which have adopted the same strategy to expand access to protection orders by allowing third parties (sometimes called "designated representatives") to apply for protection orders on behalf of survivors. Like in Ontario's amendments, these applications usually require the consent of the person in need of protection or leave of the court.[86]

Since Ontario's regulations are not yet written, there is a question of *who* should be authorized to apply for a restraining order on behalf of a person in need of protection (and how they can bring applications that are isolated from other family court matters). Across Canada, designated representatives can include law enforcement officers and intimate partner and family violence service providers. For example:

- In Nova Scotia, peace officers, victim services officers, and transition house staff may be designated persons who can apply on behalf of survivors, with their consent.[87]
- New Brunswick allows peace officers, victim services coordinators, outreach and social workers to apply on behalf of the person in need of protection with consent.[88]

In some cases, a family member or friend may be authorized to apply on the applicant's behalf, with their consent or with leave of the court.[89] Nunavut also provides for deemed consent in certain cases.[90]

Finally, British Columbia authorizes courts to consider whether a protection order should be granted on the court's own initiative (meaning without an application from a person in need of protection).[91] A similar strategy already exists in Ontario's child protection legislation, where a court can evaluate the need for a restraining order on its own motion.[92]

## 3.6 Legal Aid and Public Legal Information

Protection order applications can be costly. Applicants may have to pay filing costs, lawyers' fees, expenses to serve documents, and sometimes even cost consequences for unsuccessful applications.[93]

The high cost of legal representation is a particular barrier to accessing protection orders, which are substantively and procedurally very complex legal instruments. For unrepresented litigants, the challenge of navigating these complicated legal processes is daunting.

All survivors of intimate partner violence in Ontario are eligible for a referral guaranteeing two hours of free legal advice from a shelter or clinic through Legal Aid Ontario's intimate partner violence program.[94] Protection order applicants who meet Legal Aid Ontario's legal and financial eligibility criteria can also receive legal aid certificates, which can be used to obtain representation.[95]

Legal Aid Ontario's services are indispensable to families affected by violence. Unfortunately, the LCO continues to hear reports that people in need of protection cannot find certificate lawyers to assist them, especially in Northern, rural and remote communities. The LCO has also heard that the number of pro bono hours may not be enough to support people through a full restraining order application. For example, lawyers in British Columbia estimated they spend around 20 billable hours to initiate an *ex parte* protection order application (up to $10,000 if privately retained).[96] This is more than three times the six hours of representation Legal Aid Ontario covers for low-income restraining order applicants.[97]

Further, many people in need of protection do not qualify for legal aid but cannot afford to retain a lawyer out-of-pocket. Legal Aid Ontario's financial threshold can be as low as $18,795 per year,[98] which means survivors need to be making less than minimum wage to be eligible. Applicants who do not qualify for a legal aid certificate may be referred to duty counsel, although duty counsel cannot represent them at trial.[99]

Protection order applicants also have access to free resources that provide legal information and support, such as Family Law Information Centres, court workers, JusticeNet, and Community Legal Education Ontario's "Steps to Justice" website. Ontario's Ministry of the Attorney General and other organizations also publish public legal information and education materials. These supports, while important, are not a substitute for legal representation.

There are several potential strategies to increase access to legal representation for protection order applicants in Ontario, including:

- Increased and dedicated legal aid funding for survivors of intimate partner violence
- More tariff hours for legal aid certificates for protection orders
- More support for family law duty counsel
- Changes to legal aid financial eligibility criteria
- Increased financial support for agencies providing legal representation

## 3.7 Protection Order Advocates

Ontario can further support applicants by continuing to train and fund specialized protection order advocates. Currently, the provincially-funded, community-based Family Court Support Worker Program assists people pursuing protection orders in family court.[100] Similarly, Indigenous or Aboriginal courtworkers support their clients by explaining legal rights and obligations and offering assistance, such as helping to secure legal counsel or find an interpreter.[101] The Law Society of Ontario's Family Legal Services Provider authorization also allows specially trained paralegals to provide certain legal services in family law matters.[102] The LCO is exploring whether existing family court workers and qualified paralegals could be trained to be designated representatives who can apply for protection orders on behalf of applicants, once the changes in Ontario's 2025 *Protect Ontario Through Safer Streets and Stronger Communities Act* take effect.

In the United States, King County Washington runs a Protection Order Advocacy Program (POAP) to assist people in need of protection from intimate partner violence.[103] The POAP is part of a system of government support for people seeking protection orders. The POAP is staffed by Protection Order Advocates, who are employees of the King County Prosecuting Attorney's Office. Protection Order Advocates provide free assistance to people applying for protection orders to prevent intimate partner violence. They work with applicants by phone, email, virtually, and in person. Protection Order Advocates can:

- Answer questions about protection orders
- Explain the process of getting a "domestic violence protection order"
- Help people determine whether they are eligible for a protection order and which civil protection order best addresses the harm they are experiencing
- Help applicants complete protection order forms
- Prepare applicants for their protection order court hearings
- Stand with applicants during their protection order hearings
- Explore options for serving protection orders
- Provide emotional support throughout the protection order process
- Provide information about intimate partner violence, sexual abuse, and stalking behaviours, and the legal definitions
- Help applicants develop a safety plan
- Help troubleshoot problems and answer applicants' questions about their orders
- Help applicants identify risks and lethality factors that may increase their risk
- Refer applicants to resources and social services in the community[104]

The POAP team has worked on over 1,000 protection orders per year for the past 35 years.

## 3.8 Consultation Questions about Accessing Protection Orders

1. Should Ontario establish emergency access to protection orders?
    a. Should Ontario require protection order applications to be heard and decided within a specific timeframe?
2. Should the types of intimate and family relationships eligible for protection orders be expanded in the *FLA*, *CLRA*, and/or *CYFSA*?
3. Should Ontario define violence in the *FLA*, *CLRA*, and/or *CYFSA* for restraining order eligibility? If yes, what forms of violence should be included?
4. Who should be able to apply for protection orders on behalf of people in need of protection, with their consent (and/or by leave of the court)?
    a. Should courts be able to consider granting a protection order without an application?
5. Do you support increased funding for legal aid to access protection orders? What additional changes, such as strengthening protection order advocates, would you recommend?

# Protection Order Processes

## 4.1 Overview

Many standard court processes are unsafe in the context of intimate partner and family violence. This section considers reforms to improve safety in protection order processes on the topics of:

- Procedures for emergency protection orders, including review procedures
- Urgent and *ex parte* motions
- Protecting sensitive information
- Document service
- Trauma-informed court procedures
- Interim protective measures
- Litigation abuse, including requests for mutual protection orders
- Maintaining up-to-date copies of protection orders
- Procedures for changing, extending, or terminating protection orders

## 4.2 Procedures for Emergency Protection Orders

If protection orders in Ontario are made available on an emergency basis, existing procedures will need to be modified. For example, courts may need new policies to specify how protection orders can be applied for and granted outside of regular court hours. Allowing applications by phone can help speed up the process of obtaining emergency protection, especially since paperwork is a particular barrier to getting protection orders quickly.[105]

In other Canadian jurisdictions, emergency protection orders can be granted quickly, over the phone, on an *ex parte* basis and a limited evidentiary record, and before a justice of the peace as opposed to a judge.[106] Some jurisdictions have on-call protection order decision-makers to hear applications outside of court hours. Decisions may be required within a certain timeframe, such as 24 hours, and reviewed by a court a few days later.[107]

### 4.2.1 Review Procedures

Emergency protection order procedures can benefit applicants but may have serious consequences for respondents. As a result, streamlined applications for emergency orders in other jurisdictions are coupled with strict review procedures to respect respondents' rights.

Nova Scotia's legislation illustrates this statutory balancing between the need for expediency to protect applicants' safety and the need to respect respondents' rights in emergency protection order procedures. In Nova Scotia, a justice of the peace must conclude an emergency protection order hearing within 24 hours of an application. If granted and served on the respondent, an emergency protection order takes immediate effect, even if the respondent did not participate in the hearing. Nova Scotia recognizes the potential impact of this process on respondents by making emergency protection orders time-limited: in Nova Scotia they are only intended to offer immediate, interim protection for up to thirty days. Emergency protection orders must also be automatically reviewed by a judge, who can confirm or vary the order within seven working days if satisfied there was sufficient evidence to support making the order in the first place. If not, the judge can require a hearing to confirm, vary, or terminate the order. The order can be further reviewed by a judge at the request of the applicant or the respondent.[108]

Other Canadian jurisdictions have different timeframes for automatic review of emergency protection orders.[109] In some jurisdictions, judges only review emergency protection orders if the applicant or respondent requests a review.[110]

Notably, Manitoba, Nunavut, and New Brunswick shift the burden of proof at the review stage onto respondents to show why an emergency protection order should be set aside.[111] This approach is favourable to applicants.

## 4.3 Urgent and *Ex Parte* Motions

The LCO has heard that urgent and *ex parte* protection orders can enhance safety. This is in part because violence arises in response to protection order applications, including during delays between alerting the person causing harm about the application and before the court hearing or decision, and when applicants must appear in court beside their abusers. Courts that hear applications for protection orders quickly and without notifying respondents can grant protection orders faster and more safely, which better responds to the reality that women are at a higher risk of violence during separation and when pursuing a protection order.

However, the LCO is aware of several concerns affecting applicants seeking urgent *ex parte* restraining orders in Ontario. First, while urgent and *ex parte* motions are the only way to speed up the process of getting a family court protection order in Ontario and to do so without alerting the person causing harm, court delays and staffing shortages mean that filing an *ex parte* motion with a restraining order application is not a guaranteed fast-track to a protection order.[112] Further, *ex parte* applications are not always an option: s. 137 of the *CYFSA* prohibits courts from making a restraining order without notice to the respondent.[113]

Second, applicants bringing urgent and *ex parte* motions must meet high thresholds to prove their case is actually urgent and should proceed without notifying the respondent,[114] and judges apply the tests for urgent and *ex parte* motions unpredictably.[115]

Third, if the court thinks the restraining order application is not actually urgent, that the applicant could have notified the respondent about their application, or that the applicant did not provide all the relevant information, the court might make the applicant pay the respondent's court costs.[116]

The risk of cost consequences, the unpredictability of judicial assessment, and the fact that motions are not necessarily a "fast" route to protection orders make urgent and *ex parte* motions risky for people in need of protection in Ontario. In contrast, many protection order statutes in Canada explicitly contemplate *ex parte* applications to encourage their use.[117]

## 4.4 Protecting Sensitive Information

A critical component of many survivors' safety plans is hiding from their abusers to escape violence. However, protection order court forms in Ontario may require applicants to disclose their address, their allegations of violence, and other sensitive personal information that could endanger them when provided to the person causing harm.

The Ontario Government advises protection order applicants who do not want to use their own address to use another address where they can receive mail.[118] Survivors may not be aware of this option or may not have another address they can use, especially if they are unrepresented and unhoused. For example, people living in shelters may not have a useable address because many shelters do not allow their address to be listed on court forms for safety reasons.

Some legislation in other Canadian jurisdictions *requires*, or at least allows for, the applicant's address and other personal information to be kept confidential.[119] Manitoba prohibits anyone involved in the case from disclosing information which identifies or could identify the applicant's home or work address, unless it is necessary to enforce the order.[120]

Addresses are not the only confidential information that arises in protection order proceedings. There is also the risk that sharing the applicant's allegations about intimate partner and family violence will enrage the respondent and "provoke" further violence. Even when applicants proceed *ex parte*, the respondent is still entitled to receive a copy of the court materials. The LCO reviewed several cases in which Ontario judges took steps to protect sensitive information where there was a concern the respondent would become violent after learning more about the protection order application.[121] In Nunavut, protection order decision-makers are explicitly authorized to prohibit the publication of information that could affect safety.[122]

## 4.5 Document Service

Applicants' obligations to serve legal documents on respondents can increase risk. In most cases, people applying for protection orders are required to deliver notice of court proceedings, materials, and orders to respondents. Service responsibilities can be costly, unsafe, hard to understand, and onerous, especially when the respondent's whereabouts are unknown or they are evading service.

Hiring a professional process server can be expensive.[123] However, personal service by the survivor or their family or friends is risky given the possibility of violent retaliation.[124]

There are also strict requirements for serving documents that survivors must know about, understand, and comply with.[125] The Ontario Government's website notes that survivors must be at least 18 years old to serve documents themselves, which could pose problems for younger people applying for protection orders if they do not have family or friends to assist them and cannot afford a process server.[126] The website also states: "If it isn't safe for you or a friend or family member to serve the documents on the other party and you cannot afford to hire a professional process server, you can ask the court staff to arrange to have your documents served for you."[127] Many survivors are unaware of this option.

In 2016, the Government of British Columbia contracted professional process servers to deliver protection orders across the province at no cost to people in need of protection. The announcement notes: "This model strengthens the ability of police to enforce protection orders and of Crown counsel to prosecute breach charges as contracted process servers will ensure the affidavit of service is properly completed, filed in a court registry and made accessible to police services through the Protection Order Registry."[128]

There are also other strategies in civil protection order legislation to remove the burden on applicants to serve respondents and to ensure respondents understand the terms and significance of the order upon receipt. For example, Saskatchewan allows judges to serve notice of certain protection orders to respondents orally if they are present in court.[129] In Manitoba, police officers may give notice by reading the provisions verbatim to the respondent, and may include an information sheet explaining the respondent's right to apply to the court to set aside the protection order; the time limit for doing so; a statement that applying to set the order aside does not stay its operation; information about how the respondent can access the evidence given in support of the application; and information about the penalties for failing to comply with the order.[130]

Courts in some jurisdictions can bind respondents to protection orders even if they have not received notice, if the court believes the respondent is evading notice or cannot be found.[131]

## 4.6 Trauma-Informed Court Procedures

Some civil protection order statutes across Canada call for flexible procedures to increase access to protection orders for people experiencing violence, such as conducting hearings confidentially.[132] Manitoba authorizes judicial officers to adopt any procedures that might help put the applicant at ease and assist them in understanding the process, including being accompanied by a support person at the hearing.[133] Nunavut similarly permits hearings to be conducted in a way that puts people at ease, helps them understand the proceedings, and supports the court to reach an appropriate decision.[134]

Giving survivors options and choices of modalities to participate in protection order proceedings (whether in person or virtually) is another trauma-informed practice that can make protection orders more accessible. So too is leniency when assessing protection order materials submitted by unrepresented applicants. In a recent Ontario case, the court refused to consider allegations of violence the applicant had mistakenly included in her notice of motion instead of her affidavit.[135] The court ultimately denied the restraining order.

## 4.7 Interim Protective Measures

When people experiencing intimate partner and family violence are forced to wait for protection orders, their safety is at risk. Interim protective measures may help bridge the gap between survivors' immediate safety needs and the realities of complex protection order processes and lengthy court delays.

As Peter Neumann has explained, women who have recently split from their intimate partner and are also pursuing a protection order against them are doubly at risk of violent retaliation. Neumann argued that "[i]t would seem ludicrous if the courts were to deny women interim protection given this reality."[136]

One interim protective measure to consider is an undertaking from the respondent. An undertaking, or a promise to the court to do or not do something, could help influence the respondent's behaviour during the period between when an applicant applies for a protection order and when the protection order is actually granted. There is precedent in Ontario supporting the use of undertakings in family court restraining order cases.[137]

## 4.8 Litigation Abuse

"Litigation abuse" describes the co-opting of legal systems by people using violence to maintain contact and continue coercing, monitoring, controlling, harassing, undermining, and dominating their victims.[138] Litigation abuse can include:

- Making or threatening meritless claims (such as claiming the survivor instigated violence, insisting on mutual protection orders, or claiming parental alienation)
- Introducing false or irrelevant evidence (such as claiming the survivor misuses drugs)
- Character attacks (such as claiming the survivor is "crazy")
- Intimidating witnesses
- Causing unnecessary delays in court proceedings[139]

Litigation abuse causes significant psychological and financial harm. It can lead to protracted litigation that forces a person in need of protection to keep coming face-to-face with their abuser in court, while also depleting their resources, threatening their safety and wellbeing, and preventing healing. Litigation abuse can also confuse courts, lawyers, service providers and others involved in protection order proceedings. The LCO found several examples of litigation abuse in restraining order case law in Ontario.[140]

Strategies to avoid litigation abuse could include:

- Analyzing patterns of coercion and control in a relationship to identify the person controlling the violence
- Encouraging cross-court and cross-sector communication so decision-makers are aware of the pattern of violence and any litigation abuse in related proceedings
- Requesting explicit findings in court decisions relating to the misuse of litigation
- Judicial education to enable decision-makers to identify litigation abuse tactics
- Considering advance payment of costs or other cost consequences for litigation abuse, especially where these tactics threaten the survivor's ability to continue to finance protracted litigation[141]

### 4.8.1 Claims for Mutual Protection Orders

The use of mutual protection orders in cases of intimate partner and family violence is on the rise.[142] Mutual protection orders occur when courts grant one protection order preventing the respondent from contacting the applicant, and a separate protection order preventing the applicant from contacting the respondent.

Experts have expressed concern that in some cases, courts are inappropriately granting mutual protection orders against women due to system-wide pressure[143] and in the face of little or no evidence of violence towards their intimate partner.[144] Genuine mutual violence is rare, but resistance violence and self-defence often complicate courts' determination of who is in need of protection and can lead to mutual protection orders.[145]

Mutual orders pose many challenges for people experiencing intimate partner and family violence.[146] For example, they may unjustifiably restrict survivors' communications and movements and attract public stigma. Mutual protection orders can also minimize accountability by sending a message that neither intimate partner is more responsible than the other for violence in the relationship. They can also be a way for people using violence to maintain control over their intimate partners, including by tricking survivors into breaching the order. Finally, mutual protection orders can have unanticipated consequences for ongoing or parallel legal proceedings because they fail to make clear findings of fact and responsibility, and they can endanger people in need of protection when the police respond to subsequent calls for help by creating confusion for police on the scene and inhibiting the effective enforcement of protection orders.[147]

Professor Jennifer Koshan argues that the practice of granting mutual protection orders should be legislatively discouraged.[148] British Columbia's legislation has an explicit provision dealing with applications for mutual protection orders. It provides that if family members are seeking protection orders against each other, the court must consider whether the order should be made against one person only, taking into account factors such as the history of violence between the parties and their respective vulnerability.[149]

## 4.9 Maintaining Up-to-Date Copies of Protection Orders

Sometimes, when a protection order is repeatedly modified by the courts, it can become impossible to know the terms of the order.[150] One Ontario judge suggested counsel are responsible for deciphering judicial changes to restraining orders and creating updated copies to record the most current terms.[151] This suggestion raises concerns for unrepresented litigants and questions about the completeness and reliability of restraining order copies on file at courts and with the police. The LCO is aware of instances where applicants have reported breaches of their protection order to the police, who refused to enforce the court order because they could not determine it was the most recent version.

The LCO has also heard that many people do not know how to access a copy of a protection order that affects them. Without reliable court processes for updating and recording protection orders with their most recent terms, applicants will be unable to confirm their protection, respondents will not know the conditions they must comply with, and police cannot enforce the order. We review the benefits of a well-maintained, accessible protection order database in Subsection 8.7.1.

## 4.10 Procedures for Changing, Extending, or Terminating Protection Orders

Procedures to vary, extend, and terminate protection orders can be complicated, costly, and time-consuming. Applicants generally bear a heavy procedural and evidentiary onus. This is especially concerning when there are conflicting court orders, such as when a family court restraining order must be changed to align with the respondent's criminal bail conditions.[152]

Further, any time a temporary protection order is granted, applicants need to return to court to convince the judge why the order should be extended. Protection order conditions are also relatively inflexible, and are not usually designed with changing circumstances or reconciliation of the intimate partnership in mind. While either party can bring a motion to change the protection order, this requires filling out multiple court forms and returning to court to argue why the protection order should or should not be changed.[153]

Civil protection order statutes in other Canadian jurisdictions usually contain provisions about how to vary, extend, or terminate the protection order.[154]

## 4.11 Consultation Questions about Protection Order Processes

6. What procedural reforms, such as implementing review procedures, would make emergency protection orders effective? How can applicants' need for emergency orders be balanced with respondents' rights?

7. How can Ontario improve urgent and ex parte motions in protection order proceedings?

8. How can Ontario protect sensitive information and improve document service in protection order processes?

9. What trauma-informed court procedures could improve protection order proceedings?

10. What interim protective measures might reduce the risk of retaliation and other violence between the date of the protection order application and the court's decision?

11. Are procedural reforms needed to address litigation abuse in protection order proceedings and claims for mutual protection orders?

12. Should courts be responsible for updating protection orders to reflect modifications? What do you recommend about how to maintain up-to-date and accessible copies of protection orders?

13. How can the procedures for changing, extending, or terminating protection orders be easier, safer, and/or faster?

# 5 Evidence in Protection Order Proceedings

## 5.1 Overview

Most restraining orders in Ontario, including those made under s. 46 of the *FLA*, s. 35 of the *CLRA*, and s. 102(3) of the *CYFSA*, are available to applicants who have "reasonable grounds to fear" for their safety or the safety of their child(ren). Restraining orders granted under s. 137 of the *CYFSA* are the exception, because they can be made when it is in the child's best interests.

The LCO has identified significant inconsistencies in courts' application of the reasonable fear test, with the result that many judges have determined women's subjective fear of their intimate partners is objectively unreasonable.[155]

This section explores issues and options relating to evidence in protection order proceedings, including:

- The fact that many women seeking protection orders are not believed
- The reasonable fear standard and alternative evidentiary standards
- Limited evidence of intimate partner and family violence
- The question of false allegations
- Legislatively prohibiting myths and stereotypes
- Addressing children's experiences, wishes and safety needs
- Incorporating risk assessments into decision-making
- Legislating risk factors
- Introducing expert evidence
- Appointing *amicus curiae* for cross-examination
- Weighing the impact on the respondent
- Communicating and integrating evidence from related proceedings
- Ensuring that related proceedings are not a bar to protection

## 5.2 Many Women Seeking Protection Orders are not Believed

The LCO's analysis of 76 reported Ontario family court decisions from 2021 to 2023 showed that many women who seek restraining orders are not believed: women's applications were dismissed more than half the time.[156] In some cases, judges declined to grant restraining orders despite clear evidence and findings of intimate partner violence.[157] In others, judges found that the evidence presented was incomplete or insufficient, despite women's testimony about the violence underlying their fear.[158] In 41% of cases in the LCO's study, judges dismissed restraining order applications or terminated existing restraining orders because they thought the applicant did not have reasonable fear.[159] This statistic includes the 30% of cases in which judges denied or terminated restraining orders because they did not think the applicant's subjective fear of violence was objectively reasonable.[160]

The analysis of evidence of intimate partner and family violence is fraught with challenges, including the operation of myths and stereotypes. Misconceptions about protection orders, and about the women who seek them, continue to plague judicial decision-making. As a result, protection order decision-makers may underestimate the risk posed to women applicants, with sometimes fatal consequences.

## 5.3 The Reasonable Fear Standard

Courts can grant restraining orders under Ontario's *FLA*, *CLRA*, and s. 102(3) of the *CYFSA* when the applicant has "reasonable grounds" to fear for their safety.[161] The LCO's case law review (encompassing our study of reported decisions from 2021 to 2023 as well as earlier precedents in Ontario) raised serious concerns about judges' application of the reasonable fear standard to evaluate restraining order applications.

First, there may be judicial confusion about whether the reasonable fear test applies to both types of restraining orders in the *CYFSA*. Section 102(3) *CYFSA* restraining orders are made in accordance with s. 35 of the *CLRA*, and therefore adopt the reasonable fear standard. However, s. 137 of the CYFSA allows a court to make a restraining order if it is in the child's best interests. At least one court has confused these evidentiary standards, and it is possible this has also occurred in unreported decisions.[162]

Second, some Ontario courts appear not to use the reasonable fear standard in evaluating restraining order applications. Out of 76 restraining order decisions from 2021 to 2023, 14 judges did not apply the statutory reasonable fear test and nevertheless denied 10 of those applications. Two judges denied women's applications even after finding they had met the reasonable fear test.[163]

Third, Ontario court decisions are inconsistent about how to determine whether an applicant has reasonable fear. While courts generally agree that the applicant bears the onus to prove reasonable fear[164] and that the fear can relate to their physical *and* psychological safety,[165] they disagree on many aspects of the evidentiary test for restraining orders. Areas of disagreement are explored in the table below:

**Courts' Disagreement about the Reasonable Fear Standard**

| | | | |
|---|---|---|---|
| **Debate** | An applicant's fear of future harm is enough to get a restraining order, even if no harm has occurred yet.[166] | vs. | An applicant must show a lengthy period of persistent harassment in order to get a restraining order.[167] |
| | The applicant's fear can be entirely subjective.[168] | vs. | The applicant's fear must be subjective *and* objective.[169] |
| | Reasonable fear exists if it is legitimate fear.[170] | vs. | Reasonable fear exists if a reasonable person would perceive it.[171] |
| | The reasonable fear test should be evaluated on the balance of probabilities.[172] | vs. | The reasonable fear test is a lower standard of proof than the balance of probabilities.[173] |
| | Courts should consider the effect of issuing a restraining order on the respondent only in borderline cases.[174] | vs. | Courts should always consider the effect of issuing a restraining order on the respondent.[175] |
| | The evidence should be considered in light of the purpose of a restraining order, which is to enable the parties to conduct their litigation.[176] | vs. | The purpose of a restraining order is to protect the applicant from future harm.[177] |
| | In borderline cases, courts should consider whether other protections can be ordered if a restraining order is not granted.[178] | vs. | Courts should always consider whether other protections can be ordered instead of a restraining order.[179] |

Other, more nuanced areas of disagreement in the case law concern the weight to be placed on the timing of the violence, the "triggers" for the violence, and the respondent's good behaviour. For example, some courts have found that the events underlying women's fears about their intimate partner are outdated (even when only 11 months have passed since violence was reported),[180] that other assumed "triggers" for the violence are resolved,[181] or that the respondent has complied with other court orders,[182] making the applicants' fears unreasonable.

Areas of disagreement in the case law can make the reasonable fear test confusing for judges, lawyers, and litigants. It can also make the question of whether a survivor's request for a restraining order will be granted or not uncertain (or dependent on which judge is hearing the application). Unpredictable and inconsistent judicial evaluations of restraining order evidence may be exacerbated by the fact that not all family court judges have experience in family law, especially in regions with no Unified Family Court.

Another difficulty with the reasonable fear standard is that it does not account very well for some of the nuances of intimate partner and family violence. For example, people using violence against their partners may subtly communicate control or instill fear by using a facial expression or a small gesture that is known to the survivor as an indicator of future violence, but may not seem dangerous or objectively "reasonable" to an outside observer.[183]

### 5.3.1 Alternatives to the Reasonable Fear Standard

Some Canadian jurisdictions use an evidentiary standard similar to Ontario's reasonable fear test for their emergency protection orders.[184] Others have a two-part test: the applicant must show that violence has occurred (or is likely to occur), and that the order should be made to ensure their immediate protection because the situation is serious or urgent.[185]

While the Northwest Territories uses a two-part test for emergency protection orders, its evidentiary standard for *non-emergency* protection orders is lower:

> **7. (1)** On an application that may be made *ex parte*, the court may make a protection order if satisfied on a balance of probabilities that family violence has occurred.[186]

The Northwest Territories' test is novel in that it does not require the court to objectively assess the risk of future harm. It is therefore favourable to applicants and could help reduce judicial reliance on myths and stereotypes about applicants' fear and risk.

One other area of law from which to draw inspiration is the test for civil injunctions. An injunction is a court order that requires or prohibits specific actions. Like protection orders, injunctive relief is forward-looking: it aims to prevent irreparable harm.[187] Part of the test for injunctive relief requires courts to consider which party will suffer the greater harm if an injunction is granted or refused.[188] Though this exercise is not an explicit statutory consideration for restraining orders in Ontario, courts have previously compared protection orders to injunctions[189] and the LCO is exploring similarities between the tests for restraining orders and injunctions.

## 5.4 Limited Evidence of Violence

For protection orders to be effective, they should be informed by comprehensive evidence about the type, pattern, history, and frequency of violence the applicant has experienced. Obtaining this level of information is a challenge.

As recently as 2022, the Supreme Court of Canada recognized that many cases of intimate partner and family violence are hard to prove, in part because these forms of violence often take place in private without corroborating evidence.[190] Other documented reasons why evidence of intimate partner and family violence may be incomplete stem from the many intersecting barriers to reporting, including a fear of retaliation, shame and embarrassment, and a fear of being disbelieved.[191]

Compounding factors limiting the evidentiary record in protection order proceedings include the onus on applicants to collect and present evidence; constraints on time, resources, and expertise; explicit or subtle forms of intimidation preventing full articulation of evidence and related "perpetrator litigation tactics" (such as claims associated with resistance violence, false child protection claims, manipulation of children, or using the legal system to harass and maintain contact and control); and the influence of harm, brain damage, trauma and stress on survivors' disclosure patterns.[192]

Civil protection order statutes in other Canadian jurisdictions allow applicants to apply for emergency protection orders on a limited evidentiary record. For example, applicants in Nova Scotia can provide evidence over the phone that intimate partner violence has occurred and the order should be made immediately.[193]

## 5.5 The Question of False Allegations

False allegations of intimate partner and family violence can occur. However, claims that someone is lying about intimate partner and family violence must be carefully scrutinized to guard against the influence of pervasive and gendered myths and stereotypes. Among these myths, as recognized by the British Columbia Court of Appeal, is "a belief that women commonly raise allegations of violence post-separation and in the context of family law litigation for the specific purpose of gaining an upper hand."[194] The "fabrication myth" is discussed further in Section 5.6.

To resolve disputed claims, the British Columbia Court of Appeal called for caution and a thorough, evidence-based approach:

> *In Ahluwalia, the Ontario Court of Appeal acknowledged there will be cases in which claims of family violence are shown to have been made for strategic reasons. I take no issue with that proposition. However, whether that has happened in a given case requires that the judge assess the credibility and reliability of the assertion as part of a thorough factfinding process. To approach allegations of family violence on the assumption (explicit or implied) that these allegations are routinely made for tactical reasons, is impermissible and will give rise to reversible error.*[195]

Professor Jennifer Koshan challenges us to acknowledge that "many legal actors have yet to start from a point of *not disbelieving women* about domestic violence."[196] Legal actors must "be alert to what they may not understand and open to evidence, arguments, and education to help avoid the application of myths and stereotypes."[197]

## 5.6 Legislatively Prohibiting Myths and Stereotypes

Reliance on gendered myths and stereotypes about intimate partner and family violence is well-documented in protection order decisions.[198] Myths and stereotypes can impair the truth-seeking function of courts and result in harm to women and children.[199]

Professor Koshan catalogues false and faulty assumptions about intimate partner violence into two main categories: myths and stereotypes about the credibility of survivors, and myths and stereotypes about the harms of intimate partner violence.[200] One of the most common credibility myths in protection order decision-making is "the fabrication myth", which suggests that women falsely allege intimate partner and family violence for various personal reasons.

In the protection order context, the fabrication myth is typically used as a counter-allegation to suggest that women have made false or exaggerated claims of violence to gain an advantage in family disputes.[201] In Alberta, for example, Professor Koshan has found that some courts are suspicious of applicants' motives for seeking a protection order when there are upcoming or contemporaneous family law proceedings.[202]

Professor Koshan has thoroughly reviewed the evidence that debunks the fabrication myth,[203] and there is a growing trend among Canadian courts recognizing and repudiating the myth.[204] However, the LCO reviewed several restraining order decisions in which Ontario courts drew negative inferences about women's credibility and the truthfulness of their allegations for inappropriate reasons, such as when the applicant had called the police to report intimate partner violence and the police did not lay charges against the respondent.[205]

Other courts found that women applicants were less believable when their actions did not align with the court's expectations of how a victim of violence would behave. In 2021, a court denied a restraining order after rejecting some of the applicant's evidence because "if she were truly sexually assaulted by the husband as she describes, there was nothing stopping her from leaving the matrimonial home after the first incident and she chose not to do so."[206] In the criminal context, the Supreme Court of Canada has warned that judging a complainant's credibility "based solely on the correspondence between her behaviour and the expected behaviour of the stereotypical victim of sexual assault" is an error of law.[207]

In a 2020 decision, a judge denied a restraining order in part because he believed that "if the applicant was fearful of the respondent she would've moved more expeditiously to get the matter before the court", even though there was a less than 2-month delay between a justice of the peace advising her to seek a restraining order and her application to the court.[208] Another judge denied a restraining order in part because he thought it was "problematic" that the applicant applied three years after separating from the respondent. In the judge's view, "[i]f there had been immediate concern, it is not unreasonable to have expected a motion shortly after separation seeking a temporary restraining order."[209]

The timing of a protection order application is a double-edged sword: women who do not apply "early enough" may not be believed, while women who apply in connection with recent criminal charges or family court proceedings may be suspected of engaging in strategic litigation.[210] In all cases, women's behaviour is subject to close scrutiny.

There are also myths relating to children that affect protection order decision-making. Common myths are that intimate partner violence between two adult parents does not cause harm to their children and does not affect the violent parent's parenting ability. The Supreme Court of Canada recently held that this suggestion is "untenable".[211] Nevertheless, the myth that co-parenting should be the norm in family law, regardless of violence, persists.[212]

One approach to reducing judicial reliance on myths and stereotypes in protection order proceedings is to legislatively prohibit certain reasoning. Québec introduced legislation in October 2024 to amend various statutes to prevent judges from relying on irrelevant facts in intimate partner and sexual violence cases.[213] Québec's Civil Code now states:

> **2858.1** Where a matter contains allegations of sexual violence or spousal violence, the following facts are presumed to be irrelevant:
>
> (1) any fact relating to the reputation of the person who is the alleged victim of the violence;
>
> (2) any fact related to the sexual behaviour of that person, other than a fact pertaining to the proceeding, and that is invoked to attack the person's credibility;
>
> (3) the fact that the person did not ask that the behaviour cease;
>
> (4) the fact that the person did not file a complaint or exercise a recourse regarding the violence;
>
> (5) any fact in connection with the delay in reporting the alleged violence; and
>
> (6) the fact that the person maintained relations with the alleged perpetrator of the violence.[214]

Intimate partner violence advocates recommended similar amendments to the federal *Divorce Act* in 2018.[215] Though not passed, the list of prohibited inferences included the following:

- That family violence has ended because the relationship has ended, or divorce proceedings have begun
- That family violence did not happen, or is exaggerated, because there were no previous reports of violence
- That family violence did not happen, or is exaggerated, because there are no criminal charges (or criminal charges were recanted) and no child protection intervention

- That claims of family violence are false or exaggerated because they were made late in the proceedings or were not made in prior proceedings
- That family violence did not happen, or is exaggerated, or that the spouse making the claims is unreliable or dishonest, because of inconsistencies between evidence of family violence in the divorce proceedings and other proceedings
- That family violence did not happen, or is exaggerated, because a spouse continued to reside or maintain a financial, sexual, business relationship or a relationship for immigration purposes, with a spouse, or has in the past left and returned to a spouse
- That leaving a violent household to reside in a shelter or other temporary housing is contrary to the best interests of the child
- That fleeing a jurisdiction with the children in an effort to escape family violence is contrary to the best interests of the child
- That abuse did not happen because there are no observable physical injuries or external expressions[216]

## 5.7 Children's Experiences, Wishes, and Safety Needs

There is little empirical research documenting children's experiences with protection orders in Ontario. The LCO has heard that the current approach to protection orders overlooks the fact that children are not just observers of intimate partner and family violence – they also experience it. Further, children have a right to have their views heard and given due weight in matters that affect them. However, evidence of children's experiences, views, and wishes is routinely filtered out of protection order decision-making.[217]

Studies of protection orders in other Canadian jurisdictions have found that children are discounted when decision-makers fail to seek out and incorporate children's views where appropriate, or fail to craft conditions that acknowledge the harms children experience.[218]

Alberta is one jurisdiction where judges continue to prioritize co-parenting in protection order decisions, regardless of how family violence affects children's best interests.[219] Alberta's civil courts also tend to require evidence of direct violence towards children before including no-contact conditions relating to them in protection orders.[220]

The LCO's review of Ontario decisions revealed a similar trend of judges prioritizing the respondent's parenting role over the applicant and children's need for protection. Some judges declined to grant restraining orders to mothers in part because a restraining order would hinder the father's ability to parent the children, despite allegations of violence.[221] Other judges issued restraining orders with exceptions, or "carve-outs" to the protective conditions to enable respondents to parent their children.[222] For example, a common parenting carve-out in restraining orders is when a judge orders a father not to contact or come near a mother, except for communications or exchanges related to the children. Such parenting carve-outs can diminish protections for mothers and children and, as a consequence of parenting carve-outs, women with children may receive less protection from restraining orders than women without children.

In the LCO's study of 76 restraining order decisions issued in Ontario from 2021 to 2023, 64 cases involved non-adult children. Restraining orders were granted or extended in 27 of those cases, and 24 of those restraining orders contained parenting carve-outs to allow the respondent time with the children. Therefore, in 64 decisions involving non-adult children, there were only 3 cases in which children were fully protected by a restraining order.[223]

The LCO also found that some Ontario judges are imposing orders regarding conduct or parenting orders with communication restrictions limiting the respondent's contact with the applicant instead of restraining orders.[224] Parenting orders with communication restrictions often allow fathers to continue to be involved in their children's lives while offering some limited protections to mothers and children (such as supervised parenting time). In the 64 cases involving non-adult children in the LCO's study, 15 judges issued parenting orders instead of restraining orders.

The LCO has several concerns about this approach. First, some judges are substituting parenting orders for restraining orders even when the evidentiary test for a restraining order is met.[225] Parenting orders are not intended to be a substitute for restraining orders: parenting orders typically have less restrictive conditions, less stigma, different enforcement mechanisms, and less severe consequences for breaches.[226] Second, a respondent's status as a parent is not a factor in the statutory test for a restraining order. Nevertheless, some courts are "balancing" the applicant's right to a restraining order with the respondent's role as a parent.[227] Finally, courts making findings of intimate partner and family violence must consider the impact of this violence on children, including whether children deserve the full protection of a restraining order.

The Supreme Court of Canada has recognized that children can be harmed by direct or indirect exposure to intimate partner and family violence, and that such violence should be considered when assessing the perpetrator's ability to parent.[228] Notably, however, the LCO found that in 64 restraining order applications involving children and allegations of intimate partner and family violence, parenting carve-outs to restraining orders or parenting orders issued in place of restraining orders were common outcomes (occurring in 61% of cases), sometimes leaving children unprotected from violence.

Protection order decision-makers in other Canadian jurisdictions are often explicitly directed to consider the best interests of children in protection order hearings.[229] In British Columbia, courts must consider whether a protection order should be made that includes the child if an order is made respecting the child's parent or guardian.[230] British Columbia's legislation also requires courts to consider whether a child may be exposed to family violence if a protection order is *not* made.[231]

Children's advocates have further advised the LCO that routinely appointing counsel for children in protection order proceedings could better ensure that children's evidence reaches decision-makers and is appropriately weighed. This could be achieved through legislative amendments to Ontario's *FLA* and *CLRA* requiring courts to ascertain children's views and wishes about protection orders and authorizing courts to appoint counsel where appropriate, as in s. 78 of the *CYFSA*.

## 5.8 Risk Assessments

Since protection orders are meant to reduce the risk of future violence, accurately predicting that risk is fundamental to ensuring that protection orders are granted when needed. It is also important to properly assess risk in order to craft protection order conditions in that are correlated to the level of risk and the unique circumstances of each case.

Many protection order decision-makers already use two of the most reliable predictors to assess the risk of continuing intimate partner violence: (1) examining the past pattern of abuse and violent conduct; and (2) considering survivors' fear.[232]

However, screening protocols and risk assessment tools[233] which can supplement judicial decision-making appear to be underused in protection order cases. The LCO has heard that family courts are not inviting, accepting, or relying on risk assessment evidence in protection order proceedings.

When used correctly, risk assessments can help professionals better understand the dynamics of existing violence; triage cases; refer individuals and families to appropriate services; and empirically predict the risk that violence will continue. Studies show that empirically-validated risk assessment tools can accurately predict between 66% and 80% of continuing physical violence in intimate partner relationships, and up to 90% of the potential for lethal outcome.[234]

At the same time, risk assessment tools are not a flawless proxy for assessing the risk of future harm. They have well-studied limitations, including that they sometimes fail to accurately predict the risk of future violence (particularly non-physical forms of violence),[235] and they reflect risk at only one snapshot in time. The National Inquiry into Missing and Murdered Indigenous Women and Girls has also made clear that standard risk assessment tools used in Canada do not "speak to the lived experiences of Indigenous women."[236] For these reasons, low or moderate risk assessment scores should never be independently relied on as determinative reasons to deny protection orders, especially when other evidence indicates a need for safety.[237]

In the United Kingdom, a family court practice direction authorizes judges to direct service providers to prepare and file expert risk assessments of any party in intimate partner and family violence cases. The practice direction also requires Children and Family Court Advisers to provide risk assessments directly to judges.[238] A panel recently reviewed the implementation of this practice direction, due to concerns that it was not operating as intended and family courts were ignoring reliable service providers' risk assessments.[239]

In response to the review, the United Kingdom introduced a new pilot project to enhance information-sharing and risk assessments in family court cases involving intimate partner and family violence.[240] The Pathfinder project aims to provide judges with more information and documentation about violence in families.[241] The project focuses on investigating and addressing allegations of violence outside of court, to avoid the traditional adversarial approach of debating facts during litigation.[242]

The Pathfinder project consists of three stages. Agencies first gather information and assess the risks to a child or party. A judge reviews this information, including any risk assessments, and can request more documentation before the case gets to court. There is then a hearing to determine if any interventions or decisions are required, such as whether the case is eligible for mediation or if support services are needed. Between three months to one year after a ruling is made, the courts and agencies involved can follow up with the family to ensure court orders are working well and being followed, and to review whether further support is needed.[243]

The Pathfinder project tries to ensure expert evidence of risk is provided directly to family courts. In Canada, the LCO has heard that survivors in Alberta have sought to achieve this goal by attaching risk assessments to protection order applications, in the hopes that decision-makers will consider the assessment when weighing the need for a protection order.

## 5.9 Legislated Risk Factors

There are no enumerated risk factors to consider for restraining orders in Ontario's *FLA* or *CLRA*, nor is there any other guidance to protection order decision-makers.

This is contrasted with orders for the exclusive possession of the matrimonial home in Ontario's *FLA*, which specifies criteria a court must consider in determining whether to make an exclusive possession order.[244]

It is also different from the approach in some other Canadian jurisdictions, whose civil protection order legislation sets out risk factors decision-makers must consider when evaluating protection order applications. Risk factors that can justify making an order include circumstances of the respondent that may increase the risk to the applicant (such as

mental health, substance abuse, employment or financial difficulties, access to weapons and release from incarceration),[245] circumstances of the applicant that may increase their risk (such as pregnancy, age, family circumstances, disability, health or economic dependence),[246] recent separation or intent to separate,[247] the presence of coercive control,[248] and violence against animals.[249]

The LCO counted the number of risk factors identified by Ontario's Domestic Violence Death Review Committee that were alleged or observable in 76 restraining order decisions from 2021 to 2023.[250] There was no statistically significant correlation between the number of risk factors in any given case and the outcome of the restraining order application, even when ten or more risk factors seemed to be present.

## 5.10 Expert Evidence

The Supreme Court of Canada first endorsed the use of expert evidence to provide social context about intimate partner violence in a criminal case in 1990.[251] In considering the case of a woman who had killed her abusive intimate partner in self-defence, the Court recognized that relationships marred by intimate partner violence are "subject to a large group of myths and stereotypes" and "difficult for the lay person to comprehend".[252]

The Supreme Court has also relied on social context and social science evidence in family law cases. In concurring reasons, Justice L'Heureux-Dubé recognized "the usefulness of social science research and judicial notice of social context in debunking myths and exposing stereotypes and assumptions which desensitize the law to the realities of those affected by it".[253] In particular, social science research and expert evidence can help guide otherwise flawed judicial assessments of women's behaviour, credibility, fear, and safety risks in protection order proceedings.[254]

However, the LCO has heard and observed that the use of such evidence in protection order proceedings is rare. Survivors have suggested that having a panel of experts to contact, or a virtual library of social science research and expert evidence to rely on, would encourage the use of this evidence.

Another option is to invite more evidence from participant experts like therapists, physicians, social workers, and teachers to assist judges in intimate partner and family violence cases. Participant experts provide opinion evidence to family courts based on their professional involvement with the parties outside of litigation.[255] Their testimony about witnessing abusive behaviours during their interactions with the parties can corroborate allegations of violence and bolster an applicant's credibility.

## 5.11 Cross-Examination

In the LCO's review of 76 restraining order decisions in Ontario from 2021 to 2023, we were concerned to see that self-represented respondents personally cross-examined applicants in 11 cases.[256] Unrepresented applicants cross-examined respondents in 12 cases.[257] In all but two of these cases, courts did not make alternative trauma-informed accommodations.[258] Judges did not comment on whether it was appropriate for an alleged abuser to cross-examine a survivor (or vice versa), and did not appoint *amicus curiae* for this purpose.[259]

This is a problem given the gender-based dynamics of power, control, and fear that characterize relationships afflicted by intimate partner violence. Not only is cross-examination by an abuser an incredibly traumatic experience for a survivor, but it is also a highly flawed manner of gathering evidence and assessing credibility.

In some restraining order decisions, Ontario courts have noted that "[c]ross-examination at trial can provide valuable information in the court's risk assessment."[260] However, for applicants who fear their abusers and are forced to be cross-examined by them or cross-examine them, cross-examination may produce unreliable, incomplete evidence and re-traumatize survivors.[261]

In other Canadian and international contexts, courts and administrative bodies routinely appoint *amicus* or forgo cross-examination to prevent alleged abusers from cross-examining survivors.[262]

## 5.12 Weighing the Impact on the Respondent

Many family courts recognize that restraining orders can have serious consequences for respondents. This is both because the conditions of a restraining order restrict the respondent's liberty, but also due to the potential for imprisonment if the restraining order is breached. At the same time, intimate partner violence advocates have expressed concern about family courts' emphasis on preserving respondents' liberty interests, which they argue often comes at the expense of leaving women and children insufficiently protected from violence. The question of how to balance the applicant's need for protection against the respondent's liberty and procedural rights is complex and consequential.

Several courts in the LCO's case law review weighed the necessity of a restraining order with the deprivation of the respondent's liberty if a restraining order were to be imposed or breached.[263] Some judges sought to avoid granting restraining orders where they perceived that the risk of violence could be cured by alternative orders, such as orders regarding conduct and parenting orders with non-communication provisions.[264] These alternatives carry less stigma and less serious consequences for respondents in the event of a breach. In other cases, judges assumed that the "triggers" for intimate partner and family violence were no longer in play, such that a restraining order was not warranted (reasoning, for example, that since the parties had separated or sold the family home,[265] or because the respondent had complied with other court orders,[266] a restraining order was unnecessary).

The LCO's study also revealed a series of family court decisions endorsing a set of "key principles" pertaining to restraining orders, which includes the following caution to decision-makers:

> *A restraining order is serious, with criminal consequences if there is a breach. It will also likely appear if prospective employers conduct a criminal record (CPIC) search. This could adversely affect a person's ability to work. It may affect a person's immigration status.*[267]

In Ontario, the *Police Record Checks Reform Act* prevents the disclosure of non-conviction information about individuals unless the criteria for exceptional disclosure are met.[268] The Schedule states that restraining orders made under the *FLA*, *CLRA*, or *CYFSA* should generally *not* be disclosed in criminal record checks or vulnerable sector checks. This means that most restraining orders will not affect a person's employment or immigration status, as long as they are not breached. This is significant, because protection order decision-makers balancing an applicant's right to be free from violence against a respondent's right to be free from state restrictions on their liberty must have an accurate understanding of the effects of the order on respondents.

## 5.13 Communicating and Integrating Evidence from Related Proceedings

The LCO reviewed many restraining order decisions where family courts lacked important information about criminal legal processes.[269] In most cases, there seemed to be no way for family judges to access the missing information, even though it was highly relevant to evaluating the need for a protection order. Family courts unaware of the resolution of criminal charges, the existence of a peace bond, or the conditions imposed in a bail release order, for example, could issue orders which place applicants and children at risk.[270]

While one Ontario family court form requires litigants to disclose information about related orders and proceedings, the LCO has heard that respondents rarely share this information, and survivors may not know the outcomes of respondents' criminal charges.[271]

Other Canadian jurisdictions also require applicants to disclose orders or proceedings relating to the protection order application. These can include previous protection orders,[272] parenting orders, recommendations and reports from other orders, as well as criminal proceedings and peace bonds.[273] Newfoundland and Labrador require *ex parte* protection order applications to include a summary of all previous and current proceedings and orders affecting the applicant and the respondent.[274] Manitoba's legislation requires protection order decision-makers to consider information from court registries about legal proceedings in criminal, family or other courts involving the respondent.[275] However, it is not clear to the LCO how well these measures are working in practice. Further, these requirements do not address when it is appropriate to share evidence from related proceedings, and how to do so safely.

Even when family courts do have information about criminal court proceedings, judges vary as to the weight they place on it. In theory, family courts must accept a criminal conviction as proof of the conduct underlying the conviction,[276] although at least one Ontario family court has held that a respondent's "criminal convictions alone are insufficient to form a legitimate basis for [the applicant's] subjective fears" in the context of a restraining order application.[277]

The situation is more complex with peace bonds, because they are not a finding of guilt. Some family courts have held that the existence of a peace bond gives credence to the applicant's reasonable fear, because the peace bond is "convincing evidence that the [respondent] was responsible for criminal behaviour sufficient to support the conditions imposed" and was "not made lightly or without sufficient evidentiary foundation."[278] However, many family courts do not place much probative value on the existence of a peace bond to support allegations of intimate partner and family violence.[279]

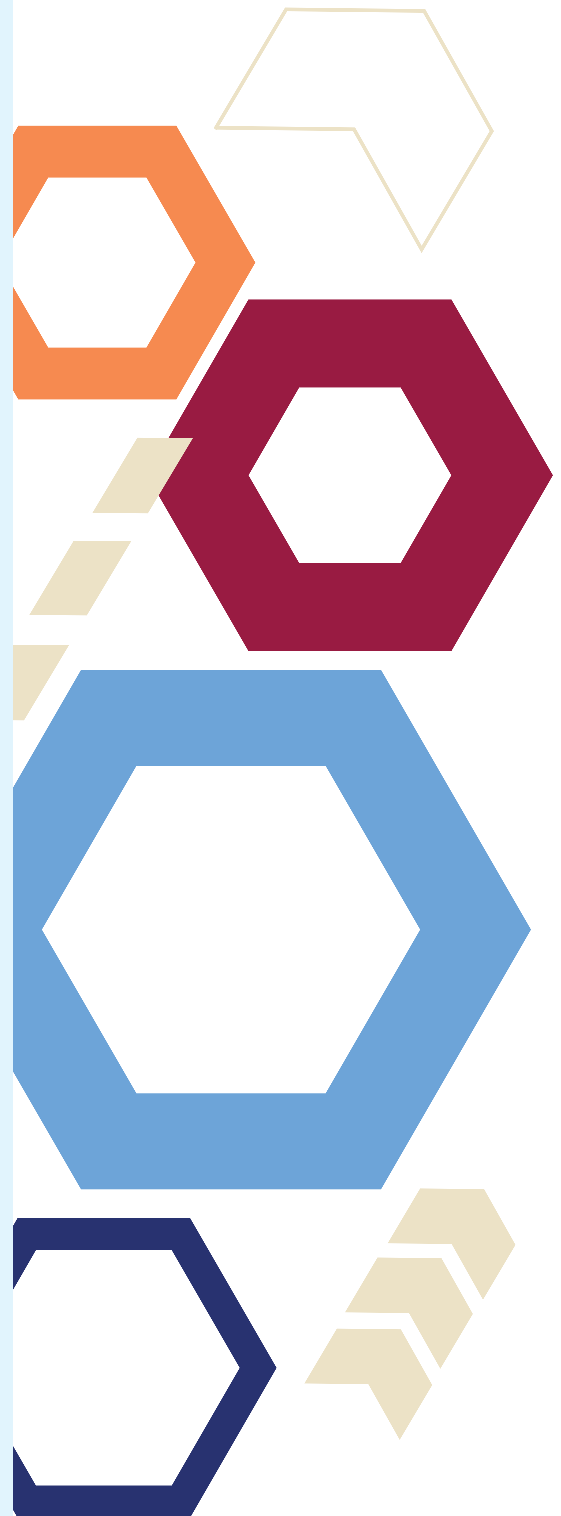
The challenge of coordinating related proceedings, including sharing evidence safely where appropriate, is discussed further in Section 9.2.[280]

## 5.14 Ensuring that Related Proceedings are not a Bar to Protection

The LCO reviewed cases where judges declined to grant a restraining order because there was already a criminal protection order in place.[281] One court dismissed the applicant's concerns that the respondent could apply to vary his bail without notifying her, finding it "highly speculative" that the Crown or court would not consult the applicant.[282] Lawyers have advised the LCO that bail conditions are, in fact, routinely amended without notice to the protected person. To guard against this risk, other civil protection order statutes make clear that a criminal protection order is not a bar to obtaining a civil protection order.[283]

## 5.15 Consultation Questions about Evidence in Protection Order Proceedings

14. Should the reasonable fear standard for evaluating a restraining order application be replaced by a different standard of proof?
    a. Should the evidentiary standards for emergency and non-emergency protection orders be different?
    b. Is it a problem that the two different types of restraining orders in the *CYFSA* rely on different evidentiary standards (best interests vs. reasonable fear)?
15. Do courts have enough information about applicants' safety needs, the history of violence, the risk to children, etc., when evaluating the need for a protection order?
    a. If not, what might safe, appropriate, and effective pathways to collect and communicate this information look like, and who should be responsible?
16. Should Ontario legislatively prohibit a list of myths and stereotypes that courts must not rely on?
17. How can children's experiences, wishes and safety needs be better ascertained, integrated into the evidentiary record, and weighed by the court in protection order proceedings?
18. Who should conduct risk assessments, how often, and using what tool(s)? How should risk assessments be introduced as evidence and relied on by courts?
19. Should Ontario legislate a list of risk factors to consider when evaluating a protection order application?
20. Should the use of expert evidence in protection order cases be expanded? If so, how?
21. How should courts address the issue of cross-examination by unrepresented parties?
22. Should courts weigh the impact of granting a protection order on respondents? If so, to what extent?
23. How should evidence and/or orders from related court proceedings be communicated and integrated into the family court record (and vice versa), if at all?
24. How should Ontario ensure related proceedings are not a bar to protection?



# 6 Protection Order Conditions

## 6.1 Overview

Ontario's *FLA*, *CLRA*, and *CYFSA* provide statutory authority for judges to order broad and creative restraining order conditions tailored to the safety needs of the person they are trying to protect. The *FLA* and the *CLRA* explicitly authorize judges to restrict the respondent's communications and movements in relation to the protected person.[284] The statutes also contain "catch-all" provisions allowing judges to impose any other restraining order conditions "the court considers appropriate."[285]

However, the LCO's case law review showed that judges rarely exercise this discretion. Instead, judges mostly grant communication and movement restrictions in restraining orders to prohibit the respondent from contacting the applicant or coming near them. It is less common for judges to use the "catch-all" provisions to order other appropriate conditions that could address the unique safety needs of people in need of protection, including the specific forms of violence they are experiencing.

There are many options to encourage protection order conditions that are responsive to survivors' individualized, contextualized safety needs. This section reviews options and oversights when it comes to protection order conditions, including:

- Statutory lists of conditions for decision-makers to consider
- The need for responsive conditions
- Conditions relating to children
- Weapons conditions
- Property and financial conditions
- Conditions to prevent tech-facilitated violence
- Conditions to protect animals
- Counselling conditions
- Conditions to monitor compliance
- Conditions that may be impossible to comply with or inadvertently risk further violence

## 6.2 Statutory Lists of Conditions for Decision-Makers to Consider

Ontario's restraining order laws explicitly authorize judges to restrict a respondent from contacting, communicating with, or coming within a specified distance of an applicant, as well as other conditions the court considers appropriate. Other Canadian jurisdictions specify a longer list of conditions decision-makers should turn their minds to.[286] Providing explicit statutory authority to order a broad range of conditions may help to align protection order conditions with applicants' safety needs.

In British Columbia's legislation, the list of conditions courts can order includes provisions to *restrain* the respondent from doing something, *require* the respondent to do something, and direct a police officer to do something.[287] To support decision-makers and court staff, British Columbia has developed a "picklist" of protection order conditions.[288] The picklist is a detailed, non-exhaustive list of conditions that decision-makers can include or modify when drafting protection orders.

The picklist approach has several benefits. A picklist can provide standardized language to guide decision-makers in crafting protection order terms, encourage the use of plain-language conditions that anticipate and avoid conflicts with other protection orders, and help to ensure conditions are tailored to the applicant's safety needs.

## 6.3 Responsive Conditions

The LCO reviewed several cases where restraining order conditions were not aligned to the applicant's requests or the forms of violence they experienced.[289] We also reviewed many cases where a woman's restraining order application was denied and the court ordered other forms of protective conditions that did not respond to her safety needs.[290]

Courts in Ontario are not explicitly directed to consider a protection order applicant's unique safety needs. In our case law review, the LCO found that many judges grant communication and movement restrictions (the two types of conditions explicitly authorized in Ontario's *FLA* and *CLRA*), but seem reluctant to order other appropriate conditions using the statutory "catch-all" provisions. At least one Ontario judge read down the scope of judicial discretion to craft other appropriate conditions, such as to complete counselling and show remorse.[291] Another judge ignored the catch-all provision entirely in the course of denying a mother's request for a restraining order to protect herself, her family, her pets and her property, finding that adult children, pets and property were not entitled to the protection of a restraining order.[292] In that case, the catch-all provision could have authorized the judge to extend protections beyond the applicant, if appropriate to ensure her physical and psychological safety. The result of underusing the catch-all provisions is that many restraining orders do not address applicants' unique circumstances and the dynamics of violence they face.

The LCO's consultations have underscored the need for judges to turn their minds to drafting stronger, more responsive conditions that are tailored to the violence at issue and the applicant's safety needs. This is important because the particulars of intimate partner and family violence can vary considerably in different social, cultural, and individual contexts. For example, women whose partners have access to firearms may need a weapons restriction in their protection order. Applicants who share pets with their former partners may require protections for their animals. People with disabilities may need certain protective conditions, such as a condition to prevent the destruction or withholding of their mobility equipment,[293] and newcomer women may need protections for their immigration documents, or a condition to prevent the withdrawal of sponsorship. People who are elderly, people in 2SLGBTQI+ relationships, children and other survivors may be subjected to different forms of violence requiring specific prohibitions.

Professor Linda Neilson has called on protection order decision-makers to ensure applicants have an opportunity to speak to their specific safety needs.[294] Decision-makers can then craft conditions that are responsive to the forms of violence being used.

Outside Ontario, courts in other Canadian jurisdictions must consider applicants' individual risk factors and vulnerabilities in protection order proceedings. New Brunswick's legislation, for example, specifically requires protection order decision-makers to consider whether an applicant is at increased risk due to pregnancy, age, family circumstances, disability, health, or economic dependence, though it is not clear whether this translates into protective conditions.[295]

Judges may also have explicit statutory authority to turn their minds to tailored protections. Courts in Manitoba, for instance, can suspend a respondent's driver's licence if the respondent used a vehicle to commit intimate partner violence.[296] Courts in Alberta can impose no-contact conditions that extend to prohibiting indirect communication through a third party.[297] In addition, many jurisdictions explicitly authorize firearm-related conditions and other protections, such as mandatory counselling, that Ontario judges do not generally include in non-criminal protection orders.[298]

Stronger, more responsive conditions are explored below.

## 6.4 Conditions Relating to Children

Many restraining order decisions the LCO reviewed did not fully extend protections beyond the applicant. In families with children, judges often issued orders specifically allowing for contact between the respondent and the children. Some courts granted parenting orders instead of restraining orders, while others crafted parenting carve-outs to restraining order conditions.[299]

Parenting carve-outs occur when judges make exceptions to conditions meant to protect an applicant and children from a respondent's violence for the purposes of parenting. Parenting carve-outs sometimes depend on mothers to facilitate fathers' parenting time with children despite no-contact or no-go conditions.[300] Parenting carve-outs can therefore diminish protections for children and, in certain cases, enable fathers' contact with children at the cost of reducing the protections afforded to mothers.

The LCO found parenting carve-outs in 24 of 27 restraining orders granted or extended in cases involving children in our study from 2021 to 2023. In some of these cases, there were allegations of violence towards the children.[301] Other Canadian research has shown that parenting carve-outs are also common in criminal protection orders, indicating that courts may overlook the risk to children in favour of continued parenting by the respondent, and that women with children may receive less protection from protection orders than women without children.[302]

Some Canadian jurisdictions explicitly direct protection order decision-makers to consider the best interests of children.[303] Many courts also have statutory authority to make interim parenting orders in protection orders until a family court can decide on the matter. For example, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and Nunavut require courts to consider the best interests of children in making protection orders, and allow courts to include conditions for the temporary care and custody of children in emergency protection orders.[304] Most of these jurisdictions also provide that parenting conditions in emergency

protection orders take priority over other pre-existing parenting orders, including those under provincial family laws and the federal *Divorce Act*.[305]

## 6.5 Weapons Conditions

Weapons are used to intimidate, control, threaten, abuse, and kill people targeted by intimate partner and family violence across the country. Known risk factors for intimate partner murders include access to firearms or possession of firearms, prior assault with a weapon, and prior threats with a weapon.[306]

In 2023, Canada had the fifth- or sixth-highest rate of civilian gun ownership in the world, and a correspondingly high rate of firearm-related violence.[307] Intimate partner violence victims were shot in almost half of the cases Ontario's Domestic Violence Death Review Committee analyzed in 2021.[308] Rates of firearm-related femicides and other intimate partner violence against women in Canada are disproportionately higher in rural, remote, and Northern communities than in urban areas.[309]

Ontario's family and child protection laws do not give judges explicit statutory authority to restrict access to weapons or regulate their use.[310] As a result, courts seem reluctant to restrict respondents' weapons. The LCO reviewed several restraining order decisions where firearms restrictions may have been warranted but were not considered.[311]

Civil protection order legislation in other provinces and territories explicitly authorizes judicial orders to seize and prohibit access to weapons.[312] Many courts across Canada can order a respondent to surrender weapons through a protection order, though few jurisdictions require seizure of weapons by law enforcement. In most cases, respondents are supposed to disclose their weapons and turn them in.[313] Absent a clear mechanism for surrendering weapons, survivors have the burden of reporting non-compliance.

A new federal law which has received Royal Assent but not fully come into force seeks to restrict firearms access for people bound by a protection order. Bill C-21 amends the *Firearms Act* in part to:

> (a) prevent individuals who are subject to a protection order or who have been convicted of certain offences relating to domestic violence from being eligible to hold a firearms licence;
>
> (b) revoke an individual's licence if there is reasonable grounds to suspect that they engaged in an act of domestic violence or stalking or if they become subject to a protection order; and
>
> (c) require any competent authority that makes, varies or revokes a protection order to inform a chief firearms officer of the protection order or its variation or revocation within 24 hours.[314]

## 6.6 Property and Financial Conditions

Apart from exclusive possession orders, Ontario's protection order legislation does not explicitly instruct judges to consider or grant conditions relating to property, payments, or financial abuse. The LCO reviewed few restraining order decisions that included protections for property or other monetary conditions, despite allegations of intimate partner and family violence damaging property and creating expenses for applicants.[315]

Like in Ontario, civil protection order statutes across Canada allow decision-makers to grant applicants exclusive possession of the family home, regardless of ownership.[316] Exclusive possession orders are not helpful to Indigenous women, however, because provincial legislation does not apply on reserve lands.[317]

Protection order conditions in other jurisdictions can also extend beyond possession of the home. Protection orders in Newfoundland and Labrador and Prince Edward Island, for example, can restrain respondents from terminating basic utilities for a house.[318] Courts in British Columbia can require respondents to make payments for rent, mortgage, specified utilities, taxes, insurance, and other expenses related to a residence.[319] Other provinces also allow courts to order a respondent to pay rent or mortgage payments for the family home as a condition of an emergency protection order.[320]

Conditions requiring respondents to make payments for rent, mortgage, utilities and other expenses can help prevent financial control and abuse. Advocates have recommended that civil protection order legislation should explicitly authorize such conditions.[321] Professor Neilson suggests that other examples of protective financial provisions could include restrictions on using credit cards or conduct designed to affect the protected person's credit rating, and prohibitions on increasing or defaulting on loans.[322] These types of conditions could better protect applicants in Ontario. For example, one case in the LCO's review concerned a woman who had experienced numerous forms of violence by her former husband, including threats that he would "ruin her financially if she ever tried to divorce him".[323] The court granted a restraining order with communication restrictions but no specific financial conditions. In a more promising example, the judge included a condition in the restraining order that "[the respondent father] will not unreasonably withhold his consent where it is needed by [the applicant mother] to secure housing, credit, and/or any other aspects of social, financial and emotional independence."[324]

Emergency protection orders in most jurisdictions can also include conditions giving applicants temporary possession of personal property, such as financial documents. In Newfoundland and Labrador, for example, courts can include "a provision granting the applicant temporary possession of or control over specified personal property, including a motor vehicle, cheque book, bank card, health services card or supplementary medical insurance card, identification documents, keys, utility or household accounts or other personal effects" and can prohibit respondents from taking or damaging such property.[325]

Some jurisdictions allow conditions requiring respondents to pay compensation to applicants or cover certain expenses. Protection orders in Alberta for example can require respondents to pay for monetary losses suffered by the applicant and their children due to family violence.[326] This can include compensation for monetary losses suffered as a direct result of the violence, such as loss of earnings or support; medical, dental, and out-of-pocket expenses for injuries; moving and accommodation expenses; legal expenses and costs of the protection order application. Other jurisdictions have similar provisions, with Manitoba specifying that the respondent can be ordered to pay for "counselling, therapy, medicine and other medical requirements" and security measures, among other expenses.[327]

## 6.7 Conditions to Prevent Tech-Facilitated Violence

Tech-facilitated violence is now a frequent feature of intimate partner and family violence cases. The LCO continues to hear reports of protection orders failing to guard against tech-facilitated violence, such as respondents sending harassing messages via e-transfers,[328] remotely accessing and abusing technology in the protected person's home,[329] stalking applicants through hidden devices like AirTags, and interacting with applicants' social media channels despite no-contact conditions.

The LCO has been advised that protection order decision-makers should consider conditions that recognize and respond to tech-facilitated violence, like cyber-stalking, the non-consensual sharing of intimate images, and other digital harassment. This could include conditions requiring respondents to de-link from shared accounts.

Ontario's protection order legislation does not direct judges to turn their minds to tech-facilitated violence, and most restraining order decisions the LCO reviewed did not provide explicit protections against tech-facilitated violence.[330]

Statutory language relating to tech-facilitated violence in civil protection order legislation is rare in Canada.[331] However, Nova Scotia has adopted separate legislation allowing courts to grant cyber-protection orders to prevent tech-facilitated violence. Nova Scotia's *Intimate Images and Cyber-protection Act* allows applicants to apply for a cyber-protection order to stop cyber-bullying or the sharing of intimate images.[332] A cyber-protection order can:

- Forbid someone from sharing an intimate image
- Forbid someone from posting communications that would be considered cyber-bullying
- Forbid someone from contacting the victim in the future
- Order a person to take down or disable access to an intimate image or communication
- Declare that an image is an intimate image or that communication is cyber-bullying
- Refer the parties to dispute resolution
- Award damages to the victim[333]

## 6.8 Conditions to Protect Animals

Violence towards animals is another common harm in intimate partner and family violence cases.[334] It can also be a strategy to manipulate survivors into staying or returning to violent households to protect their animals.[335] Ontario's Domestic Violence Death Review Committee has determined that prior violence against family pets is a risk factor for intimate partner homicides.[336]

Most judges in the LCO's case law review did not consider protections for pets.[337] To counter this trend in the United States, many states have amended their protection order legislation to explicitly authorize judges to include protections for animals.[338] In Canada, New Brunswick's civil protection order legislation defines "household pets" as a form of property that can be protected by emergency protection orders.[339] New Brunswick and Manitoba also include violence against animals as a judicial consideration in justifying an emergency protection order.[340] British Columbia similarly defines family violence to include "threats respecting pets" as a form of psychological or emotional abuse that can give rise to the need for a protection order.[341]

## 6.9 Counselling Conditions

The LCO has heard that conditions referring the person causing harm to appropriate supports and services, such as intervention programs, mental health and addictions care, educational resources, and other counselling can improve their ability to comply with a protection order and enhance safety. However, case law across Canada is conflicting about whether and when courts can mandate counselling for people using violence against their intimate partners and children.

In Ontario, mandatory counselling conditions in intimate partner violence cases are most common in criminal court, and in family cases where the counselling order is directed to improve the respondent's parenting relationship with their children (as opposed to reducing the respondent's violence towards their partner).[342] This leaves a question open as to whether more family law judges should mandate respondents to attend counselling to address intimate partner violence in restraining order conditions.

In the bail context, the Supreme Court of Canada has cautioned against the use of conditions intended to change an accused's behaviour. In *R. v. Zora*, the Court held that behavioural conditions intended to rehabilitate an accused will not be appropriate unless the conditions are necessary to address the risks posed by the accused, because of the prospect of criminal liability for breaching the order.[343]

Despite the Court's cautions about behavioural conditions in *Zora*, many bail release orders direct people charged with intimate partner violence-related offences to participate in intervention programs like the Partner Assault Response (PAR) program.[344] The PAR program is a psycho-educational group counselling program funded by Ontario's Ministry of the Attorney General.

In Ontario's family law cases, as noted, the general trend is that courts are comfortable directing counselling when related to *parenting*.[345] Counselling conditions are usually tied to parenting time or other parenting issues, and the orders are framed as requiring respondents to undergo voluntary counselling *if* they want to be more involved in their children's lives. These orders are structured in a way that means respondents can choose not to go to counselling and they will not be in breach of a court order.

Other Ontario family court judges have ordered parents to attend counselling in a less voluntary manner.[346] These orders are framed in a way that requires parents to attend counselling regardless of whether they want to change their involvement in their children's lives. A parent who refuses to attend counselling will be in breach of the court order.

Professor Neilson recommends adopting clear statutory authority for judges to order counselling.[347] Other Canadian jurisdictions have taken this approach in their protection order legislation. The language of these provisions differs across the country, with some courts empowered to *recommend* counselling or therapy as part of an order,[348] while other courts can *require* counselling or therapy as part of an order.[349] Courts in certain jurisdictions can order respondents to cover the costs of intimate partner violence-related counselling or therapy for the protected person or a child.[350]

Professor Neilson cautions, however, that compliance with counselling conditions should be monitored, because counselling programs do not necessarily stop violence, drop-out rates are high, and non-completion is associated with an increased risk of future violence.[351]

The LCO has also heard that counselling is not suitable for every perpetrator, especially when violence is entrenched and where there are serious mental health concerns. In these cases, orders for counselling may create a false sense of security.

## 6.10 Conditions to Monitor Compliance

There is no standardized monitoring of compliance with non-criminal protection orders in Ontario. While electronic monitoring of offenders can be used in criminal cases, it is not used in family court protection orders. Instead, it is left to survivors to report protection order breaches.

In 2019, France introduced legislation allowing a criminal *or* family court to request a bound person to wear an electronic bracelet as part of the terms of a protection order.[352] When electronic monitoring is ordered as a condition of the protection order, both the applicant and the respondent wear an electronic bracelet that looks like a smartwatch and tracks movements using GPS. Both bracelets set off alarms if the respondent comes closer to the applicant than the protection order allows. If the respondent ignores the alarm, the bracelet sends an alert to the police.[353] The alarm and alert system means applicants can take steps to ensure their own safety before police arrive.

The LCO has heard from survivors in Ontario that a dual-bracelet electronic monitoring system would have given them peace of mind in their own cases.

## 6.11 Conditions That May Be Impossible to Comply with or Inadvertently Perpetuate Violence

Some protection order conditions are more likely to be breached than others. Respondents may breach conditions that are unclear, conflicting, hard to change in the event of reconciliation, do not acknowledge the respondent's mental health or substance use issues, or do not account for the family's interdependency (such as shared housing, joint finances, and co-parenting arrangements).

The LCO has heard about conditions that are impossible to comply with in the absence of stronger social infrastructure and wraparound services.[354] For example, a person with a substance use disorder may have great difficulty complying with a criminal protection order that prohibits them from drinking alcohol. Without addictions support, this person may continuously breach the protection order and become further entangled in the criminal legal system.[355]

Other social inequalities and economic threats – like the lack of safe and affordable housing, poverty, unemployment, and a rising cost of living – create prime conditions for breaches of family protection orders and corresponding criminal jeopardy. Exclusive possession orders and common restraining order provisions, such as no-contact conditions and no-go or proximity restrictions, often prevent the respondent from living in the family home. Protection orders do not answer the question of where the displaced person should go. Protection orders also do not usually address how the protected person is supposed to pay for their housing costs and other living expenses if they are financially dependent on their partner. And in rural communities, small Northern towns and on First Nations reserves, it can be impossible for respondents to consistently abide by conditions requiring them to stay a certain distance away from the applicant's home, workplace, school or place of worship.

In the bail context, the Supreme Court of Canada warned that conditions "may be easy to list, but hard to live."[356] Without appropriate social infrastructure, protection order conditions that render people unhoused or are otherwise difficult to comply with will continue to be breached. These conditions may perpetuate violence by worsening respondents' well-being, and they may lead to repeated interactions with the police and the criminal legal system.

## 6.12 Consultation Questions about Protection Order Conditions

25. Should Ontario legislate a statutory list of conditions for protection order decision-makers to consider? What should be on the list?
    a. In what areas are conditions missing, being overlooked, or falling short of what is needed to provide protection?
    b. How can we encourage courts to identify and draft conditions that are responsive to applicants' unique safety needs?
26. What do you recommend about how to improve conditions relating to children, weapons, property and finances, tech-facilitated violence, and animals?
    a. Should courts be authorized to mandate counselling and electronic monitoring in protection order conditions?
27. Some conditions may be impossible to comply with or perpetuate violence (such as those that remove the respondent from the family home and render them unhoused). How can courts evaluate potential conditions more effectively? What supports and services should be activated when protection order conditions are imposed, and by whom?

# 7 Protection Order Duration

## 7.1 Overview

The length of protection orders can vary. Ontario's *FLA* and *CLRA* authorize judges to grant restraining orders on an interim or final basis, but there is no guidance about how long orders should last or how to determine an appropriate duration.[357] In contrast, restraining orders made under s. 137 of the *CYFSA* are to continue in force for as long as the court considers is in the child's best interests.[358]

This section explores issues and options relating to protection order duration, such as:

- Legislating default minimum and maximum durations
- Making duration contingent on safety developments

## 7.2 Legislating Default Minimum and Maximum Durations

Restraining orders were granted or extended in 29 of 76 cases the LCO reviewed from 2021 to 2023. Six of those restraining orders were issued on a permanent basis.[359] Of the restraining orders that were not permanent, only one decision in the LCO's review specified the duration of the restraining order on the face of the order,[360] though other judges issued separate endorsements that the LCO could not review but which may have stated the duration of the restraining order.

Other Canadian jurisdictions have reported a trend in judges granting short-term protection orders, to the detriment of applicants.[361] Researchers have cautioned that short-term orders may be too short to be effective at deterring violence and responding to the recurrent nature of intimate partner violence,[362] too short to allow survivors time to escape violent situations and households,[363] too short to be worth the time, energy, expense, and risk of provoking violence that it takes to pursue a protection order,[364] and a poor use of court resources because they require survivors to return to court multiple times to advocate for renewed protection.[365]

In particular, intimate partner violence experts have critiqued protection orders that only last one to two months. Researchers in New Brunswick made the following comment about short-term criminal protection orders:

> *From a family violence, as opposed to a legal perspective, one wonders how the legal system can expect women and children attempting to escape relationships characterized by, in some cases, years of family violence, to achieve safety (court orders protecting themselves and the children, economic independence, residential safety and safe transportation) in merely one to two months.*[366]

There are no provisions in Ontario's *FLA* or *CLRA* about the duration of restraining orders. For *CLRA* restraining orders, children's advocates have told the LCO it would be helpful if the legislation clarified whether those restraining orders expire when a child turns 18 or continue in force (if there is otherwise no termination date and if the order is not varied to exclude the child before the child turns 18).

Other Canadian jurisdictions usually legislate maximum durations for emergency protection orders that range from 30 days (Nova Scotia) to indefinite durations (Saskatchewan, the Yukon). Some shorter emergency protection orders can be extended for longer periods, as indicated in the table below. Note that *non*-emergency protection orders may not be as regulated. The Northwest Territories for instance does not restrict the duration of non-emergency protection orders (as compared to emergency protection orders, which have a maximum duration of 90 days when issued).[367]

### Maximum Duration of Emergency Protection Orders by Jurisdiction[368]

| Jurisdiction | Maximum duration of emergency protection orders | Maximum extension of emergency protection orders |
|---|---|---|
| ***Alberta*** | 1 year | 1 year (per each application) |
| ***British Columbia*** | 1 year (unless otherwise ordered) | No maximum specified |
| ***Manitoba*** | 3 years | No maximum specified (if satisfied a longer period is necessary for protection) |
| ***New Brunswick*** | 180 days | 180 days |
| ***Newfoundland and Labrador*** | 90 days | No renewal or extension |
| ***Northwest Territories*** | 90 days | No maximum specified |
| ***Nova Scotia*** | 30 days | 30 days |
| ***Nunavut*** | 1 year (but certain conditions can only last 90 days) | May apply for a new emergency protection order when original order expires |
| ***Prince Edward Island*** | 90 days (unless otherwise ordered) | No maximum specified |
| ***Saskatchewan*** | Indefinite (length of emergency protection order is "determined by the circumstances and the availability of resources in [the survivor's] community"[369]) | No maximum specified |
| ***Yukon*** | Indefinite (but certain conditions can only last 180 days) | No maximum specified |

An Australian study found that extending the length of protection orders from 12 to 24 months was associated with a reduction in further intimate partner violence, although extending protection order durations could lead to increased surveillance and may increase the volume of people subject to protection orders and strain police capacity.[370]

## 7.3 Making Duration Contingent on Safety Developments

One option to govern the duration of protection orders is to make them contingent on positive safety developments. Professor Linda Neilson has suggested that the duration of protection orders could be made conditional on a specific event, behavioural change, or a revised risk assessment. For example, the order could be set to terminate after the respondent voluntarily completes an intervention or counselling program, followed by a positive risk assessment.[371] Such orders could presumably fit within the statutory language of Ontario's *FLA* and *CLRA* allowing judges to grant restraining orders that include "[a]ny other provision that the court considers appropriate."[372]

However, see Section 6.9 for case law debating whether and when judges can order counselling in the absence of more explicit statutory authority. In particular, at least one Ontario court has held that it was not open to a judge to prohibit a father from seeking to review a restraining order unless he showed remorse and insight into his past violence, completed counselling or therapy, and provided proof of a positive change in behaviour resulting in lowered risk of future violence.[373]

## 7.4 Consultation Questions about Protection Order Duration

28. Should Ontario legislate minimum and/or maximum durations of protection orders?
    a. What factors should guide judicial discretion to determine the appropriate duration of emergency and non-emergency protection orders?

29. Should courts consider making the duration of protection orders conditional on voluntary completion of counselling or an intervention program, followed by a positive risk assessment?

# 8 Enforcing Protection Orders

## 8.1 Overview

Most protection orders in Ontario are enforced by the police. Once judges grant protection orders, court staff are usually responsible for sharing protection orders with law enforcement. It is then left to survivors to report breaches of protection orders to the police. However, some survivors do not know they can report a breach, and others are reluctant to call the police on their intimate partner. In particular, the dependence on police to enforce most protection orders in Ontario "may deter Indigenous, racialized, migrant, and other survivors experiencing intersecting inequalities from applying for protection orders or calling police in the event of breaches, based on their fear of consequences such as deportation and child protection scrutiny."[374] Even when the police are called, the officers who respond to protection order breaches may not be specialized in intimate partner and family violence, and the police may not take action.

When police do not effectively enforce protection orders, abusers are empowered to keep violating those orders. Rates of non-compliance with protection orders are already high. American statistics suggest that one half to two thirds of protection orders are breached.[375] Police should therefore anticipate breaches and be prepared to address them. However, enforcement challenges persist despite the research in this Consultation Paper indicating that restraining orders are only granted to applicants who can pass a rigorous evidentiary threshold demonstrating they are at risk of future violence.

This section considers issues and reforms relating to the enforcement of protection orders, including:

- Inadequate enforcement
- Provincial offence provisions or Criminal Code enforcement
- Deterring breaches with appropriate consequences
- Indirect non-compliance
- Communicating terms, significance, and consequences
- Record-keeping, including protection order databases
- Monitoring compliance
- Interjurisdictional enforcement

## 8.2 Inadequate Enforcement

In jurisdictions like Ontario, where most protection orders rely on the police for enforcement,[376] police failures to enforce protection orders are a major concern. Advocates across Canada have long reported police failures to enforce protection orders. In 2015, a Manitoba woman named Camille Runke was murdered by her estranged husband despite calling the police 22 times to report that he was breaching a protection order.[377] Her case called into question why the police did not enforce the protection order – a question that was also central to the CKW Inquest,[378] and one that has been repeatedly raised in the aftermath of protection order failures.

In 2021, Rise Women's Legal Centre interviewed women in British Columbia who described police ignoring breaches of their protection orders, giving multiple warnings to the person using violence without taking concrete action, or treating the breach as grounds for seeking a peace bond as opposed to enforcing the protection order in its own right.[379] Professor Jennifer Koshan has documented similar concerns in Alberta, as well as failures to enforce protection orders on First Nations reserves by police who were reluctant to intervene.[380]

The LCO has heard about these and other concerns in Ontario. We have learned about cases where the police simply refused to enforce the protection order, seemingly on the basis that the police perceived the breach to be minor or non-threatening. The reports we heard suggest police are more likely to treat breaches as trivial if they do not involve physical harm, such that the breach does not seem obviously violent on its face.

The LCO has also heard that the police cannot always find the protection order (or the details of the protection order conditions) in their databases for the purposes of enforcement. In these circumstances, the police are unable to confirm they have the lawful authority to make an arrest for breaching the protection order and may refuse to intervene. The police may also be confused by, and unable to enforce, mutual protection orders, conflicting orders, unclear orders, and orders that appear out of date. Even when police do make an arrest for a restraining order breach, there is a chance the Crown may not prosecute the charge.[381]

The ongoing lack of enforcement of protection orders prevails despite research showing that breaching a court order is a top 20 risk factor for intimate partner homicide. Ontario's Domestic Violence Death Review Committee reviewed 563 intimate partner violence-related deaths between 2003 and 2021, and found that the perpetrator was known to have breached an existing protection order or other court order in a quarter of cases.[382] This statistic suggests the police should take reports of protection order breaches very seriously.

## 8.3 Provincial Offence Provisions or *Criminal Code* Enforcement

Breaches of most restraining orders are prosecuted under s. 127 of the *Criminal Code*, in the absence of specific offence provisions in Ontario's legislation.[383] This means people who violate the conditions of restraining orders may be charged with the criminal offence of disobeying a court order. A breach charge under s. 127 can be prosecuted as an indictable offence punishable by imprisonment for up to two years, or a summary offence.[384]

In contrast, Ontario's *FLA* contains provincial arrest and offence provisions for breaches of exclusive possession orders:

> **Offence**
>
> (5) A person who contravenes an order for exclusive possession is guilty of an offence and upon conviction is liable,
>
> (a) in the case of a first offence, to a fine of not more than $5,000 or to imprisonment for a term of not more than three months, or to both; and
>
> (b) in the case of a second or subsequent offence, to a fine of not more than $10,000 or to imprisonment for a term of not more than two years, or to both.
>
> **Arrest without warrant**
>
> (6) A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened an order for exclusive possession.[385]

Other Canadian jurisdictions vary as to how they prosecute protection order breaches. In some jurisdictions, breaches of civil protection orders are dealt with via s. 127 of the *Criminal Code*.[386] However, Professor Koshan's evaluation of protection order legislation in Alberta identified concerns about enforcement approaches that rely on s. 127 of the *Criminal Code*:

> *Problems include a lack of clarity in the case law about the application of s 127, which applies "unless a punishment or other mode of proceeding is expressly provided by law", as well as reticence on the part of police and courts to criminalize what they perceive as more trivial breaches. Survivors of family violence may also be reluctant to see their partners criminalized for breaches for a host of reasons, including financial precarity and fear and distrust of police and other authorities, a particular concern for members of marginalized groups.*[387]

Following this evaluation, Alberta amended its civil protection order legislation in 2011. Now, emergency protection orders in Alberta are enforced by arrest and offence provisions incorporated into Alberta's civil protection order legislation.[388] Some advocates have expressed a concern, however, that breaches of protection orders in jurisdictions with provincial arrest and offence provisions may not be taken seriously by police.[389]

In Ontario, there appears to be some judicial confusion about how restraining orders are enforced,[390] as well as police resistance to making an arrest for a restraining order breach.[391] Some judges have added police enforcement clauses to restraining orders to reinforce the police's responsibility to address breaches (though this should not be necessary, given that restraining orders are already supposed to be enforced by the police via s. 127 of the *Criminal Code*).[392] Further, as noted earlier in this Consultation Paper, some Ontario courts are reluctant to impose restraining orders on respondents because of the potential for serious criminal consequences, including imprisonment. It is worth considering whether "less serious" provincial offence provisions would increase the amount of restraining orders granted and enforced in Ontario, especially if those provisions are carefully crafted with appropriate consequences to deter breaches.

## 8.4 Deterring Breaches with Appropriate Consequences

Researchers in other Canadian jurisdictions have considered whether the consequences of breaching protection orders in provincial offence provisions are an appropriate deterrent.[393] In Ontario, maximum penalties for a person convicted of breaching a protection order are up to two years imprisonment (if prosecuted as an indictable offence via s. 127 of the *Criminal Code*) or a fine of $5,000 and/or imprisonment of no more than two years (if prosecuted as a summary offence).[394] Judges may resist granting restraining orders to avoid subjecting respondents to these criminal charges and penalties.

Unlike the sanctions available under s. 127 of the *Criminal Code*, Alberta's provincial arrest and offence provisions set out penalties that gradually increase in severity with repeated protection order breaches:

> **s. 13.1 (2)** A person who is guilty of an offence under subsection (1)(a) or (b) is liable
>
> (a) for a first offence, to a fine of not more than $5000 or to imprisonment for a term of not more than 90 days, or both,
>
> (b) for a 2nd offence, to imprisonment for a term of not less than 14 days and not more than 18 months, and
>
> (c) for a 3rd or subsequent offence, to imprisonment for a term of not less than 30 days and not more than 24 months.[395]

Nova Scotia and Prince Edward Island raise the fine to $10,000 for second and subsequent breaches of protection orders.[396] In New Brunswick, fines can be as high as $500,000.[397] Courts in some jurisdictions can also require respondents to post any bond the court considers appropriate for securing compliance with the terms of the order.[398]

## 8.5 Indirect Non-Compliance

The LCO has heard that protection orders are especially difficult to enforce when respondents breach conditions indirectly. For example, respondents who are not allowed to contact survivors or go to their homes may enlist their family or friends to communicate with, stalk, harass and intimidate survivors on their behalf. The LCO is aware of cases where fathers tried to use their children as messengers or spies by asking for information about their mothers' activities and whereabouts. Many respondents create burner accounts (such as anonymous social media accounts, email addresses, and phone numbers) to contact survivors in violation of the protection order.

Though not specific to enforcement, civil protection order legislation in other jurisdictions contemplates vicarious responsibility for intimate partner violence. For the purpose of granting a protection order, several statutes state that a respondent who encourages or solicits another person to do something that constitutes violence will be deemed to have done the act personally.[399] Courts in Alberta can also make enforceable no-contact conditions prohibiting indirect communication with the protected person.[400]

## 8.6 Communicating Terms, Significance, and Consequences

Legal clinics have advised the LCO that people protected by protection orders sometimes do not know they can report a breach of the order to the police, which actions or inactions constitute a breach, and what steps to take to ensure their safety after a breach.

Further, not all instances of non-compliance with protection orders are malicious breaches. Some breaches may occur because the conditions and significance of the protection order are not effectively communicated to the respondent. Of the 29 restraining orders granted in the LCO's case law review, the court explained the consequences of

breaching the protection order in only four cases. The LCO has also heard from Partner Assault Response program staff that respondents do not always understand what not to do after receiving a protection order. A respondent may breach protection order conditions that are unclear, or if they are unaware of the conditions or misunderstand the extent of the conditions.[401]

Language and literacy abilities, disabilities, mental health issues, and substance use disorders can affect respondents' comprehension of protection orders and their ability to comply without further supports and services. Misunderstandings are also possible when decision-makers do not use clear, plain, and descriptive language in the protection order, or do not explain the conditions in a way that is accessible to the person who must follow them. This is a particular concern when the respondent is unrepresented.

New Brunswick's civil protection order regulations specifically require judicial officers to write protection orders in plain language.[402] Similarly, British Columbia's "picklist" approach to conditions encourages judges to draft plain-language protection orders that all parties can understand.[403] A list of suggested conditions can also help prevent conflicting orders or court expectations, further reducing non-malicious breaches.

Another option is for Ontario to develop a policy for courts and other authorities to ensure the content of a protection order is effectively communicated to all parties. The information to be relayed in plain-language terms could include:

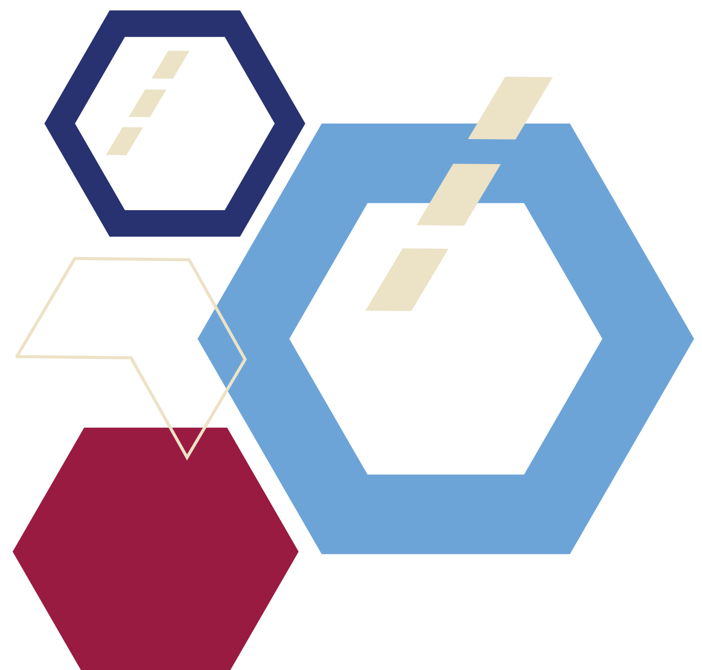
- Who is protected by the order
- Who is restricted by the order
- The duration of the order
- How to change the conditions of the order
- How the order will be enforced
- The choices available to the protected person if the order is breached
- The consequences of failing to comply with the order

In particular, explaining how to change protection order conditions may reduce breaches that arise when intimate partners reconcile or seek to communicate about their children.

## 8.7 Record-Keeping

It is the LCO's understanding that court staff generally send protection orders to local police detachments for the purposes of enforcement. In Thunder Bay, for example, this could include the Thunder Bay Police Service and the Nishnawbe Aski Police Service, which is responsible for providing policing to First Nations communities spanning all of Northern Ontario. However, if the protected person moves or travels within Ontario but outside of those policing jurisdictions, say to Kingston, the Kingston police may not be able to see the details of the protection order. The inability to access detailed conditions appears to be a problem even when the protection order is registered on the shared Canadian Police Information Centre (CPIC) database.

The Ontario Courts' CPIC Restraining Order Form directs family court staff to send restraining orders to law enforcement to upload to CPIC, which suggests that all family and child protection restraining orders should be registered on CPIC.[404] The LCO has been advised, however, that the process of communicating restraining orders (and their amendments) from family courts to the police to be registered onto CPIC is unreliable and non-functional.[405]



For this reason, lawyers and legal clinics, community service providers, and public legal education resources advise the protected person to carry a copy of the protection order with them to show the police in the event of a breach, and to give copies to others who may need to report a breach, like the children's school. Even the Ontario Government advises applicants to always keep a copy of the restraining order with them, and that "[a] copy could be useful if the person restrained disobeys any of the terms of the restraining order and the police are called."[406] This guidance, and experiences shared with the LCO, suggest that police cannot reliably locate protection orders in their databases to enforce them.

This approach places a greater burden on survivors and results in inconsistent and unsafe enforcement practices, which undermine the potential of protection orders and fuel distrust in the legal system. Relying on survivors to keep protection order records seems to be the default practice because there is no coordinated, comprehensive database of all protection orders issued in the province.

### 8.7.1 Protection Order Databases

British Columbia has created a Protection Order Registry for the purpose of ensuring that police across the province have direct access to protection orders and can effectively enforce them. The Registry is a confidential database of all civil and criminal protection orders in British Columbia. Protection orders are supposed to be entered into the registry by British Columbia courts or by the police at the time they are issued, varied, or terminated.[407] The police have 24/7 access to the Registry and can get up-to-date information in order to enforce protection orders immediately.[408]

The LCO has heard that Ontario should develop its own confidential protection order database that can be accessed by courts, law enforcement, and gender-based violence service providers across the province. On-demand, up-to-date access to protection orders issued in Ontario could help to ensure rapid and appropriate enforcement. A database could also improve safety by increasing information-sharing between courts and reducing the frequency of conflicting orders.

The LCO's consultations have stressed the importance of accurate record-keeping if such a database is introduced in Ontario. We have heard concerns that since police are not reliably receiving protection order information from courts, it is important to strengthen communication channels so that a database is useful and successful. Accuracy is also necessary because a protection order database can have consequences for respondents, many of whom will become listed in a policing database even without criminal findings. The database must ensure that personal identifying information and the content of protection orders are correct and up to date.

## 8.8 Monitoring Compliance

There is no standardized monitoring of compliance with protection orders in Ontario. There may be some level of incidental oversight in certain cases, such as where the person subject to the order is attending a Partner Assault Response program, counselling, or other type of program that involves professional assessments of their behaviour on an ongoing basis. In the criminal context, interactions with probation and parole officers may also provide a level of monitoring as to whether the person subject to the order is abiding by their conditions.

In most cases, however, survivors of intimate partner and family violence are responsible for reporting breaches of protection orders to the police, because no one else is monitoring or ensuring compliance on their behalf.

Advocates have suggested the need for structured oversight mechanisms to monitor compliance with protection orders. In France, courts can recommend the use of electronic monitoring bracelets to alert survivors and police to non-compliance.[409] In the United Kingdom, a pilot project launched in some family courts invites courts and agencies to review orders made in intimate partner and family violence cases between three months to one year after the ruling is made.[410] The review is intended to ensure court decisions are working well, including by assessing if court orders are being followed and whether additional supports are needed.

## 8.9 Interjurisdictional Enforcement

While criminal protection orders can be enforced throughout Canada, the same is not always true for non-criminal protection orders.

Most protection order legislation across Canada is not interjurisdictional. This means that if someone obtains a protection order in Saskatchewan, it may not be enforceable once they move to Ontario, even though they may still be at risk of intimate partner and family violence. Ontario does not currently have a procedure in place for people to register their protection orders from other jurisdictions and have them recognized and enforced, though the Government is considering a proposal to streamline the enforcement of restraining orders made in other provinces and territories in Ontario.[411]

British Columbia's *Family Law Act* provides a workaround to this issue. That legislation contains a provision explicitly recognizing that a protection order made by a court in another Canadian jurisdiction is deemed to be an order made under British Columbia's legislation and is therefore enforceable in British Columbia.[412]

## 8.10 Consultation Questions about Enforcing Protection Orders

30. How can we improve police enforcement of protection orders?
31. If Ontario creates standalone civil protection order legislation, should breaches of emergency protection orders be prosecuted through provincial arrest and offence provisions or via s. 127 of the *Criminal Code*? What about non-emergency orders?
    a. Should restraining orders in ss. 102(3) and 137 of Ontario's *CYFSA* have the same enforcement mechanism and consequences for breaches?
32. Are the consequences of breaching a protection order an appropriate and effective deterrent? If not, what other responses should be considered?
    a. What do you recommend about how to address a respondent's indirect non-compliance with a protection order?
33. Who should inform protected persons and respondents about the content of a protection order, the consequences of breaching the order, and how to report a breach?
34. Should Ontario create a protection order database? If so, how can we improve record-keeping to ensure a protection order database is accurate and up to date? Who should have access to the database?
35. Should protection order compliance be monitored on an ongoing basis? If yes, how?
36. Should Ontario provide for the recognition, registration, and interjurisdictional enforcement of protection orders from other jurisdictions?

# 9 Coordination

## 9.1 Overview

Cases of intimate partner and family violence often give rise to related proceedings in the family, child protection, and criminal legal systems, as well as other proceedings such as those before the Immigration and Refugee Board. These courts and administrative bodies have different structures, objectives, processes, evidentiary standards, and timelines. There may be different experts, services, and lawyers associated with each system. Families may be required to attend multiple hearings on different days, in different locations, and to repeat their experiences and produce their evidence many times.[413] Most challenging, however, from the perspective of legal system coordination, is that different courts and bodies have their own databases, case management systems, and other technology.

The result is that the various courts and administrative bodies involved in intimate partner and family violence cases often operate independently with little communication or coordination, even when they are considering violence within the same family. This creates a fragmentation of legal system responses to intimate partner and family violence, which can lead to conflicting or inconsistent orders and gaps in protection when information about risk is not shared.

Ontario's legal systems must also be integrated with government and community services in intimate partner and family violence cases. Safety risks associated with a lack of coordination in the legal sector are amplified by ineffective communication with the extended network of gender-based violence service providers. This network includes social services, mental health and addictions supports, intervention and parenting programs, education initiatives, and other community responses to violence.

## 9.2 Legal System Coordination

Many domestic violence death reviews, inquiries, and coroner's inquests have identified the lack of coordination between legal system responses to intimate partner and family violence as a contributing factor in family homicides.[414] These reports have expressed concern about family courts having to make decisions without knowing all the risks that have been set out for the criminal court judge who made a pre-existing no-contact order.[415]

In 2013, Canada's Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence analyzed issues posed by the intersection of family, child protection and criminal legal system responses to family violence. The FPT Report identified key concerns arising from the lack of coordination between those systems, including:

> *The proceedings and orders made in one court can have significant impacts on parallel or subsequent matters involving the same family in another court. If orders within the criminal context (notably pre-trial release of the accused, bail, peace bonds or conditional sentence orders) are issued without knowledge of the existence or content of family law or child protection orders, inconsistent or contradictory court orders can result and family members may be placed in a situation where they are inadvertently in breach of one of the conflicting court orders. On the other hand, where family courts are issuing child custody or parenting orders without knowledge of pre-existing criminal, civil protection or child protection orders related to family violence, they run the risk of issuing an order that could place the child and or the parent in danger.*[416]

The LCO has heard of many cases where family and criminal courts have issued conflicting orders pertaining to the same family.[417] The LCO has also learned that family courts frequently expect mothers to show they have facilitated a father's parenting time with children, sometimes despite criminal charges and no-contact orders against the father. Conflicting court orders and expectations create confusion for parties, courts, lawyers, and police. Conflicting orders can also encourage breaches because they are impossible to comply with and enforce.

In addition to conflicting orders, the FPT Report explores many other ways the lack of coordination between family, child protection, and criminal proceedings impacts families affected by violence, including that abusers may use this confusion to their advantage.[418] The FPT Report also provides a full analysis of the evidentiary issues associated with sharing evidence safely and appropriately between criminal and family courts.[419]

Despite these challenges, there is value in providing criminal courts with information about family and child protection court proceedings and orders, and vice versa. Coordination allows courts to address or reconcile the intersection of various orders to avoid conflicts; fully assess the risks of harm to family members; know if there is a history of breaches; and anticipate heightened safety risks and emotional context when there are significant upcoming court dates in family and child protection proceedings.[420]

Some Ontario judges have lamented the existing lack of coordination of proceedings relating to families affected by intimate partner and family violence. In *R. v. S.S.M.*, Justice Pomerance observed that there were three separate courts considering the accused's risk of re-offending (in criminal, child protection, and family court proceedings) and two different agencies had conducted separate investigations (the police and the Children's Aid Society).[421] The legal cases were argued by different lawyers in different courts. Each court received different items of evidence, and Justice Pomerance noted that the evidentiary record in her court was incomplete because it did not contain evidence and information from the other proceedings.[422] She wrote:

> *[46] If this case were a jigsaw puzzle, I would not be able to complete the picture. I am missing important pieces relating to the proceedings in Family Court. I presume that the family court is missing important pieces relating to the criminal proceedings. A partial image may misrepresent. One can only perceive the full picture when all of the interlocking segments are combined.*
>
> *[. . .]*
>
> *[52] If criminal and family courts are dealing with the same factual issues, affecting the same family, one might expect there to be a mechanism for the sharing of information between the two sectors. Yet, there tends to be little interaction between these systems. The criminal and family courts seem to operate as separate silos, through which cases move vertically, but not horizontally, toward completion. The silo approach or "two solitudes" model does a disservice to the administration of justice. It can lead to conflicting rulings and incomplete records. Important information and evidence can fall through the cracks. In the worst case scenario, the lack of coordination might result in the recurrence of serious violence.*[423]

Justice Pomerance directed that there be a hearing in the Superior Court of Justice to bring together all the parties, agencies, and lawyers involved with the family.[424] She noted the case raised "very real issues of risk and safety [that] are best addressed by a holistic approach that crosses jurisdictional boundaries", and that it could "only enhance the decision-making process to hear all of the relevant information and evidence, and canvass all of the interested agencies for their level of comfort or concern."[425] Justice Pomerance felt compelled to "break down the silos" to make an informed decision, emphasizing that "[i]ssues arising from domestic violence deserve a coordinated response."[426]

At the same time, many challenges must be overcome to improve legal system coordination. These include the fact that there are different rules relating to disclosure, privilege, privacy and confidentiality in different legal contexts, as well as different legal onuses, timelines, and evidentiary standards.[427]

## 9.3 Cross-Sector Coordination

Multiple sectors are responsible for responding to intimate partner and family violence. This encompasses individuals, organizations, and institutions operating in the government, justice, healthcare, education, policing, and social and community services sectors, whose work may involve direct engagement with anyone affected by intimate partner and family violence. The private sector can also help prevent and respond to violence.[428]

The FPT Report notes that "[e]very major report and much of the research on violence against women and children over the past 25 years has confirmed the crucial importance of cross-sector collaboration."[429] Advocates have explained the collaborative cross-sector strategies required to address intimate partner and family violence as follows:

> *Within each jurisdiction, a comprehensive, co-ordinated strategy is needed to address the problem of domestic violence and the factors that contribute to it. Such co-ordination needs to occur across policy sectors (social, justice, education and health) and at all levels within each jurisdiction: at the provincial level (to establish a policy framework); at the local community level (to co-ordinate services and to identify needs, gaps and solutions); and at the individual level (to provide effective case management and conferencing mechanisms). The essential ingredients of an effective strategy addressing domestic violence within each jurisdiction include resources, a focal point of leadership and co-ordination, senior-level commitment and support to undertake these initiatives, and an accountability framework based on commitment to a long range vision.*[430]

Families affected by intimate partner and family violence interact with many different service providers and other actors as they progress through different legal systems. It is critical that all professionals are informed and engaged in risk management and safety planning, which requires sustained and intentional cross-sector coordination.[431]

## 9.4 Promising Practices to Improve Coordination

Improving coordination across legal systems and within the gender-based violence sector can help reduce safety risks and avoid conflicting, inconsistent protection orders. Promising practices to identify and coordinate multiple legal proceedings are explored below.

### Identifying and linking proceedings

- Mandating courts to inquire about intimate partner and family violence and requiring parties to disclose related proceedings and orders[432]
- Standard clauses in court orders[433] and consistent file designation of intimate partner and family violence cases within each court system to facilitate cross-referencing and improve the manual searching of various databases[434]
- Court coordinators who act as a liaison between different courts (including family, child protection, and criminal courts) to coordinate proceedings, evidence, and related services involved with the family[435]

**Example:**

**Moncton's Domestic Violence Court Coordinator**

In New Brunswick, within the Moncton Domestic Violence Court, there is a Domestic Violence Coordinating Team with a Court Coordinator who collects and shares information with key partners. To prevent conflicting family and criminal court orders, the Coordinator "consults the family court information system on a weekly basis to cross-reference potential overlapping domestic violence cases, by using identifying information of offenders and victims scheduled to appear in Domestic Violence Court each week. This Domestic Violence Court Docket is circulated weekly to the social workers and all involved in the Domestic Violence Court in order to facilitate a coordinated response for domestic violence files."[436]

### Information sharing

- Standardized use of risk assessments[437] and communication and information-sharing protocols among courts, police, lawyers and service providers that supplement the discretion to share information where safety risks outweigh privacy concerns[438]
- High-risk case coordination protocols, frameworks, or committees to manage the timely and confidential sharing of risk assessment, risk management, and safety planning information[439]
- Procedures to regulate the sharing of Crown prosecution records for simultaneous family and child protection proceedings[440]
- Judicial communications[441]
- Coordinating committees and inter-agency collaboration models to strengthen government and community responses to violence[442]

**Example:**

**Toronto's 2024 high-risk case coordination model**

High-risk case coordination models are a relatively new strategy to strengthen community responses to intimate partner and family violence. Some communities in Ontario have created committees comprised of representatives from the Crown, police, and service providers, among other experts.[443] Members identify high-risk cases, share information, make recommendations, and implement agreed-upon safety measures in high-risk cases.

In August 2024, the Toronto Crown Attorney's Office and the Toronto Victim Witness Assistance Program at the Ontario Court of Justice announced a joint initiative called the Toronto Region Intimate Partner Violence High-Risk Committee (IPV-HRC) and High-Risk Teams (HRT) to facilitate a timely, coordinated, and effective response to high-risk intimate partner violence cases in criminal court. The announcement notes that "[t]his will be achieved through the identification, monitoring, and management of high-risk IPV cases with the goal of members sharing information and working collaboratively to enhance the safety of [survivors], their families and the general community in a manner that is trauma-informed and takes into account the intersectional identities of survivors."[444] The Toronto Region is assessing how well the HRC and HRT function to determine whether this model could be replicated in communities across the province.

### Avoiding conflicts

- Protocols allowing Crown prosecutors to access family and child protection court orders before bail hearings[445]
- Standard wording in family court orders,[446] and graduated bail conditions in criminal court orders that are sensitive to changing risks and family proceedings[447]
- Statutory provisions to resolve conflicting orders[448]

**Example:**

**Statutory provisions in civil protection order statutes**

Other Canadian jurisdictions use statutory provisions in their civil protection order legislation to reduce conflicting orders. Several statutes state that emergency protection orders take precedence over existing orders under provincial family laws and the federal *Divorce Act* to provide immediate protection for the applicant and children.[449] British Columbia's legislation provides that criminal and family protection orders take priority over other family court orders in the event of a conflict or inconsistency.[450] The other family court orders are suspended until the protection order is terminated or any order is varied in a way that eliminates the conflict or inconsistency.[451]

### Technological solutions

- A court order database[452]
- A comprehensive electronic court case management system for all levels of court across the province,[453] or automated case identification software that matches family and criminal court cases from separate databases[454]

**Example:**
**New York's Automatic Case Identification System**

The state of New York has an Automatic Case Identification System (ACIS) which reads the separate family and criminal court databases daily and matches related cases. ACIS matches are reviewed by a court clerk, and confirmed matches are assigned a family number which is used to track the family in all proceedings.[455]

British Columbia's Protection Order Registry, discussed in Subsection 8.7.1, is another technological tool designed to improve coordination in intimate partner and family violence cases.

### Specialized courts

- Integrated domestic violence courts where the same judge or court hears both family and criminal matters related to the same family[456]

**Example:**
**Toronto's Integrated Domestic Violence Court**

Toronto's Integrated Domestic Violence Court (IDVC) was launched in 2011 to resolve concurrent family and criminal court proceedings involving intimate partner violence.[457] IDVC judges can hear certain types of family cases and intimate partner violence-related criminal cases affecting the same family.[458] The IDVC model means parallel family and criminal court proceedings relating to one family are heard by one judge, in one court.

IDVCs can help to ensure consistency in orders, enhance safety, coordinate referrals to services, and make processes more efficient, both for courts and family members.[459]

## 9.5 Consultation Question about Improving Coordination

37. How can we improve legal system and cross-sector coordination for protection orders, including on the topics of identifying and linking proceedings; sharing information, evidence, and orders; avoiding conflicting court orders and expectations; using technological solutions; and through specialized courts?
    a. Should Ontario legislate a hierarchy of court orders to determine precedence in the event of a conflict?
    b. Is expanding the Integrated Domestic Violence Court (IDVC) a viable strategy for better protection order coordination? If so, how should cases that do not meet the IDVC's criteria be addressed?

# 10 Civil Protection Order Legislation

## 10.1 Overview

This Consultation Paper highlights the need for protection order reform in Ontario and identifies promising practices in civil protection order legislation across Canada. However, questions remain about the best legislative vehicle to make protection order reforms, including whether any recommended changes to Ontario's protection orders should be introduced through amendments to existing family and child protection legislation, through new civil protection order legislation, or both.

For example, the LCO has heard repeated calls to ensure emergency access to protection orders in Ontario, which could be established through a new legislative scheme. New legislation could also help bridge some of the gaps in Ontario's current protection order architecture, such as restrictive definitions of who can apply for certain protection orders.

As laid out in this Consultation Paper, there are known access to justice problems with limiting the availability of protection orders to family and criminal routes. Namely, family courts do not readily grant restraining orders. Some judges have also interpreted the purpose of restraining orders narrowly, concluding that a restraining order is intended to provide protection only for the purpose of resolving contentious litigation.[460] Further, forcing survivors to apply for protection orders through family courts can open the door to protracted litigation of other (sometimes settled) family disputes.

On the other hand, the LCO has been advised by Crown prosecutors that survivor-led applications for peace bonds are not a viable route to a protection order. Criminal processes can also lead to the unwanted criminalization of survivors and their families, and often relegate survivors to being bystanders in the process.

At the same time, the many protection order laws and processes in Ontario are already confusing and disconnected. Adding more legislation with new processes could amplify the existing access to justice concerns and lack of coordination, and create more safety risks for survivors caught in multiple proceedings.

### 10.2 Consultation Question about Civil Protection Order Legislation

38. Should Ontario reform protection orders through new standalone civil protection order legislation, amendments to the *FLA*, *CLRA*, and *CYFSA*, or some combination?

# 11 Supplementary Strategies

## 11.1 Overview

The LCO is exploring supplementary strategies for protection, in recognition of the reality that protection orders are inaccessible and ineffective for many people experiencing intimate partner and family violence. Protection orders are not, and never will be, a complete solution to preventing these forms of violence. Instead, they are one part of a much broader, whole-of-society response to reducing violence. Accordingly, there are many supports, services, and strategies that can make protection orders more successful and help keep people safe. These include education and training, data collection, information-sharing mechanisms, specialized tribunals, restorative and transformative justice options, and follow-up care.

## 11.2 Education and Training

The LCO has heard that protection order decision-makers and enforcers need more training and education about:

- Intimate partner and family violence, including how to assess reasonable fear and identify the risk of future harm
- The purposes and limitations of protection orders
- The different types of protection orders available in Ontario and the intersections of those orders

Experts have specifically recommended more education and training for the judiciary and law enforcement about the dynamics of intimate partner and family violence, to reduce reliance on myths and stereotypes and help ensure survivors' accounts of their reasonable fear are appropriately evaluated.

Protection order decision-makers and enforcers should also be educated about the purposes of protection orders, namely that they are intended to serve a preventive function and therefore even breaches perceived to be "trivial" must be enforced. Judicial and policing authorities must also understand the limitations of protection orders, including how difficult it is to get a protection order and how ineffective they may be.[461]

Further educating protection order decision-makers and enforcers about the different types of protection orders in Ontario, and the intersections of those processes, could help avoid conflicting orders and certain other issues the LCO has identified in our case law review. For example, some judges presume a restraining order is not needed when there is an existing criminal protection order, even though the survivor may have no opportunity to influence the criminal order and may not be informed if the order is varied or terminated.[462]

Continued public education initiatives to inform survivors about protection orders, including their purposes, limitations, and intersections, can further promote safety and access to justice. Survivors should also be aware of the risks of applying for protection orders, including the risks of retaliatory violence and litigation abuse.

## 11.3 Data Collection

In our efforts to obtain data on protection orders in Ontario, the LCO learned that courts across the province are not reliably flagging and collecting data on cases of intimate partner and family violence in their record-keeping systems.

Poor court data collection hinders research to analyze and improve legal remedies for intimate partner and family violence. In addition, there is no ongoing governmental review to evaluate protection order processes and detect gaps in accessibility and effectiveness.

Professor Jennifer Koshan has previously argued that governments "should monitor and evaluate their protection order legislation regularly and provide statistics on its usage and enforcement, including demographic information about claimants and respondents to the extent possible, so that access to justice barriers can be assessed and redressed."[463] If the LCO's recommendations to change protection orders are implemented, it is crucial to monitor whether those changes bring about the desired improvements across Ontario.

## 11.4 Clare's Law

Clare's Law, sometimes called a Domestic Violence Disclosure Scheme, was first created in England and Wales as a way for people to obtain information from the police about whether their intimate partners have a history of perpetrating violence.[464] The law was named in memory of Clare Wood, a woman who was killed by a former partner who had a record of intimate partner violence that she was unaware of. In Canada, several provinces have enacted versions of Clare's Law authorizing police to disclose risk-related information to help intimate partners make decisions about their safety and relationships.[465] Similar legislation was proposed in Ontario in 2021, but it did not become law.[466] Survivors have told the LCO that a version of Clare's Law would increase their sense of safety and ability to protect themselves.

## 11.5 Civil Resolution Tribunal

British Columbia's Civil Resolution Tribunal (CRT) is an online administrative tribunal that helps people resolve certain types of disputes quickly, without needing a lawyer or attending court.[467] For most claims, the CRT process has four stages: application and response, negotiation between the parties, facilitation with the support of a CRT case manager, and a CRT decision (where an independent tribunal member makes a decision about the claim if the parties cannot reach an agreement by negotiation or facilitation). A CRT decision can be enforced like a court order.[468]

The process is streamlined for cases involving intimate images. An applicant can make a claim for an "intimate image protection order" to make someone delete an intimate image or stop them from sharing or threatening to share an intimate image.[469] This is a legal order. Applicants can also make claims for financial compensation for harm caused or to punish the respondent, or for an administrative penalty payable to the government if the respondent does not comply with an intimate image protection order.[470]

## 11.6 Restorative Justice and Transformative Justice

Restorative justice and transformative justice are approaches to justice focused on healing and accountability. Restorative justice processes seek to centre survivors' voices and agency in order to understand, acknowledge, and address harms, identify needs, and repair relationships and trust for affected individuals and communities.[471]

Transformative justice builds on restorative justice by seeking to understand and transform the broader context that contributed to the harm, to help prevent future violence.[472]

Advocates have called on Ontario to increase restorative and transformative justice options for survivors of gender-based violence. One family court judge observed that "a focus on restorative outcomes may offer more effective protections [in intimate partner violence cases] than, say, a restraining order backed by police enforcement" (citing Professor Melanie Randall, who wrote that "a more activated community may offer protections which supplement or extend significantly beyond the largely reactive powers of the police").[473] The judge noted that focusing on restorative justice "meshes with the reality that most families with a history of [intimate partner violence] will maintain contact with one another after dissolution of the family unit, and that doing so is usually in the children's best interests."[474]

Alberta's courts are leading a pilot project to refer appropriate cases to a restorative justice process. The project aims to learn from Indigenous wisdom, restorative practices, and traditional law "used for centuries to effectively address harm through a holistic and communal approach."[475] The first phase of the project involves criminal matters, but the Province intends to expand restorative practices to family and civil matters.[476]

## 11.7 Ongoing Care for Families Affected by Violence

Continued investment in supports and services for survivors and their families is critical to improving protection orders. Many experts told the LCO that sending survivors to family court for a restraining order does not give them the resources they need to escape violence – such as housing, mental health supports, financial assistance, education and skills training, and childcare. As one lawyer put it: "Sometimes we make it easy for people to go back to their abuser."[477]

Families affected by violence require longer-term investments and wraparound services that extend beyond what Ontario's legal system offers. In terms of post-court care and ongoing service referrals, the Pathfinder project model in the United Kingdom directs judges and agencies to follow up with families affected by violence three months to a year after a court order is issued.[478] The purpose of the review is to determine if the court's decision is working effectively for the family, whether it is being complied with, and whether additional supports are needed. The LCO has heard that similar ongoing and follow-up care for individuals and families experiencing intimate partner and family violence could significantly improve safety outcomes after protection orders are granted in Ontario.

## 11.8 Consultation Questions about Supplementary Strategies

39. Should Ontario:
    a. Strengthen education, training, and data collection relating to protection orders?
    b. Enact a version of Clare's Law?
    c. Create a Civil Resolution Tribunal to hear some types of protection order applications?
    d. Introduce restorative and transformative justice options for people in need of protection?
    e. Invest in ongoing and follow-up care for families affected by violence?

40. What other strategies should Ontario adopt to improve the accessibility and effectiveness of protection orders?

# 12 Endnotes

1 More information on this project is available on the LCO's website, online: <lco-cdo.org>.

2 "Intimate partner violence" is a form of gender-based violence. It includes physical, sexual, psychological and emotional abuse, and other controlling behaviours by a current or former intimate partner. Intimate partner violence can occur in all types of intimate relationships. The term is sometimes used interchangeably with "domestic violence." See Mass Casualty Commission, *Turning the Tide Together, Final Report of the Mass Casualty Commission*, *Volume 3: Violence*, (Truro: Mass Casualty Commission, 2023), online: <masscasualtycommission.ca> [Mass Casualty Commission, *Turning the Tide Together Volume 3*], pp 10-11.

3 The term "family violence" encompasses intimate partner violence and extends to cover "any form of abuse, mistreatment, or neglect that a child or adult experiences from a family member or from someone with whom they have an intimate relationship." See Mass Casualty Commission, *Turning the Tide Together Volume 3*, p 9.

4 We define the different types of protection orders and other project terms in our Project Glossary, which is available online: <lco-cdo.org>.

5 "While violence affects people of all genders, ages, religions, cultures, ethnicities, geographic locations, and socio-economic backgrounds, some populations are more at risk of experiencing violence because of historical and ongoing oppressions such as sexism, homophobia, transphobia, colonialism, ageism, classism, racism, [and] ableism". See Canada, Women and Gender Equality Canada, *The National Action Plan to End Gender-Based Violence*, (Ottawa: Women and Gender Equality Canada, 2022), online: <canada.ca> [Canada, *The National Action Plan*].

6 See Canada, *The National Action Plan*, noting also that "the intersection of any two or more identity factors compounds a person's risk and vulnerability to violence".

7 Canada, *The National Action Plan*.

8 Linda C Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases*, 2nd ed, (Ottawa: Canadian Legal Information Institute, 2020), online: <canlii.org> [Neilson, *Responding to Domestic Violence*], ch 9.2.1 and notes 593-595.

9 Ontario, Domestic Violence Death Review Committee, *2021 Annual Report*, (Ontario: Office of the Chief Coroner, 2024), online: <ontario.ca> [DVDRC, *2021 Annual Report*], pp 13-14.

10 DVDRC, *2021 Annual Report*, pp 13-14, 16-17, and 26, showing that in 392 cases involving 434 murders, 76% of cases had a history of intimate partner violence and 27% of cases had a "failure to comply with authority", which was defined as breaching a protection order or other court order.

11 See for example United Nations, "International Day for the Elimination of Violence against Women", (last accessed 2 September 2025), online: <un.org>.

12 See for example Mass Casualty Commission, *Turning the Tide Together Volume 3,* p 268.

13 Canada has international legal obligations to protect women and children from gender-based violence arising from various international commitments. See Government of Canada, "Human rights treaties", (modified 15 August 2024), online: <canada.ca>.

14 Mass Casualty Commission, *Turning the Tide Together Volume 3*, pp 429-430.

15 See Culleton, Kuzyk & Warmerdam Inquest, *Verdict of Coroner's Jury*, (Ontario: Office of the Chief Coroner 2022), online: <lukesplace.ca>.

16 As of November 10, 2025, 106 municipalities in Ontario have declared intimate partner violence an epidemic. For more information, see Building a Bigger Wave, "The Epidemic of GBV-IPV", (last accessed 10 November 2025), online: <buildingabiggerwave.org>.

17 See for example Molly Hayes, “Ontario rejects recommendation to label intimate partner violence an epidemic”, *The Globe and Mail*, 28 June 2023, online: <theglobeandmail.com>. Note that Canada’s federal government responded to the CKW Inquest indicating its commitment to ending the epidemic of gender-based violence in all its forms. Molly Hayes, “Intimate partner violence an ‘epidemic’, federal government says in response to coroner’s inquest”, *The Globe and Mail*, 16 August 2023, online: <theglobeandmail.com>.

18 Legislative Assembly of Ontario, Official Report of Debates (Hansard), JP-46, *Standing Committee on Justice Policy, Committee business, Intimate partner violence*, 1st Sess, 43 Parl, (15 August 2024), online: <ola.org> [Hansard, *Intimate partner violence*], JP-1029-1030.

19 Legislative Assembly of Ontario, *Bill 10, Protect Ontario Through Safer Streets and Stronger Communities Act, 2025*, (Royal Assent received 5 June 2025), online: <ola.org> [Ontario, *Bill 10*].

20 Ontario Regulatory Registry, “Consultation on Proposals to Make Restraining Orders More Accessible and to Streamline Enforcement of Restraining Orders made Outside Ontario”, (24 October 2025), online: <regulatoryregistry.gov.on.ca> [Ontario, “Consultation on Restraining Orders”].

21 Ontario Ministry of the Attorney General, Backgrounder, “The Protect Ontario Through Safer Streets and Stronger Communities Act”, (1 May 2025), online: <news.ontario.ca>. These proposals follow the LCO’s recommendations to the Government in August 2024. See Hansard, *Intimate partner violence*, JP-1029-1030.

22 Different types of protection orders have different definitions of who can apply for protection, different processes for how to apply for protection (or, in the criminal context, different processes for how protection orders are imposed on people experiencing intimate partner and family violence), different evidentiary tests, different sets of conditions that can be included in the orders, different durations, and different enforcement mechanisms. They are also granted by different courts.

23 According to a 2013 study, up to 80% of family court litigants are filing unrepresented. Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants, Final Report*, (National Self-Represented Litigants Project, 2013), online: <representingyourselfcanada.com>, p 15.

24 For examples, see Mass Casualty Commission, *Turning the Tide Together Volume 3*, pp 350-364. The result of these barriers is that most incidents of intimate partner and family violence are not reported. Repeated studies have shown that only 20 to 30% of gender-based violence offences are reported, and this low reporting rate has been stagnant for several decades. Mass Casualty Commission, *Turning the Tide Together Volume 3*, p 350.

25 In applications for restraining orders, 89% of applicants were women (68 of 76 cases) and 57% of their applications were dismissed (39 of 68 cases).

26 Judges denied or terminated restraining orders because they thought the applicant’s subjectively held fears of future violence were not objectively reasonable in 30% of cases in the LCO’s study from 2021 to 2023 (23 of 76 cases). Judges also denied restraining orders in 8 additional cases after finding there was no subjective or objective fear. Some judges did not apply the statutory reasonable fear test at all; this resulted in 10 further denials of restraining orders. Two other judges dismissed women’s restraining order applications despite finding they had both subjective and objective fear.

27 In *Melek v Mansour*, 2022 ONSC 6688, the court made numerous findings of family violence and further found that the mother feared for her safety due to the father’s violence, but denied her restraining order application after reading in an imminency component to the test for a restraining order due to the “serious potential criminal consequences of breaching a restraining order” (paras 7, 52-53, and 109-110). In *Trotta v Chung*, 2022 ONSC 6465, the court had “serious concerns” about the father’s violence towards the mother but approached “the issue of whether to impose a restraining order on [the father] with caution” because “[t]he nature of such an order is to restrict the freedom of movement and communication of a party. The effect of such an order is quasi criminal in nature” (para 44). The court declined to grant a restraining order. See also *Smith v Reynolds*, 2020 ONSC 4459, where the court noted “it is clear Ms. Reynolds is still fearful” (para 112) but went on to hold that “[a] restraining order is a significant, serious remedy with potentially serious repercussions and implications for the liberty of the person restrained” and that her stated fear was “not sufficient to establish either subjectively or objectively” reasonable grounds for a restraining order (para 113).

28 See for example *Fernandes v Fernandes*, 2023 ONSC 564, paras 113-116 and 166-167, and *GP v RP*, 2023 ONCJ 388, paras 52-55.

29 See for example *AH v MT*, 2023 ONSC 2356, where the court warned that a restraining order "immediately lessens the prospect of shared parenting and joint decision-making responsibility" (para 17), and *Stec v Blair*, 2021 ONSC 6212, where the court denied the mother's request for a restraining order in part because "a restraining order will make parenting exchanges more difficult and potentially more traumatic for [the child]" (para 60). See also *McArthur v Le*, 2023 ONSC 4897, where the court declined to grant a restraining order to protect the mother because "[i]t would make it impossible for the parties to implement the communications and parenting time orders they have agreed upon" prior to the restraining order application (para 119). The court further ordered that the parties shall not reside more than 10 kilometres apart for the purposes of co-parenting (para 124).

30 Neilson, *Responding to Domestic Violence*, ch 9.2.2.1, including note 603. Professor Neilson writes: "While the gender-imbalance in analyses of rights in civil protection cases in Canada warrants a remedial response, this situation is not unique to Canada. Thus the first step for us to take is ensuring that, when the rights of perpetrators are taken into account, so are the rights of women, children, and other adults to be protected from domestic violence and to receive equal protection and benefit of law" (footnote omitted).

31 See Jennifer Koshan, "Preventive Justice? Domestic Violence Protection Orders and their Intersections with Family and Other Laws and Legal Systems" (2023) 35:1 Can J Fam L 241, online: <commons.allard.ubc.ca> [Koshan, "Preventive Justice?"], p 282, and Christine Agnew-Brune, Kathryn E Beth Moracco, Cara J Person & J Michael Bowling, "Domestic Violence Protection Orders: A Qualitative Examination of Judges' Decision-Making Processes" (2015) 32:13 J of Interpersonal Violence 1921, pp 1932 and 1934.

32 Katie Dangerfield, "'A piece of paper that did nothing': Advocates say protection orders are failing women in Canada", *Global News*, 6 June 2019, online: <globalnews.ca>.

33 Guy Leblanc, "Court orders to prevent domestic violence 'a joke' to abusers", *CBC News*, 29 January 2021, online: <cbc.ca>.

34 LCO Consultation with a non-profit working on issues of gender-based violence.

35 LCO Consultation with a legal clinic specializing in gender-based violence cases.

36 Guy Quenneville, "'Breach him forever,' probation service warned about Ottawa Valley triple murderer", *CBC News*, modified 23 June 2022, online: <cbc.ca> [Quenneville, "'Breach him forever'"].

37 For the purposes of comparing Ontario's protection order legislation to other Canadian jurisdictions, it is important to draw a distinction between Ontario's protection orders in *family and child protection statutes* and protection orders in other jurisdictions' *civil statutes*. Sometimes, family and child protection law are considered subsets of civil law. In this Consultation Paper, they are distinct. We consider family and child protection law to be specialized areas of law with their own rules and court procedures, distinct from general civil litigation. This distinction provides the conceptual clarity needed for us to ask an important question later in this paper about whether Ontario should create new, standalone civil protection order legislation like other jurisdictions or focus only on amending existing family and child protection statutes.

38 Québec and British Columbia are two exceptions to the pattern of *standalone* civil protection order legislation in Canada. Québec does not have standalone civil protection order legislation, but survivors of intimate partner and family violence can obtain an injunction under article 509 of Québec's *Code of Civil Procedure* that can act as a protection order for up to three years when a person's life, health, or safety is threatened. See Québec, *Code of Civil Procedure*, CQLR c C-25.01 [Québec *Code of Civil Procedure*], art 509. In British Columbia, protection orders for intimate partner and family violence are integrated into British Columbia's family law legislation. See British Columbia, *Family Law Act*, SBC 2011, c 25 [British Columbia *FLA*], ss 183-191. For more information on all the statutes, see Jennifer Koshan, Janet E Mosher & Wanda A Wiegers, *Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada*, 2nd ed, (Ottawa: Canadian Legal Information Institute, 2022), ch 1.1, Table 1, online: <canlii.org>.

39 Research shows intimate partner and family violence escalate at the time of separation, which is a common time people seek protection orders. Ontario's Domestic Violence Death Review Committee has repeatedly found that women are at higher risk of being murdered by their intimate partners when there is an actual, or even pending, separation. See Ontario, Domestic Violence Death Review Committee, *2019-2020 Annual Report, Chapter 2: Statistical Overview*, (Toronto: Domestic Violence Death Review Committee, 2020), online: <ontario.ca> [DVDRC, *2019-2020 Annual Report*], Summary of Graph 3. Applications for protection orders may also prompt violence in retaliation. See for example Neilson, *Responding to Domestic Violence*, chs 9.2.1, note 597 and 9.3.2.1, note 697.

40 In *Bakker v Bakker*, 2023 ONSC 3025, for example, three years passed between the applicant requesting and receiving a restraining order. The process took two years in *Blaskavitch v Smith*, 2023 ONSC 2133.

41 The Act's purpose was "to provide for intervention in cases of domestic violence beyond what is allowed under the current law." It would have allowed spouses, former spouses, same-sex partners, former same-sex partners, people who are cohabiting, people in a dating relationship, and relatives who reside together to apply for emergency protection orders (called "intervention orders" in the Act). Legislative Assembly of Ontario, *Bill 117, Domestic Violence Protection Act, 2000*, (Royal Assent received 21 December 2000), online: <ola.org>. Ontario's dormant *Domestic Violence Protection Act* was repealed in 2009. See *Family Statute Law Amendment Act, 2009*, SO 2009, c 11.

42 Canada, Report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Volume I*, (Ottawa: Department of Justice, 2013), online: <justice.gc.ca>, [FPT Report, *Making the Links*], p 4.

43 *R v Penunsi*, 2019 SCC 39, paras 12-14 and 61.

44 There are additional protection orders and protective provisions in other statutes that are used in intimate partner and family violence cases across the province. These include restraining orders specific to the context of human trafficking (see Ontario's *Prevention of and Remedies for Human Trafficking Act, 2017*, SO 2017, c 12, Sch 2, s 4), criminal detention orders with no-contact conditions (see *Criminal Code of Canada*, RSC 1985, c C-46 [*Criminal Code*], ss 515(12) and 516(2)), parenting and contact orders (see Ontario's *Children's Law Reform Act*, RSO 1990, c C.12 [Ontario *CLRA*], s 28, and the federal *Divorce Act*, RSC 1985, c 3 (2nd Supp) [*Divorce Act*], ss 16.1 and 16.5), custody and access orders that are deemed to be *CLRA* parenting and contact orders (see Ontario's *Child, Youth and Family Services Act, 2017*, SO 2017, c 14, Sch 1 [Ontario *CYFSA*], ss 102(1), (2), and 104), orders regarding conduct (see Ontario's *Family Law Act*, RSO 1990, c F.3 [Ontario *FLA*], s 47.1), injunctive relief (see Ontario's *Courts of Justice Act*, RSO 1990, c C.43, s 101), and trespass notices (see Ontario's *Trespass to Property Act*, RSO 1990, c T.21). Other provisions of the *CYFSA* offer further protection to children in circumstances of intimate partner or family violence, including orders where a child is in need of protection, custody and supervision orders, and restrictions on access orders (see Ontario *CYFSA*, ss 94, 101, 107, and 116). These related protections are outside the scope of this project.

45 Carol Barkwell, *Letter of Support for the LCO's Improving Protection Orders project*, (10 May 2024). On file at the LCO.

46 See Ontario *FLA*, s 46, Ontario *CLRA*, s 35, and Ontario *CYFSA*, ss 102(3) and 137. Note that there are two types of restraining orders available under Ontario's *CYFSA*. Section 102(3) of the *CYFSA* allows courts to grant a restraining order which is deemed to be a restraining order made under s. 35 of the *CLRA*, and s. 137 of the *CYFSA* provides another type of restraining order.

47 In *Bakker v Bakker*, 2023 ONSC 3025, three years passed between the applicant requesting and receiving a restraining order. The process took two years in *Blaskavitch v Smith*, 2023 ONSC 2133.

48 One way to speed up the process is to bring an urgent motion with a restraining order application. However, this is not always a reliable mechanism to fast-track an application. The LCO's consultations revealed that urgent restraining orders can be heard the next day in some jurisdictions, like Durham. But other courts are inundated with urgent motions and take weeks to months to resolve them. There is also a risk of triggering cost consequences. See Section 4.3.

49 For example, from 2003 to 2019, Ontario's Domestic Violence Death Review Committee reviewed 364 cases of intimate partner violence-related homicides in Ontario, involving 515 deaths. They found that 66% of those cases involved an actual or pending separation, indicating that separation is a crucial risk factor in predicting lethal outcomes. See DVDRC, *2019-2020 Annual Report*, Summary of Chart 3 and Summary of Graph 3.

50 Peter Neumann has written that "women [who have experienced intimate partner violence and] who may be in the first stages of separating from their partners . . . may thus doubly invite retaliation, once for trying to separate, and again for bringing their partners to court." For this point, Neumann cited two cases: In *R v Collin*, (1986) 4 QAC 215, a man stabbed and killed his intimate partner and her five-year-old son five days after she separated from him and laid a peace bond information against him. In 1993, another man stabbed his wife to death hours after she applied for a peace bond. Peter M Neumann, "Peace Bonds: Preventive Justice? Or Preventing Justice?" (1994) 3 Dal J Leg Stud 171, online: <digitalcommons.schulichlaw.dal.ca> [Neumann, "Peace Bonds"], pp 180-181 and note 33.

51 For example, there was only one Unified Family Court judge in Belleville by mid-2023. Lawyers who brought urgent motions in family court still had to wait months for decisions.

52 Counter services are offered at Ontario courts Monday to Friday, 9:00 am to 11:00 am and 2:00 pm to 4:00 pm, excluding holidays. See Ontario, "All court locations", (last accessed 3 September 2025), online: <ontario.ca>.

53 Nova Scotia, *Domestic Violence Intervention Regulations*, NS Reg 75/2003 [Nova Scotia *Regulations*], s 3.

54 Nova Scotia *Regulations*, s 4(1) and (2).

55 Nova Scotia *Regulations*, s 4, and Nova Scotia, "Changes to Court Services" (2021), online: <novascotia.ca>.

56 Nova Scotia, *Domestic Violence Intervention Act*, SNS 2001, c 29 [Nova Scotia *DVIA*], s 6.

57 Alberta, *Protection Against Family Violence Act*, RSA 2000, c P-27 [Alberta *PAFVA*], ss 2(1) and 6(2), and Government of Alberta, "Get an Emergency Protection Order", (last accessed 2 September 2025), online: <alberta.ca> [Government of Alberta, "Get an Emergency Protection Order"].

58 Nova Scotia *Regulations*, s 5(2), and Saskatchewan, *Victims of Interpersonal Violence Regulations*, RRS c V-6.02 Reg 1 [Saskatchewan *Regulations*], s 6.

59 New Brunswick, *General Regulation – Intimate Partner Violence Intervention Act*, NB Reg 2018-34 [New Brunswick *Regulation*], s 4(2), and Newfoundland and Labrador, *Provincial Court Family Violence Protection Rules*, NLR 52/06, s 11.

60 See for example *KA v CA*, 2022 ONSC 1887, where the court held that a restraining order was not available under the *FLA* or the *CLRA* to protect an applicant mother from her adult son (paras 11 and 13-16). The court advised the applicant to seek a peace bond instead (para 17).

61 Ontario *FLA*, s 46(2).

62 Morgan Blimkie, *Common-Law Partners and Exclusive Possession*, (Oshawa: Luke's Place, 2024). On file at the LCO.

63 In *KA v CA*, 2022 ONSC 1887, the court held that it could not grant a *CLRA* restraining order to protect a mother from her adult son (paras 13-16). See also the Ontario Government's webpage on family court restraining orders, which says they are only available to people who have been married, lived together, or have a child together. Ontario, "Getting a restraining order", (updated 24 March 2025), online: <ontario.ca> [Ontario, "Getting a restraining order"].

64 Protection orders are available to people in intimate relationships even if they did not live together in Manitoba, New Brunswick, Yukon, and Nunavut, among others. See Manitoba, *The Domestic Violence and Stalking Act*, CCSM c D93 [Manitoba *DVSA*], s 2(1)(d)); New Brunswick, *Intimate Partner Violence Intervention Act*, SNB 2017, c 5 [New Brunswick *IPVIA*], s 1 "intimate personal relationship"; Yukon, *Family Violence Prevention Act*, SY 1997, c 12 [Yukon *FVPA*], s 1 "intimate companions"; and Nunavut, *Family Abuse Intervention Act*, SNu 2006, c 18 [Nunavut *FAIA*], s 2(3).

65 Most jurisdictions allow family members to apply for protection orders. See for example Alberta *PAFVA*, s 1(1)(d) and (e), and 2(1).

66 Manitoba *DVSA*, s 2(1).

67 Saskatchewan, *The Victims of Interpersonal Violence Act*, SS 1994 c V-6.02 [Saskatchewan *VIVA*], ss 2(a), (e.1), (i), and 3(1).

68 British Columbia *FLA*, ss 1 “family member”, 182, and 183(1) and (2). Rise Women’s Legal Centre and West Coast LEAF recommend this definition be expanded to include “persons in dating relationships, adult children who do not live with the parent, people in care-giving relationships, and other relatives who do not live with the person.” See Hayley Hrymak, *Protection Orders in BC and the Urgent Need for a Specialized Process and Coordinated Reform*, (British Columbia: Rise Women’s Legal Centre, 2024), online: <static1.squarespace.com> [Hrymak, *Protection Orders in BC*], p 38 and note 85.

69 Alberta *PAFVA*, s 1(1)(d) and (e). Alberta’s legislation defines “family violence” to include “(i) any intentional or reckless act or omission that causes injury or property damage and intimidates or harms a family member, (ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member, (iii) forced confinement, (iv) sexual abuse, and (v) stalking”.

70 Though note that the *CLRA* does define “family violence” for the purposes of other orders, and there is a list of criteria for judges to consider for exclusive possession orders under the *FLA*, which includes violence. See for example Ontario *CLRA*, ss 24(3)(j) and (4), and Ontario *FLA*, s 24(3).

71 British Columbia, Alberta, Manitoba, and Nunavut include stalking as a reason for applying for a protection order. See British Columbia *FLA*, s 1 “family violence” (d)(iii); Alberta *PAFVA*, s 1(1)(e)(v); Manitoba *DVSA*, s 6(1); and Nunavut *FAIA*, s 6. Newfoundland and Labrador define family violence to include someone “following” the applicant. See Newfoundland and Labrador, *Family Violence Protection Act*, SNL 2005, c. F-3.1 [Newfoundland and Labrador *FVPA*], s 3(1)(f). Notably, Manitoba includes “using the Internet or other electronic means” in the definition of conduct that constitutes stalking. Manitoba *DVSA*, s 2(2) and (3)(b.1).

72 Nova Scotia, Nunavut and Newfoundland and Labrador define violence to include sexual exploitation. Nova Scotia *DVIA*, s 5(1)(d); Nunavut *FAIA*, s 3(1)(c.1); and Newfoundland and Labrador *FVPA*, s 3(1)(e).

73 British Columbia lists “coercion” as a form of psychological or emotional abuse constituting family violence. British Columbia *FLA*, s 1 “family violence” (d)(i). New Brunswick defines intimate partner violence to include “abusive, threatening, harassing or violent behaviour used as a means to psychologically, physically, sexually or financially coerce, dominate and control the other member of the relationship”. New Brunswick *IPVIA*, s 2(1).

74 New Brunswick, Yukon, and Nunavut define intimate partner violence, family violence, and family abuse, respectively, to include depriving a person of food, clothing, medical attention, shelter, transportation, and other necessities of life. New Brunswick *IPVIA*, s 2(1)(b); Yukon *FVPA*, s 1 “family violence” (e); and Nunavut *FAIA*, s 3(1)(f). Saskatchewan defines interpersonal violence to include deprivation of necessities. Saskatchewan *VIVA*, s 2(e.1)(vi).

75 British Columbia defines family violence to include “unreasonable restrictions on, or prevention of, a family member’s financial or personal autonomy”. British Columbia *FLA*, s 1 “family violence” (d)(ii). Newfoundland and Labrador and Nunavut define family violence to include conduct that controls, exploits or limits the applicant’s access to financial resources to create financial dependency. Newfoundland and Labrador *FVPA*, s 3(1)(f.2), and Nunavut *FAIA*, s 3(1)(g).

76 Newfoundland and Labrador, Nunavut, Northwest Territories, and British Columbia consider violence towards children a reason for seeking a protection order, and British Columbia defines violence to include a child’s direct or indirect exposure to family violence. See Newfoundland and Labrador *FVPA*, s 3(1); Nunavut *FAIA*, s 2(1); Northwest Territories, *Protection Against Family Violence Act*, SNWT 2003, c 24 [Northwest Territories *PAFVA*], s 1(2); and British Columbia *FLA*, s 1 “family violence”. Alberta includes children as family members who can experience family violence, and requires protection order decision-makers to consider children’s exposure to family violence and their best interests. See Alberta *PAFVA*, ss 1(1)(d)(iv) and 2(2)(c.2) and (d).

77 New Brunswick, Nunavut, Prince Edward Island, and Newfoundland and Labrador state that a respondent who encourages or solicits another person to do something that constitutes violence will be deemed to have done the act personally. See New Brunswick *IPVIA*, s 2(2); Nunavut *FAIA*, s 3(4); Prince Edward Island, *Victims of Family Violence Act*, RSPEI 1988, c V-3.2 [Prince Edward Island *VFVA*], s 2(3); and Newfoundland and Labrador *FVPA*, s 3(3).

78 British Columbia includes "threats respecting pets" as a form of family violence that can give rise to the need for a protection order, because it is a kind of "psychological or emotional abuse". British Columbia *FLA*, s 1 "family violence" (d)(i). Manitoba and New Brunswick instruct protection order decision-makers to consider whether the respondent has been violent towards animals. Manitoba *DVSA*, s 6.1(1)(e) and New Brunswick *IPVIA*, s 4(3)(g).

79 See for example British Columbia *FLA*, s 1 "family violence" (a); Nunavut *FAIA*, s 3(1)(d); Manitoba *DVSA*, s 2(1.1)(d); Newfoundland and Labrador *FVPA*, s 3(1)(d); Saskatchewan *VIVA*, s 2(e.1)(iii); and Yukon *FVPA*, s 1 "family violence" (c).

80 Manitoba defines "stalking" to include "using the Internet or other electronic means to harass or threaten" the applicant. Manitoba *DVSA*, s 2(2) and (3)(b.1).

81 Newfoundland and Labrador *FVPA*, s 3(1)(a) and Nova Scotia *DVIA*, s 5(1)(a).

82 British Columbia *FLA*, s 1 "family violence" (a). See also Nunavut *FAIA*, s 3(2).

83 Ontario, *Bill 10*.

84 Hansard, *Intimate partner violence*, JP-1029.

85 There is conflicting case law about whether child protection authorities can get a s. 102(3) *CYFSA* restraining order on behalf of family members in need of protection. Section 102(3) *CYFSA* restraining orders are deemed to be restraining orders under s. 35 of the *CLRA*, which requires that "the applicant" has a reasonable fear for their own safety or for that of a child in their custody. Several Ontario courts have granted s. 102(3) restraining orders to societies who applied on someone else's behalf (such as to protect a mother and child based on the mother's fear of future harm). See for example *Children's Aid Society of Toronto v MJ*, 2022 ONCJ 265, paras 108-122 and *Children's Aid Society of Halton Region v LSA*, 2019 ONCJ 759, paras 8-9 and 362 (though in this case the mother's position "mirror[ed] the Society's request"). But at least one Ontario court has held that it did not have jurisdiction to grant a s. 102(3) restraining order because the society seeking the order on a child's behalf was not an "applicant" fearing for their safety or that of a child in their custody as required by s. 35 of the *CLRA*, since the child was in the grandmother's custody. See *Catholic Children's Aid Society of Toronto v IA*, 2019 ONCJ 49, paras 163-177.

86 See for example Yukon *FVPA*, s 2(1) and Nova Scotia *DVIA*, s 7(1).

87 See Nova Scotia *DVIA*, s 7(1)(b) and Nova Scotia *Regulations*, s 3.

88 Among others. See New Brunswick *Regulation*, s 3(1) and (2).

89 See respectively Nunavut *FAIA*, s 26(1) and Nova Scotia *DVIA*, s 7(c).

90 Nunavut expressly provides for deemed consent where, "but for minority, mental incompetence or special vulnerability to the respondent, a person would reasonably, in all the circumstances, submit an application for an emergency protection order, the person is conclusively deemed to have consented to an application made on his or her behalf." Nunavut *FAIA*, s 26(2).

91 British Columbia *FLA*, s 183(1)(a).

92 Ontario *CYFSA*, ss 102(3) and 137(1). For s. 102(3) *CYFSA* restraining orders see the statutory language: "the court may, without a separate application, make a restraining order in accordance with section 35 of the *Children's Law Reform Act*." For s. 137 *CYFSA* restraining orders, see the statutory language and the following examples: *Children's Aid Society of Toronto v RB*, 2023 ONCJ 582, paras 34 and 45; *Nogdawindamin Family and Community Services v AW*, 2018 ONCJ 833, para 21; and *The Children's Aid Society v SB and CG*, 2018 ONSC 5301, paras 15-16.

93 See *HG v JRN*, 2022 ONSC 4413, para 31 (awarding partial costs to the father after ruling that the mother's unsuccessful restraining order application "should not have been presented.") The decision on the merits of the restraining order application is *HG v JRN*, 2022 ONSC 3436. See also *McArthur v Le*, 2023 ONSC 4897, para 119 (denying a restraining order to protect the mother) and *McArthur v Le*, 2023 ONSC 6839, para 12 (ordering the mother to pay full costs because she "took unreasonable positions throughout the litigation and at trial.")

94 Legal Aid Ontario, "Domestic violence", (last accessed 8 September 2025), online: <legalaid.on.ca>.

95 Legal Aid Ontario, "Will legal aid pay for my lawyer?", (last accessed 8 September 2025), online: <legalaid.on.ca> [LAO, "Will legal aid pay for my lawyer?"].

96 Hrymak, *Protection Orders in BC*, p 30.

97 Legal Aid Ontario, “Restraining orders”, (last accessed 10 September 2025), online: <legalaid.on.ca>.

98 LAO, “Will legal aid pay for my lawyer?”.

99 Ontario, “Family Law Information Centres”, (updated 1 March 2024), online: <ontario.ca>.

100 A Family Court Support Worker can provide information about the family court process; help survivors prepare for family court proceedings; refer survivors to other specialized services and supports in the community; help with safety planning, such as getting to and from court safely; and accompany survivors to court proceedings. Ontario, “Family court support workers”, (updated 2 January 2024), online: <ontario.ca>.

101 See for example Aboriginal Legal Services, “Courtworkers”, (last accessed 9 September 2025), online: <aboriginallegal.ca>.

102 Though their scope is limited. See Law Society of Ontario, “Family Legal Services Provider”, (last accessed 9 September 2025), online: <lso.ca>.

103 King County, “Protection Order Advocacy Program”, (Seattle: 2017), online: <dvprotectionorder.org> [King County, “Protection Order Advocacy Program”].

104 King County, “Protection Order Advocacy Program”. King County also has Protection Order Navigators, who are trained to answer simple questions related to all types of civil protection orders and can help people understand the civil protection order process and access the online Protection Order Portal, where people can complete their forms online; make referrals to community resources; assess eligibility to meet with a Protection Order Advocate; and provide basic instructions on filing procedures. See King County, “Speak to an advocate”, (last accessed 2 September 2025), online: <kingcounty.gov>.

105 Currently, applicants must determine which forms are needed, gather and compose the required information, fill out the forms, file the forms properly, and serve the forms. Applicants may fill out a Form 14 (Notice of Motion), Form 14A (Affidavit), and a Form 8 (Application) to initiate their protection order application, followed by a Form 6B (Affidavit of Service) and a Form 14C (Confirmation) that they will attend court. The Ontario Government also advises restraining order applicants to complete a Continuing Record, and a Canadian Police Information Centre (CPIC) Restraining Order Information Form. See Ontario, “Getting a restraining order”. More forms are required if the applicant is asking the court to decide other family law issues, and serving these documents can be time-consuming too.

106 See for example Alberta *PAFVA*, ss 2(1) and 6(2), and Government of Alberta, “Get an Emergency Protection Order”.

107 See for example Nova Scotia *DVIA*, ss 11(2) and 12(1), and Nova Scotia *Regulations*, s 15.

108 Nova Scotia *DVIA*, ss 11(2) and 12(1), and Nova Scotia *Regulations*, ss 5(2) and 15.

109 In Alberta, for example, emergency protection orders granted by justices of the peace must be automatically reviewed by a judge within nine working days. Alberta *PAFVA*, s 2(6). Other jurisdictions have shorter timeframes for automatic review: three days in Saskatchewan, Yukon, and Northwest Territories, and five days in Nunavut, Prince Edward Island, and New Brunswick. Saskatchewan *VIVA*, s 5(2); Yukon *FVPA*, s 5(2); Northwest Territories *PAFVA*, s 5(2); Nunavut *FAIA*, s 15(2); Prince Edward Island *VFVA*, s 6(2); and New Brunswick *IPVIA*, s 8(1).

110 British Columbia *FLA*, ss 186 and 187; Manitoba *DVSA*, s 11(1); and Newfoundland and Labrador *FVPA*, ss 10 and 12.

111 Manitoba *DVSA*, s 12(2); Nunavut *FAIA*, s 14(2); and New Brunswick *IPVIA*, s 8(7).

112 The LCO has heard that many courts are overwhelmed by urgent motions, leaving applicants waiting months for a decision even when judges agree the matter is urgent. Some courts have developed *ad hoc* methods to triage urgent motions (especially during the COVID-19 pandemic), but it is the LCO’s understanding that there is no standardized process to evaluate and prioritize high-risk protection order applications compared to other urgent family court motions.

113 Ontario *CYFSA*, s 137(2).

114 Applicants have to argue the merits of their urgent or *ex parte* motion, which requires proving there is a risk to safety. Steps to Justice, "Abuse and Family Violence: Restraining orders and peace bonds: What is a restraining order?", (reviewed 1 March 2021), online: <stepstojustice.ca> [Steps to Justice, "What is a restraining order?"]. The judge must agree, *and then* the applicant must argue why a restraining order should be granted. This may happen at one court hearing, or the applicant may have to attend court multiple times. The threshold tests for urgency and of dispensing with notice are high. See for example *LAB v JAS*, 2020 ONSC 3376, paras 24 and 47-49.

115 For example, in *Soares v Kilgour*, 2020 ONSC 2938, a mother applied to continue a restraining order because of the father's violence. The judge agreed that the parenting arrangements and the safety of a very young baby constituted a "situation of urgency" that warranted a hearing before a case conference without a detailed assessment of urgency (para 4). See also *Sanvictores v Sanvictores*, 2022 ONSC 5789, where the judge readily accepted that the restraining order application was urgent and required *ex parte* relief (para 23). However, in *LAB v JAS*, 2020 ONSC 3376, the judge required the applicant to meet three separate tests: the threshold test for urgency, the threshold test of dispensing with notice, and the test for a restraining order (para 49).

116 Including court filing fees and lawyer's fees. Steps to Justice, "What is a restraining order?".

117 See for example British Columbia *FLA*, s 186(1). However, Rise Women's Legal Centre found that courts in British Columbia were resistant to hearing protection order applications without notice to the other party, despite British Columbia's legislation permitting *ex parte* applications. Rise found that courts inappropriately dismissed *ex parte* applications, and that some judges seemed to be driven by concerns about procedural fairness for the respondent rather than safety assessments of the risk to the applicant. Rise considered this to be a significant process failure in British Columbia's protection order regime, finding that "[t]he unpredictability of *ex parte* applications, including the uncertainty about whether a survivor will be able to proceed with the application at all, may act as a deterrent to seeking a protection order in the first place." See Hrymak, *Protection Orders in BC*, pp 31-33.

118 Ontario, "Getting a restraining order".

119 See for example Yukon *FVPA*, s 3; Saskatchewan *VIVA*, s 9; Nova Scotia *DVIA*, s 13; Northwest Territories *PAFVA*, s 3(1); and Nunavut *FAIA*, s 34.

120 Manitoba *DVSA*, s 20.

121 See for example *The Children's Aid Society v SB and CG*, 2018 ONSC 5301, in which the court found that the mother's evidence established "physical and emotional abuse on the part of the father towards her, which abuse may have included death threats[, and h]er concerns about retaliation should the father be made aware of these proceedings and of the evidence contained in this file are valid" (para 14). The court further held that "measures must be put into place to protect the mother and the children on a temporary basis until such time as the father's voice can be heard by the court" (para 15). The court issued a restraining order against the father with an added protective condition: "Until further order of the court, the father (and his counsel if he obtains one) shall have no access to any information contained in the court file in regards to these proceedings" (para 16(5)). The father was to receive a copy of the restraining order, but not the decision itself (para 16(2)).

122 Nunavut *FAIA*, s 33.

123 It can cost hundreds of dollars, depending on how far away the respondent lives, the number of attempts to contact the respondent, rush service, and skip tracing to locate the respondent.

124 This is especially true at the time of separation and given the additional risk of retaliation for seeking a protection order. See Neumann, "Peace Bonds", pp 180-181 and note 33; Neilson, *Responding to Domestic Violence*, chs 9.2.1 and notes 597-598, 9.3.2.1 and note 697; Hrymak, *Protection Orders in BC*, p 31 and notes 59-61; and DVDRC, *2019-2020 Annual Report*, p 17.

125 For example, survivors are not allowed to deliver certain documents themselves and must rely on family, friends, or professional process servers, which can be a barrier for some people (especially if the respondent is far away or hard to locate). Service must also happen within a certain timeframe and in a specific format, and survivors are responsible for informing the court that they have properly served every document on the respondent by filing proof of service. See Ontario, "Serving your documents" (updated 19 March 2025), online: <ontario.ca> [Ontario, "Serving your documents"].

126 Ontario, “Serving your documents”.

127 Ontario, “Serving your documents”.

128 The announcement also notes: “This change means more than 1,000 applicants will no longer need to arrange for a friend or family member to serve a protection order or hire a professional process server when a respondent is not present in court to receive the order.” See British Columbia Attorney General, “B.C. offers increased protection for those at risk of family violence”, (5 December 2016), online: <news.gov.bc.ca>.

129 Saskatchewan *Regulations*, s 17.

130 Manitoba, *Domestic Violence and Stalking Regulation*, Man Reg 117/99 [Manitoba *Regulation*], ss 15-15.1.

131 Nunavut *FAIA*, s 37, and Prince Edward Island *VFVA*, s 5(3).

132 See for example Nunavut *FAIA*, s 32; Saskatchewan *VIVA*, s 9(2); Yukon *FVPA*, s 3(3); Nova Scotia *DVIA*, s 13(2); and Northwest Territories *PAFVA*, s 3(2).

133 Manitoba *DVSA*, s 4(2.1) and (5).

134 Nunavut *FAIA*, ss 31-32.

135 On the basis that her expression of allegations in the notice of motion was not evidence. See *Noriega v Litke*, 2020 ONSC 2970, paras 7-8.

136 Neumann, “Peace Bonds”, pp 180-181.

137 The judge in *Falconer v Mistretta*, 2018 ONSC 6756, was concerned for the applicant’s safety in the period between the expiry of her temporary *ex parte* restraining order and the time it would take to grant an extension of the order. The judge obtained an undertaking from the respondent as an interim protective measure: “Pending the release of these reasons, and at the court’s request, the respondent, through counsel, gave an undertaking on October 31, 2018 not to communicate with the applicant, directly or indirectly, and not to be within 150 metres of the applicant with the exception of communications between the parties in relation to access exchanges” (para 14). The undertaking covered the 15 days between the expiry of the *ex parte* order and the release of the judge’s decision.

138 Neilson, *Responding to Domestic Violence*, chs 7.4.1.

139 See generally Neilson, *Responding to Domestic Violence*, chs 7.4 and 9.2.2.3.

140 See for example *Children’s Aid Society of Toronto v LS*, 2017 ONCJ 506, para 49 (“It is abundantly clear that father, with absolutely no evidence to support his claims, is using this litigation to engage the mother again. It may be considered frivolous but it is also certainly harassment in this case.”) See also *MAL v RHM*, 2018 ONSC 1597, paras 66 and 114-116.

141 See Neilson, *Responding to Domestic Violence*, ch 7.4.1.

142 Koshan, “Preventive Justice?”, p 264 and note 76.

143 Koshan, “Preventive Justice?”, pp 245-246.

144 Neilson, *Responding to Domestic Violence*, Supplementary Reference 4 (Mutual Restraining Orders) and note 1943, and Koshan, “Preventive Justice?”, pp 272-273 and notes 103-105.

145 Neilson, *Responding to Domestic Violence*, note 506.

146 See for example Neilson, *Responding to Domestic Violence*, Supplementary Reference 4 (Mutual Restraining Orders).

147 For all these reasons, community service providers and public legal resources advise survivors not to consent to mutual peace bonds. See Ontario Women’s Justice Network, “Protection Orders – Part 3: A Basic Guide to Peace Bonds”, (last accessed 4 September 2025), online: <owjn.org>.

148 Koshan, “Preventive Justice?”, p 295.

149 British Columbia’s legislation also reminds courts that the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made. British Columbia *FLA*, s 184(2) and (3).

150 See for example *Armstrong v Coupland*, 2023 ONSC 5451, where a restraining order granted by Justice Bale varied a previous restraining order granted by Justice Chappel, which further varied a restraining order granted by Justice MacLeod. Our research lawyers could not reliably unpack the nesting orders in this case to decipher the most current restraining order terms.

151 In *Osmak-Bonk v Bonk*, 2004 ONCJ 167, a judge amended a pre-existing restraining order by deleting some old conditions and adding new ones. The judge then suggested: "Counsel may wish to redraft a new restraining order to incorporate those parts of [the pre-existing order] that still apply, with the orders herein issued, for the sake of clarification" (para 32). This practice is contrary to rule 25(11)(b)(i.1) of Ontario's *Family Law Rules*, which requires a court clerk to prepare a restraining order. See Ontario's *Family Law Rules*, O Reg 114/99 [Ontario *Family Law Rules*], and *Malik v Malik*, 2019 ONSC 5959, para 16. For another concerning case, see *PAJH v MKH*, 2021 ONSC 5425, paras 6-24.

152 See for example *Osmak-Bonk v Bonk*, 2004 ONCJ 167, paras 23-33, where the family court mistakenly allowed contact between the mother and father without knowing about a bail release order that prevented the father from contacting the mother. It took the family court almost eight months to change the restraining order to bring it into alignment with the father's bail conditions. This delay could have caused serious safety risks if the mother had reported a breach, because the police had no way to know whether the family or criminal court order took precedence. The process to change the order also required a court appearance and accumulated lawyers' fees.

153 At least three or four court forms. See Ontario, "Getting a restraining order".

154 See for example Nunavut *FAIA*, s 39.

155 Judges denied or terminated restraining orders because they thought the applicant's subjectively held fears of future violence were not objectively reasonable in 30% of cases the LCO reviewed from 2021 to 2023 (23 of 76 cases). See for example *Davidson v Davidson*, 2022 ONSC 4375, paras 266-279, where the court reasoned that the applicant's subjective fear was no longer objectively reasonable once the parties sold the matrimonial home. Judges also denied restraining orders in 8 additional cases after finding there was no subjective or objective fear. Some judges did not apply the statutory reasonable fear test at all; this resulted in 10 further denials of restraining orders. Two other judges dismissed women's restraining order applications despite finding they had both subjective and objective fear.

156 In applications for restraining orders, 89% of applicants were women (68 of 76 cases) and 57% of their applications were dismissed (39 of 68 cases).

157 See for example *GP v RP*, 2023 ONCJ 388, paras 52-55, and *Fernandes v Fernandes*, 2023 ONSC 564, where the court conclusively found that the father was perpetrating ongoing violence against the mother "toward the higher end of the spectrum" due to its high frequency and consistency (paras 113-116). The court nevertheless denied a restraining order because "there is no evidence that [the father] poses a credible threat of imminent harm to Mother or to either child" and because it was not clear that the mother had subjective fear, and if she did it was not "legitimate" (paras 166-167).

158 See for example *Fernandes v Fernandes*, 2023 ONSC 564, paras 113-116 and 166-167; *MK v KM*, 2022 ONCJ 424, paras 71-88 and 410(6); and *Birrrell v Coppola*, 2023 ONSC 4032, paras 55-65. See also *LAB v JAS*, 2020 ONSC 3376, paras 36-37, 40-42, and 47-49, and *Grundy v Dickie*, 2022 ONSC 3629, paras 46-55.

159 This occurred in 31 of 76 cases, including courts finding neither subjective nor objective fear (in 8 cases), and finding subjective fear that was not objectively reasonable (in 23 cases).

160 This occurred in 23 of 76 cases.

161 This is the statutory test in Ontario's *FLA*, *CLRA*, and s. 102(3) of the *CYFSA* (deemed *CLRA* restraining orders). See Ontario *FLA*, s 46; Ontario *CLRA*, s 35; and Ontario *CYFSA*, s 102(3).

162 In *Children's Aid Society of Peel v SF*, 2022 ONCJ 598, the court referred to *CLRA* and *FLA* restraining order case law about reasonable fear in the context of an application for a s. 137 *CYFSA* restraining order, which calls for the best interests test.

163 *GP v RP*, 2023 ONCJ 388, paras 52-55, and *Melek v Mansour*, 2022 ONSC 6688, paras 109-111.

164 See for example *Gauthier v Lewis*, 2021 ONSC 7554, para 36. Though note that courts disagree about the standard of proof to discharge that onus, as discussed later in this section.

165 See for example *Lawrence v Bassett*, 2015 ONSC 3707, para 12, citing *McCall v Res*, 2013 ONCJ 254, para 31, both of which were endorsed by the Ontario Court of Appeal in *Tiveron v Collins*, 2017 ONCA 462, para 13. See also *SVG v VG*, 2023 ONSC 3206, para 101.

166 See for example *RKK v JLM*, 2007 ONCJ 223, para 33 ("It is not necessary for a respondent to have actually committed an act, gesture or words of harassment, to justify a restraining order. It is enough if an applicant has a legitimate fear of such acts being committed.") This statement was adopted in *PF v SF*, 2011 ONSC 154, para 31. See also *JK v RK*, 2021 ONSC 1136, where the court held the applicant "need not establish that [the respondent] has harassed or harmed her" (para 30).

167 See for example *Ciffolillo v Nieweglowski*, 2007 ONCJ 469, para 22 ("[A] restraining order will be made where a person has demonstrated a lengthy period of harassment, or irresponsible, impulsive behaviour with the objective of harassing or distressing a party), citing *Wilkins v Wilkins*, 1987 CanLII 8400 (ONCJ), and *Purewal v Prewal*, 2004 ONCJ 195. See also *FK v MC*, 2017 ONCJ 181, para 100(g), and *Children's Aid Society of Toronto v LS*, 2017 ONCJ 506, para 44, for similar phrasing. While this statement could be taken to indicate non-exhaustive examples of situations where a restraining order is warranted, some judges have interpreted it to mean that a restraining order should *only* be granted after a lengthy period of persistent harassment. Judges have therefore declined to grant restraining orders to applicants who did not show a "lengthy period of harassment" or "persistent conduct" by the respondent. See for example *Noriega v Litke*, 2020 ONSC 2970, paras 40-43, and *Gauthier v Lewis*, 2021 ONSC 7554, paras 40-41.

168 See for example *McCall v Res*, 2013 ONCJ 254, para 31 ("The fear must be reasonable [and] [t]he fear may be entirely subjective so long as it is legitimate"). This statement was adopted in *Lawrence v Bassett*, 2015 ONSC 3707, paras 12 and 16 ("subjective fear is sufficient so long as it is legitimate.") The Ontario Court of Appeal endorsed this analysis in *Tiveron v Collins*, 2017 ONCA 462, para 13.

169 See for example *RKK v JLM*, 2007 ONCJ 223, para 33 ("[A]n applicant's fear of harassment must not be entirely subjective, comprehended only by the applicant. [. . .] There can be fears of a personal or subjective nature, but they must be related to a respondent's actions or words.") Judges who have adopted this statement have concluded there are both subjective and objective elements to the concept of "reasonable grounds to fear." See for example *Noriega v Litke*, 2020 ONSC 2970, para 37.

170 See for example *PF v SF*, 2011 ONSC 154, paras 31-32 ("In other words, where an Applicant has a 'legitimate fear' for his or her safety, even where that is somewhat subjective, a restraining order should go where there are compelling facts leading to that fear.")

171 See for example *Ciffolillo v Nieweglowski*, 2007 ONCJ 469, para 23 ("The conduct must be of a sort that a reasonable person would regard as disturbing, or as a source of anxiety or irritation to a substantial degree. This section does not contemplate trivial or casual annoyance"), citing *Sniderman v Sniderman*, 1981 CanLII 4166 (ONSC). See also *Children's Aid Society of Toronto v LS*, 2017 ONCJ 506, para 43, citing *Children's Aid Society of the Region of Halton v CIC*, 2009 ONCJ 784.

172 See for example *Gauthier v Lewis*, 2021 ONSC 7554, para 36, and *Verma v Di Salvo*, 2020 ONSC 850, para 76.

173 See for example *LAB v JAS*, 2020 ONSC 3376, para 23, and *Sheldon v Seraphim*, 2024 ONSC 2678, para 53, citing *JK v RK*, 2021 ONSC 1136, paras 28-30.

174 See for example *Armstrong v Coupland*, 2023 ONSC 5451, para 24(l) ("It is appropriate, in borderline cases, to consider the balancing prejudice to the Respondent, if the restraining order is granted"), citing *DC v MTC*, 2015 ONCJ 242, para 69(h).

175 See for example *Sheldon v Seraphim*, 2024 ONSC 2678, para 53, citing *JK v RK*, 2021 ONSC 1136, paras 28-30, *Daleman v Daleman*, 2021 ONSC 7193, para 145, and *GP v RP*, 2023 ONCJ 388, paras 52-55.

176 See for example *PF v SF*, 2011 ONSC 154, para 33, citing *Callon v Callon*, [1999] OJ No 3108 (Div Ct), and *Grundy v Dickie*, 2022 ONSC 3629, para 54. Note however that orders regarding conduct in Ontario's *FLA* are designed for this purpose. See Ontario *FLA*, s 47.1.

177 See for example *FK v MC*, 2017 ONCJ 181, para 106 (noting many reasons why a restraining order was necessary to protect the mother from harm, especially after the court case ended), and *CT v CS*, 2021 ONSC 7578, para 23 ("the intention of a Restraining Order is to provide protection from harm rather than to address litigation processes.")

178 See for example *Armstrong v Coupland*, 2023 ONSC 5451, para 24, citing *DC v MTC*, 2015 ONCJ 242.

179 See *Children's Aid Society of Toronto v LS*, 2017 ONCJ 506, para 43 (after describing the intent of s. 35 *CLRA* restraining orders, the judge noted: "I must consider the behaviour of the father in this case and the evidence of harassment, and whether there is any other means of protecting the mother and children"), and *GP v RP*, 2023 ONCJ 388, paras 52-55.

180 *Stave v Chartrand*, 2004 ONCJ 79, para 20. But see Neilson, *Responding to Domestic Violence*, ch 8.8.1, noting: "While recent domestic violence is associated with increased risk, a period of time since the last incident of violence is not a reliable indicator of safety".

181 See for example *MC v RK*, 2022 ONSC 3281, paras 24-25, finding the applicant's fear was not reasonable in part because the parties no longer live together, and *Davidson v Davidson*, 2022 ONSC 4375, para 278, finding the applicant's fear was not reasonable after the sale of the family home.

182 See for example *Smith v Reynolds*, 2020 ONSC 4459, paras 112-113. Note that Alberta's statute states that the fact the respondent has complied with other no-contact orders should not preclude the granting of an emergency protection order. See Alberta *PAFVA*, s 2(2.1)(b). Similarly, Manitoba's legislation cautions that the respondent's compliance with a protection order does not by itself mean the applicant does not have a continuing need for protection. See Manitoba *DVSA*, s 8.2(2).

183 Neilson, *Responding to Domestic Violence*, ch 9.3.1.6.

184 Manitoba, for example, requires applicants to show on a balance of probabilities that the respondent has committed violence; the applicant believes the violence will continue or resume; the applicant requires protection because there is a reasonable likelihood the violence will continue or resume; and a protection order should be made without delay due to seriousness or urgency. People who would reasonably believe the respondent will continue or resume the violence, "but for mental incompetence or minority", are deemed to have that belief. Manitoba *DVSA*, s 6(1) and (2).

185 See for example New Brunswick *IPVIA*, s 4(1). In British Columbia, a court may make a protection order if the court determines that family violence is likely to occur, and that there is an "at-risk" family member whose safety and security is, or is likely, at risk. See British Columbia *FLA*, ss 182-183.

186 Northwest Territories *PAFVA*, ss 4(1) (emergency protection order) and 7(1) (protection order).

187 "Irreparable harm" is harm that cannot be quantified in monetary terms or cannot be cured or compensated. See *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC).

188 *Cycle Toronto et al v Attorney General of Ontario et al*, 2025 ONSC 2424, para 10, citing *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC).

189 See *R v Penunsi*, 2019 SCC 39, para 61 (comparing a peace bond to a civil injunction) and *Tran v Armstrong*, 2015 ABQB 343, para 16 (noting that "[a] restraining order is merely one type of injunction.")

190 *Barendregt v Grebliunas*, 2022 SCC 22, para 144.

191 See Mass Casualty Commission, *Turning the Tide Together Volume 3*, pp 13 and 277, and Neilson, *Responding to Domestic Violence*, Supplementary Reference 3 (Legal System Considerations: Evidence Filters Criminal). Professor Neilson writes that "missing evidence is more the rule than the exception in these cases." Neilson, *Responding to Domestic Violence*, ch 11.1.8.2.

192 See Neilson, *Responding to Domestic Violence*, chs 4.3.3 (noting that disclosure patterns might include delays in disclosure, disclosing particulars over time, difficulties remembering details, difficulties sharing information in a linear sequence, and recantation. Since these patterns can be produced by harm from ongoing violence or continued manipulation or intimidation, they are not reliable markers of false or exaggerated claims), 5.2.5, 8.5 and 9.2.2.4.

193 Nova Scotia *DVIA*, s 6(1) and (3) and Nova Scotia *Regulations*, s 4(3).

194 *KMN v SZM*, 2024 BCCA 70, para 84.

195 *KMN v SZM*, 2024 BCCA 70, para 126 (citation omitted), referencing *Ahluwalia v Ahluwalia*, 2023 ONCA 476, para 120.

196 Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35:1 Can J Fam L 33, online: <commons.allard.ubc.ca> [Koshan, "Challenging Myths and Stereotypes"], p 40.

197 Koshan, "Challenging Myths and Stereotypes", p 40.

198 See for example Koshan, "Preventive Justice?", pp 274-275.

199 The Supreme Court of Canada has recognized that judicial reliance on myths and stereotypes in the context of sexual assault cases can lead to prejudicial reasoning, faulty assessments of credibility, false logic, and errors of law. See Koshan, "Challenging Myths and Stereotypes", pp 36 and 39-40, citing *R v ARJD*, 2018 SCC 6, para 2, and *R v Barton*, 2019 SCC 33, para 60.

200 Koshan, "Challenging Myths and Stereotypes", p 36.

201 See Jennifer Koshan, "The Myth of False Allegations of Gender-Based Violence", (8 November 2023), online: <ablawg.ca> [Koshan, "The Myth of False Allegations"].

202 See Koshan, "Preventive Justice?", pp 274-275 and the cases cited at notes 109-110, including the Alberta Court of Appeal's recent approval of a decision where the judge speculated that "protection orders are now being used for collateral purposes" and as a "backdoor, *ex parte* way of obtaining custody of children, or exclusive possession of matrimonial premises … or … chattels."

203 See Koshan, "The Myth of False Allegations".

204 See for example *KMN v SZM*, 2024 BCCA 70, paras 84 and 120-127, and the trial decision in *Ahluwalia v Ahluwalia*, 2022 ONSC 1303 (under appeal to the Supreme Court of Canada at the time of writing), para 74, where the court rejected the father's claim that the mother had fabricated intimate partner violence allegations because she was angry about the separation and sought financial gain.

205 See for example *LAB v JAS*, 2020 ONSC 3376, paras 41 and 48, and *IS v JW*, 2021 ONSC 1194, paras 56-57.

206 *Ramezani v Najafi*, 2021 ONSC 7638, para 356.

207 *R v ARJD*, 2018 SCC 6, para 2.

208 *Noriega v Litke*, 2020 ONSC 2970, paras 55-56.

209 *HG v JRN*, 2022 ONSC 3436, para 123.

210 See for example *McArthur v Le*, 2023 ONSC 4897, paras 105-106.

211 *Barendregt v Grebliunas*, 2022 SCC 22, para 143.

212 See for example *AH v MT*, 2023 ONSC 2356, para 17, where the court noted that a restraining order should not be lightly imposed in part because it "immediately lessens the prospect of shared parenting and joint decision-making responsibility, as those concepts are difficult to imagine in circumstances where one parent is restrained from having any contact or communication or being near the other, with limited exceptions." See also *McArthur v Le*, 2023 ONSC 4897, paras 106-112, where the court stated: "Even if the allegations of domestic violence, threats and coercion are true, I am not persuaded that they have bearing on who should assume decision-making responsibility for the child." Note that in the LCO's review of 76 restraining order decisions from 2021 to 2023, 64 cases involved non-adult children and most of those restraining order applications were dismissed, or an existing restraining order was terminated (58%). Further, courts issued parenting carve-outs to restraining orders or parenting orders instead of restraining orders in 61% of those cases. Of the 27 restraining orders granted or extended in cases involving non-adult children, only 3 restraining orders fully protected children.

213 Assemblée nationale du Québec, *Bill 73, An Act to counter non-consensual sharing of intimate images and to improve protection and support in civil matters for persons who are victims of violence*, 1st Sess, 43rd Leg (2024), online: <assnat.qc.ca>.

214 Québec, *Civil Code of Québec*, CCQ-1991, art 2858.1. According to s. 2858.1, any debate about the admissibility in evidence of any such fact is an issue of law and is to be held in camera.

215 Luke's Place Support and Resource Centre & National Association of Women and the Law, *Brief on Bill C-78: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, (November 2018), online: <lukesplace.ca> [Luke's Place & NAWL, *Brief on Bill C-78*]. The joint brief was endorsed by 30 organizations across Canada.

216 Luke's Place & NAWL, *Brief on Bill C-78*, p 6.

217 In *Jewish Family and Child Service of Greater Toronto v KB*, 2018 ONCJ 650, for example, Jewish Family and Child Service sought a restraining order to protect the children from their mother. The Office of the Children's Lawyer opposed the restraining order on behalf of the children, who wanted to be returned to their mother. The court granted the restraining order despite the children's position.

218 For example, in the context of criminal protection orders, researchers in New Brunswick found it was unlikely Crown prosecutors, defence lawyers, and criminal courts had direct access to children's views. Some criminal courts were not even aware that children were part of the family, because police had not notified the Crown about the children. The researchers further noted that "a number of other jurisdictions have reported judicial reluctance to grant orders shielding children from contact with [domestic violence] perpetrators in emergency civil protection orders", though this was not the case in Moncton. See Linda C Neilson with Joanne Boucher, Justice Brigitte Robichaud & Judge Anne Dugas-Horsman, *Collaborative Design of a Research-Informed, Coordinated Provincial / Queen's Bench Family Violence Court Model*, (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research, 2022), [Neilson et al, *Collaborative Design*], pp 19-20, 27-28 and note 48.

219 Koshan, "Preventive Justice?", pp 284-285.

220 Koshan, "Preventive Justice?", p 282.

221 See for example *McArthur v Le*, 2023 ONSC 4897, para 119; *Stec v Blair*, 2021 ONSC 6212, para 60; and *AH v MT*, 2023 ONSC 2356, para 17.

222 See for example *Johnson v Apps*, 2023 ONSC 6691, paras 9 and 129 (leaving in place a restraining order prohibiting the father from "direct or indirect communication with [the mother] or the children except through [professional third parties] to facilitate access to the children, and to communicate with the children during such access.")

223 Note, however, that in many cases applicant mothers requested restraining orders with parenting carve-outs, and many courts structured the carve-outs to preserve the protections afforded to mothers (by requiring that communication relating to the children and exchanges occur through third parties, for example). Note also that some restraining orders contained protective conditions for children even where there were also parenting carve-outs. See for example *Campbell v Heffern*, 2021 ONSC 5870, para 38(g) and (h).

224 Parenting orders were issued instead of restraining orders in 15 of the 64 cases involving non-adult children in the LCO's study of reported decisions from 2021 to 2023 (23% of cases). See for example *GP v RP*, 2023 ONCJ 388, where the court described a parenting order as a "suitable alternative" to a restraining order, even after finding the father perpetrated family violence against the mother and she had a subjective and objective basis to fear him (paras 52-55). For an example of a court making an order regarding conduct instead of a restraining order, see *McArthur v Le*, 2023 ONSC 4897, para 119. Courts deciding between granting a restraining order or a parenting order have referred to the latter as "the lesser option of making a no-contact order pursuant to section 28 of [Ontario's *CLRA*]" or the "lesser non-communication order pursuant to section 28", with some recognizing that s. 28 *CLRA* parenting orders are not always adequate substitutes for restraining orders to protect against intimate partner and family violence. See *QMSQ v SQ*, 2021 ONCJ 334, paras 184-186; *SB v JIU*, 2021 ONCJ 614, para 67; and *FK v MC*, 2017 ONCJ 181, paras 105-106.

225 See for example *GP v RP*, 2023 ONCJ 388, paras 52-55.

226 Restraining orders and parenting orders have different evidentiary requirements, standard conditions, and enforcement mechanisms (a person protected by a restraining order can call the police to enforce it, whereas people must usually return to court to enforce parenting orders), and they typically have different consequences for breach (criminal charges for a restraining order breach versus court sanctions for breaching a parenting order). See Ontario, "Parenting time, decision-making responsibility and contact", (updated 29 July 2025), online: <ontario.ca>, and *Armstrong v Coupland*, 2023 ONSC 5451, paras 16 and 420, where the police determined non-communication provisions in a parenting order to protect a mother from a father were unenforceable, and the mother had to apply to court to have the father's breaches enforced by costs consequences pursuant to rule 1(8) of Ontario's *Family Law Rules*. See also *FK v MC*, 2017 ONCJ 181, paras 105-106; *QMSQ v SQ*, 2021 ONCJ 334, paras 184-186; and *SB v JIU*, 2021 ONCJ 614, para 67, for courts' recognition that parenting orders are not always adequate substitutes for restraining orders in cases of intimate partner and family violence.

227 See for example *GP v RP*, 2023 ONCJ 388, paras 52-55.

228 *Barendregt v Grebliunas*, 2022 SCC 22, para 143.

229 See for example Alberta *PAFVA*, s 2(2)(d).

230 British Columbia *FLA*, s 185(b).

231 British Columbia *FLA*, s 185(a).

232 Neilson, *Responding to Domestic Violence*, ch 8.8.4 and notes 476-477.

233 See generally Pamela C Cross et al, *What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners*, (Oshawa: Luke's Place, February 2018), online: <justice.gc.ca> and Molly Contini & Brianna Wilson, *Literature Review on Risk and Risk Assessment Tools for Intimate Partner Violence*, (Toronto: WomanAct (Woman Abuse Council of Toronto), July 2019), online: <womanact.ca>.

234 Neilson, *Responding to Domestic Violence*, ch 8.9.4 and notes 487-488, noting that risk assessment tools are known to improve on professional judgment alone.

235 Such as coercive control; stalking; abduction or confinement; sexual, emotional, and financial abuse; negative parenting practices and child stress, abuse, and trauma. See Neilson, *Responding to Domestic Violence*, chs 8.9.2, 8.9.7, and 8.9.10 (noting other documented limitations of risk assessment tools and the fact that "even the best risk assessment tools result in approximately 20% false negatives (failure to predict domestic violence)").

236 See National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a*, (2019), online: <mmiwg-ffada.ca>, p 582, noting that expert testimony "provided an important discussion of the way the very notions of 'safety' and 'danger' are conceptualized differently within Indigenous and non-Indigenous contexts" and research on risk assessment tools has found "that, when comparing the level of perceived danger in the same situation, Indigenous women did not perceive themselves to be in as much danger as did immigrant or settled Canadian women."

237 See Adam Satariano and Rose Toll Pifarré, “An Algorithm Told Police She Was Safe. Then Her Husband Killed Her”, *The New York Times*, 18 July 2024, online: <nytimes.com>, about the dangers of relying on low risk assessment scores. In Spain, a woman named Lobna Hemid was murdered by her husband after police left her unprotected because their risk assessment algorithm indicated she was at a “low risk” of future violence.

238 United Kingdom Ministry of Justice, *Practice Direction 12J – Child Arrangements and Orders: Domestic Abuse and Harm*, (May 2010), online: <justice.gov.uk>, ss 13 and 33.

239 United Kingdom Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report*, (June 2020), online: <assets.publishing.service.gov.uk> [United Kingdom, *Assessing Risk*], pp 6 and 44-45.

240 Gemma Dunstan, “Family court pilot to support abuse victims expanded”, *BBC News*, 2 February 2025, online: <bbc.com>.

241 United Kingdom, Press Release, “Pioneering approach in family courts to support domestic abuse victims better”, (8 March 2022), online: <gov.uk> [United Kingdom, “Pioneering approach”].

242 United Kingdom, “Pioneering approach”.

243 United Kingdom, “Pioneering approach”.

244 Ontario *FLA*, s 24(3).

245 See for example New Brunswick *IPVIA*, s 4(3)(h) and (j), and Manitoba *DVSA*, s 6.1(1)(f) and (h).

246 See for example New Brunswick *IPVIA*, s 4(3)(k) and Manitoba *DVSA*, s 6.1(1)(i).

247 See for example New Brunswick *IPVIA*, s 4(3)(i) and Manitoba *DVSA*, s 6.1(1)(g).

248 See for example New Brunswick *IPVIA*, s 4(3)(d) and British Columbia *FLA*, s 184(1)(c).

249 See for example New Brunswick *IPVIA*, s 4(3)(g) and Manitoba *DVSA*, s 6.1(1)(e).

250 For the list of risk factors, see DVDRC, *2021 Annual Report*, pp 24-30.

251 *R v Lavallee*, [1990] 1 SCR 852.

252 *R v Lavallee*, [1990] 1 SCR 852, pp 873 and 889.

253 *Willick v Willick*, [1994] 3 SCR 670, p 703.

254 Professor Linda Neilson writes that “the legal system is faced with behaviors on the part of targeted parties that can be confusing and difficult to interpret. Social-science research tells us that domestic violence can and does produce traumatic injuries that affect how targeted intimate partners relay evidence and present themselves to lawyers, service providers and courts”, which can result in non-linear testimony, emotional detachment, and difficulty recalling details. See Neilson, *Responding to Domestic Violence*, ch 9.2.2.4, and the research cited in note 606.

255 For the distinction between “participant experts” and “litigation experts”, see rule 20.2 of Ontario’s *Family Law Rules*, and *GSW v CS*, 2018 ONCJ 286, note 12. Participant experts can provide evidence where (1) their opinion is based on their observation of, or participation in, the events at issue, and (2) they formed their opinion as part of the ordinary exercise of their skill, knowledge, training and experience while observing or participating in such events. See *Westerhof v Gee Estate*, 2015 ONCA 206, paras 60-61.

256 See for example *Gill v Gill*, 2023 ONSC 5882, paras 43(b) and 47; *Al-Hadad v Al-Harash*, 2023 ONCJ 463, para 12; and *GP v RP*, 2023 ONCJ 388, para 3.

257 See for example *McArthur v Le*, 2023 ONSC 4897, para 58.

258 After the applicant said it was disturbing to see the respondent in *Riley Doyle v Doyle*, 2021 ONSC 4821, the court provided accommodations such as moving the respondent’s chair out of the applicant’s line of sight (para 361). In *Ramezani v Najafi*, 2021 ONSC 7638, an agent for the respondent cross-examined the applicant on her sexual assault allegations (para 23).

259 Despite family courts’ ability to do so. For confirmation of this authority, see *Morwald-Benevides v Benevides*, 2019 ONCA 1023, paras 21-40.

260 See for example *Children's Aid Society of Toronto v LS*, 2017 ONCJ 506, para 44, citing *FK v MC*, 2017 ONCJ 181, para 103.

261 At trial in *Tiveron v Collins*, 2016 ONSC 2451, for example, a mother testified about her fear of harm due to the father's anger and his threatening behaviours, and the need for a restraining order. The mother told the court she was intimidated by the father's behaviour and his physical presence (para 15). The court nevertheless allowed him to cross-examine her without any safeguards, later observing that "[m]any times while the father was cross-examining the mother her fear and anxiety were palpable" (para 15).

262 For example, article 278 of Québec's Code of Civil Procedure allows courts to appoint legal representation for cross-examination in intimate partner and family violence cases to protect witnesses from intimidation tactics and abuse. Similarly, Australia has established the Commonwealth Family Violence and Cross-Examination of Parties Scheme as an amendment to their *Family Law Act* to protect survivors of family violence from being cross-examined by alleged abusers. The Scheme provides funding for lawyers to assist both parties in hearings where cross-examination is required. See Australia, *Family Law Act*, 1975 (Cth), s 102NA-NB. The United Kingdom also prohibits personal cross-examination in family proceedings in certain circumstances, such as when there is a criminal charge or conviction, and allows courts to appoint legal representation instead. See United Kingdom, *Domestic Abuse Act 2021*, c 17, s 65(31R)(1)-(2) and (31W)(6).

263 See for example *GP v RP*, 2023 ONCJ 388, paras 52-55, and *Al-Hadad v Al-Harash*, 2023 ONCJ 463, paras 169-170.

264 See for example *McArthur v Le*, para 119, and *GP v RP*, 2023 ONCJ 388, para 55. See also *Grundy v Dickie*, 2022 ONSC 3629, paras 46-55, where the judge did not find "legitimate fear" despite the applicant's allegations that the respondent was threatening to behead her. The judge determined a restraining order was not appropriate, but that "the parties could benefit from direction [. . . and] this can be accomplished in other ways, such as crafting parenting terms to ensure the applicant's concerns are addressed without imposing burdensome restrictions with criminal consequences."

265 See for example *McArthur v Le*, 2023 ONSC 4897, para 107; *MC v RK*, 2022 ONSC 3281, paras 24-25; and *Davidson v Davidson*, 2022 ONSC 4375, para 278.

266 See for example *GP v RP*, 2023 ONCJ 388, paras 53-55, and *Smith v Reynolds*, 2020 ONSC 4459, paras 112-113.

267 See for example *Armstrong v Coupland*, 2023 ONSC 5451, para 24, citing *FK v MC*, 2017 ONCJ 181, para 105.

268 Ontario, *Police Record Checks Reform Act, 2015*, SO 2015, c 30, ss 9, 10, and the Schedule.

269 See for example *Lekic v Ismail*, 2023 ONSC 6753, where the court did not know the outcome of the respondent husband's criminal charges for harassing the wife (para 4), and *Simcoe Muskoka Child, Youth and Family Services v JMW*, 2023 ONSC 741, where the court was "in the dark" about the terms of the respondent father's criminal undertaking (which he refused to provide), and the court did not know whether the undertaking "adequately addresses the safety of [the child] and the Respondent Mother" (paras 5, 55, 57-58 and 60).

270 See for example *Osmak-Bonk v Bonk*, 2004 ONCJ 167, paras 23-33, where the family court mistakenly allowed contact between the mother and father without knowing about a bail release order that prevented the father from contacting the mother. It took the family court almost eight months to change the restraining order to bring it into alignment with the father's bail conditions. This delay could have caused serious safety risks if the mother had reported a breach, because the police had no way to know whether the family or criminal court order took precedence. The process to change the order also required a court appearance and accumulated lawyers' fees.

271 Ontario Court Services, *Form 35.1: Affidavit*, (last accessed 3 September 2025), online: <ontariocourtforms.on.ca>.

272 See for example Manitoba *DVSA*, s 22(c).

273 See for example Nunavut *FAIA*, s 30. Manitoba also requires details of agreements or court orders to which the applicant and respondent are parties; the details of related ongoing proceedings; and information about whether the applicant has previously applied for a protection that was not granted, and when. Manitoba *Regulation*, s 3(1)(e), (f) and (g).

274 Newfoundland and Labrador *FVPA*, s 4(5).

275 Manitoba *DVSA*, s 6.1(2).

276 FPT Report, *Making the Links*, p 62.

277 See *JK v RK*, 2021 ONSC 1136, para 42, citing *Noriega v Litke*, 2020 ONSC 2970. However, the court in *Noriega* found that the respondent's criminal conviction was too dated from the restraining order application because it occurred 12 years prior (paras 51 and 52), not that criminal convictions alone cannot support a finding of reasonable fear. Relatedly, advocates in the United Kingdom have expressed concern about family courts ignoring or re-litigating criminal convictions, "reinforcing the victim's feeling that she is not believed". See United Kingdom, *Assessing Risk*, pp 104-105.

278 *Otis v Gregoire*, [2008] OJ No 3860 (SCJ), para 14 (though note that the court nevertheless denied the restraining order).

279 FPT Report, *Making the Links*, p 63 and the cases cited at note 171.

280 See also FPT Report, *Making the Links*, pp 104-116.

281 See for example *Akyuz v Sahin*, 2023 ONSC 1024, paras 101-105.

282 After finding that a restraining order "would not be likely to add to the protection she derives from the Release Order in the criminal proceeding." See *LAB v JAS*, 2020 ONSC 3376, para 46.

283 See for example Manitoba *DVSA*, s 6.1(3)(a).

284 Ontario *FLA*, s 46(3)(1) and (2), and Ontario *CLRA*, s 35(2)(1) and (2).

285 Ontario's *FLA* and *CLRA* allow courts to include "any other provision the court considers appropriate" in a restraining order. Ontario *FLA*, s 46(3)(4), and Ontario *CLRA*, s 35(2)(4). Ontario's *CYFSA* similarly authorizes courts to "include in the order such directions as the court considers appropriate for implementing the order and protecting the child." Ontario *CYFSA*, s 137(1)(1).

286 See for example Manitoba *DVSA*, s 14(1).

287 British Columbia *FLA*, s 183(3).

288 Provincial Court of British Columbia, "Family orders picklists", (last accessed 3 September 2025), online: <provincialcourt.bc.ca> [British Columbia, "Family orders picklists"].

289 See for example *Lekic v Ismail*, 2023 ONSC 6753, where a mother asked for a restraining order to prohibit the father from communicating with her except if related to the children (para 78). The court granted a restraining order after finding the father's abusive texts to the mother constituted family violence and that the mother had reasonable fear (paras 23 and 81). However, the only restraining order provision restricted the father from coming near the mother's home, except to exchange the children (para 91(h)). There were no conditions to prevent the father from continuing to send abusive text messages, despite the mother's request and the court's findings.

290 See for example *GP v RP*, 2023 ONCJ 388, in which the court found that the mother had subjective and objective fear of the father, meeting the test for a restraining order. Nevertheless, the court declined to grant a restraining order because there was a "suitable alternative" that would have less of an impact on the father (paras 52-55). The "alternative" protections were in the form of a parenting order that limited the father's contact with the applicant but did not address certain forms of violence, such as: the father taking the accessible vehicle the mother needed to drive their wheelchair-bound child to appointments; calling Children's Aid Society with unmerited complaints about the mother's parenting because he was upset she would not speak to him; and withholding child tax benefits from the mother (para 47). See also *McArthur v Le*, 2023 ONSC 4897, where the court declined to grant a restraining order without applying the proper test, and instead made orders to "govern the parties' behaviour" (para 119) which did not include firearms conditions despite the mother's allegations that the father had threatened to shoot her (para 96).

291 In *Marshall v Reid*, 2018 ONSC 648, the court held that judicial discretion inherent in the statutory phrase "[a]ny other provision that the court considers appropriate" does not extend to imposing provisions requiring the bound person to complete counselling and show remorse before seeking to review the order, because (a) those preconditions did not address the issue of whether the protected person had a continued fear of the bound person, (b) the preconditions were not contained in or contemplated by the statute, and (c) the preconditions may have prevented the bound person from ever applying to terminate the restraining order (para 36).

292 See *Noriega v Litke*, 2020 ONSC 2970, paras 30-31. For another example, see *Fernandes v Fernandes*, 2023 ONSC 564, paras 162-163 and 167.

293 In *GP v RP*, 2023 ONCJ 388, for example, the parents' child was disabled and used a wheelchair-accessible vehicle. The father took the vehicle when the parents separated, even though the mother needed it to care for the child. The court found this caused the mother "considerable distress, cost and inconvenience, as she had to arrange taxis to take the child to her many appointments with service providers" (para 47). The court also found that the mother had subjective and objective fear of the father, meeting the test for a restraining order (para 52). However, the court declined to grant a restraining order in favour of other protective conditions in a parenting order (paras 53-55). The court did not include any conditions preventing the father from co-opting the accessible vehicle.

294 Neilson, *Responding to Domestic Violence*, ch 9.2.2.9.

295 Decision-makers must also consider "the applicant's need for a safe environment to arrange for longer-term protection from intimate partner violence." New Brunswick *IPVIA*, s 4(3)(k) and (l).

296 Manitoba *DVSA*, s 15(1)(a).

297 Alberta *PAFVA*, s 2(3.1).

298 See for example Manitoba *DVSA*, s 14(1).

299 In the LCO's review of restraining order decisions between 2021 to 2023, 64 cases involved non-adult children. Restraining orders were granted or extended in 27 of these cases, and 24 of those restraining orders contained parenting carve-outs to allow the respondent time with the children. Therefore, in the 64 cases involving non-adult children, there were only 3 cases in which children were fully protected by a restraining order. Note however that some restraining orders contained protective conditions for children even where there were also parenting carve-outs. See for example *Campbell v Heffern*, 2021 ONSC 5870, para 38(g) and (h).

300 See for example *KK v MM*, 2021 ONSC 3975, para 39, where the court granted a restraining order to protect the mother from the father but carved out exceptions, stating: "the father shall not initiate communication with the mother except [for various reasons including some relating to parenting]". See also the later decision in *KK v MM*, 2023 ONSC 3347, paras 6 and 131(d) and (e). For another example, see the original restraining order in *IS v JW*, 2021 ONSC 1194, para 14.

301 See for example *Johnson v Apps*, 2023 ONSC 6691, paras 9, 45, and 129. Note, however, that in many cases applicant mothers requested restraining orders with parenting carve-outs, and many courts structured the carve-outs to preserve the protections afforded to mothers (by requiring that communication relating to the children and exchanges occur through third parties, for example). Note also that some restraining orders contained protective conditions for children even where there were also parenting carve-outs. See for example *Campbell v Heffern*, 2021 ONSC 5870, para 38(g) and (h).

302 Researchers in New Brunswick found that most criminal protection orders they reviewed did not restrict the bound person's contact with children (even in high-risk cases), and some authorized contact between the bound person and the protected parent in order to arrange parenting time. The researchers concluded it was likely that "women with children were accorded lower levels of protection [in orders from criminal courts] than women without children in order to enable men, despite [family violence] convictions or agreements, to continue to parent children." See Neilson et al, *Collaborative Design*, pp 19-20.

303 See for example Alberta *PAFVA*, s 2(2)(d).

304 See Koshan, “Preventive Justice?”, p 252 and note 31, citing New Brunswick *IPVIA*, s 4(3)(e) and (5)(h); Nova Scotia *DVIA*, ss 6(2)(d) and 8(1)(k); Newfoundland and Labrador *FVPA*, ss 5(2)(d) and 6(n); Prince Edward Island *VFVA*, s 4(2)(d) and (3)(f); and Nunavut *FAIA*, ss 7(2)(h) and 35(d).

305 See Koshan, “Preventive Justice?”, p 252 and note 31, citing New Brunswick *IPVIA*, s 12(1); Nova Scotia *DVIA*, s 8(4); Newfoundland and Labrador *FVPA*, s 13(1); and Nunavut *FAIA*, s 9.

306 DVDRC, *2021 Annual Report*, Appendix A.

307 Mass Casualty Commission, *Turning the Tide Together, Final Report of the Mass Casualty Commission, Volume 4: Community*, (Truro: Mass Casualty Commission, 2023), online: <masscasualtycommission.ca> [Mass Casualty Commission, *Turning the Tide Together Volume 4*], p 520, citing Joanna Birenbaum & Mercedes Perez, “Final Written Submissions of the Canadian Coalition for Gun Control”, (Canadian Coalition for Gun Control, 10 October 2022).

308 DVDRC, *2021 Annual Report*, p 3.

309 See Mass Casualty Commission, *Turning the Tide Together Volume 4*, pp 52-55 and 517-518, and the research cited therein.

310 Neilson, *Responding to Domestic Violence*, chs 9.2.2.23.4-9.2.2.23.5. Professor Neilson argues that the limited express statutory authority given to Canadian judges to protect people from weapons in family law cases is a serious concern, especially because many survivors may choose not to involve the police or participate in criminal proceedings and because “family law cases involving domestic violence are no less dangerous than criminal domestic violence cases”.

311 For example, in *Khadra v Khadra*, 2021 ONSC 3599, the father threatened the mother’s parents with a gun at their home. The court imposed a restraining order to protect the mother but did not restrict the father’s access to firearms or otherwise refer to the gun.

312 For a comprehensive list of these provisions, see Neilson, *Responding to Domestic Violence*, ch 9.2.2.23.3. Firearms can also be a consideration when evaluating the need for a protection order. See for example New Brunswick *IPVIA*, s 4(3)(j)(iii).

313 See for example Manitoba *DVSA*, s 7(1)(g) and Newfoundland and Labrador *FVPA*, s 6(j).

314 See Parliament of Canada, *Bill C-21, An Act to amend certain Acts and to make certain consequential amendments (firearms)*, (Royal Assent received 15 December 2023), ss 16 and 36. See also the exceptions in s. 70.3, if an individual can establish they need a firearm to hunt or trap to sustain themselves or their family.

315 One judge explicitly found that the applicant’s property could not be protected by a restraining order. See *Noriega v Litke*, 2020 ONSC 2970, para 30.

316 Many jurisdictions also prevent landlords from evicting an applicant based upon the fact they are not on the lease if they are granted an exclusive possession order. See for example Alberta *PAFVA*, s 9(2). Nunavut’s legislation deems individuals who have an exclusive possession order to be tenants with all associated rights and responsibilities. See Nunavut *FAIA*, s 46(1)-(3).

317 Community Legal Education Ontario, “Family court orders”, (February 2025), online: <cleo.on.ca>.

318 Newfoundland and Labrador *FVPA*, s 6(m) and Prince Edward Island *VFVA*, s 4(3)(h)(ii).

319 British Columbia *FLA*, s 226(a).

320 Prince Edward Island *VFVA*, s 4(3)(j.1) and Newfoundland and Labrador *FVPA*, s 6(l).

321 See for example Koshan, *Preventive Justice*, pp 290-291 and note 164. Interviewees Professor Koshan spoke to in her review of Alberta’s protection order legislation were concerned about the lack of remedies for emotional and financial abuse and coercive control, which were heightened during the COVID-19 pandemic. Interviewees recommended amending Alberta’s legislation to include these forms of abuse and explicitly authorize related conditions, such as allowing temporary possession of personal property and requiring the respondent to make payments for the family home and provide financial support to the claimant and children.

322 Neilson, *Responding to Domestic Violence*, ch 9.2.2.10.

323 *Murray v Choudhary*, 2021 ONSC 883, para 56.

324 *JK v RK*, 2021 ONSC 1136, para 54.

325 Newfoundland and Labrador *FVPA*, s 6(f) and (g).

326 Alberta *PAFVA*, s 4(2)(d). See also Northwest Territories *PAFVA*, s 7(2)(g) and Yukon *FVPA*, s 7(1)(f).

327 Manitoba *DVSA*, s 14(1)(j).

328 See for example Farrah Merali, "Toronto woman with restraining order says police were 'too busy' to help when she tried to report a breach", *CBC News*, 2 May 2025, online: <cbc.ca>.

329 For a promising case, see *JK v RK*, 2021 ONSC 1136, where a father was ordered not to contact the mother but gifted his children stuffed animals that played recordings of his voice in the mother's home (para 16). The police and the family court took this misconduct seriously (paras 17, 47 and 49).

330 In *Murray v Choudhary*, 2021 ONSC 883, for example, part of the father's violence included hacking the mother's email account to put notifications in her calendar about their anniversary and Valentine's Day. The court imposed a restraining order prohibiting the father from communicating with the mother or otherwise harassing her, but there were no explicit terms about tech-facilitated violence. The court in *Lekic v Ismail*, 2023 ONSC 6753, ignored tech-facilitated abuse entirely. There, a mother asked for a restraining order to prohibit the father from communicating with her except if related to the children (para 78). The court granted a restraining order after finding the father's abusive texts to the mother constituted family violence and that the mother had reasonable fear (paras 23 and 81). However, the only restraining order provision restricted the father from coming near the mother's home, except to exchange the children (para 91(h)). There were no conditions to prevent the father from continuing to send abusive text messages, despite the mother's request and the court's findings. For a positive example, see *Lawrence v Bassett*, 2015 ONSC 3707, paras 4, 19-20, and 24.

331 One exception is Manitoba's legislation, which defines stalking to include "using the Internet or other electronic means to harass or threaten the other person". Manitoba *DVSA*, s 2(2) and (3)(b.1). In Saskatchewan, protection orders can restrain respondents "from making any communication likely to cause annoyance or alarm to the victim," including "electronic or telephone contact with the victim and other family members or their employers, employees or co-workers or others with whom communication would likely cause annoyance or alarm to the victim". Saskatchewan *VIVA*, s 7(1)(c).

332 See Nova Scotia, *Intimate Images and Cyber-protection Act*, SNS 2017, c 7, s 6 and CyberScan, "Intimate images and cyber-protection: support for victims", (last accessed 10 September 2025), online: <novascotia.ca> [CyberScan, "Intimate images and cyber-protection"].

333 See CyberScan, "Intimate images and cyber-protection".

334 See for example Haley Hrymak & Kim Hawkins, *Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger*, (British Columbia: Rise Women's Legal Centre, January 2021), online: <static1.squarespace.com>, p 29.

335 Neilson, *Responding to Domestic Violence*, chs 9.2.2.9 and 9.3.5.3.

336 DVDRC, *2021 Annual Report*, p 29.

337 The court in *Murray v Choudhary*, 2021 ONSC 883, for example, ordered a restraining order to protect a woman after finding she had suffered abuse from her husband, including threats to harm the dog (paras 65, 70-71). Though the restraining order prevented the husband from coming near her, there were no conditions to prevent him from hurting the dog (para 72(11)). Some courts explicitly held that restraining orders cannot protect pets. See for example *Noriega v Litke*, 2020 ONSC 2970, para 30.

338 See Neilson, *Responding to Domestic Violence*, ch 9.2.2.9, noting that orders protecting animals provide comfort to survivors and children and reinforce the safety of survivors who may have otherwise been forced to return to violent households, and that protections for property can also help.

339 New Brunswick *IPVIA*, ss 1 “property” (c) and 4(5). See also Newfoundland and Labrador *FVPA*, s 2(j) (defining property to include “companion animals”).

340 New Brunswick *IPVIA*, s 4(3)(g) and Manitoba *DVSA*, s 6.1(1)(e).

341 British Columbia *FLA*, s 1 “family violence” (d)(i).

342 See for example *Lekic v Ismail*, 2023 ONSC 6753, para 91(f), and *Blanchard v Walker*, 2012 ONCJ 798, para 110.

343 *R v Zora*, 2020 SCC 14, para 93. The Court reasoned that “[e]ven if some condition is thought to be therapeutic, intended to help, or ‘couldn’t hurt,’ the prospect of additional criminal liability under [former s. 145(3), now s. 145(5) of the *Criminal Code*] means any such limits on otherwise lawful behavior may also attract criminal penalties” (para 85), though there may be exceptions where a condition to attend counselling or treatment is sufficiently linked to the accused’s risks (para 93). Part of the inquiry is whether “the condition is proportional: imposing such conditions means that the accused could be convicted of a criminal offence for skipping a day” of counselling (para 93).

344 Two Ontario judges recently disagreed about whether the Supreme Court of Canada’s decision in *R v Zora*, 2020 SCC 14, means mandatory PAR program attendance is an inappropriate counselling condition in criminal intimate partner violence cases. See *R v Valentine*, 2021 ONCJ 96, paras 7-8 and *R v Sarahang*, 2021 ONCJ 223, paras 58 and 62. Note that referrals to PAR programs continue to be common practice in criminal intimate partner violence cases.

345 For example, in *Lekic v Ismail*, 2023 ONSC 6753, the court ordered a restraining order to protect a mother from a violent father, and in a separate order mandated the father to “attend for counselling to address his mental health and addictions if he wishes to have parenting time with the children” pursuant to the *Divorce Act* (para 91(f)). The *Divorce Act* provides that a court may impose any terms, conditions, and restrictions that it considers appropriate in a parenting or contact order relating to a child (*Divorce Act*, ss 16.1(5) and 16.5(6) (see also ss 16.1(4)(d) and 16.5(5)(b))). Appellate courts have disagreed about whether this statutory language, which is similar to Ontario’s restraining order “catch-all” provisions, authorizes judges to order parents to attend counselling. See *Kaplanis v Kaplanis*, 2005 CanLII 1625 (ONCA), paras 14-15 (noting that the legislation does not specifically authorize orders for parental counselling and finding error with a trial judge’s counselling order), compared to *Lust v Lust*, 2007 ABCA 202, para 9 (holding that the *Divorce Act* does specifically authorize judges to order parents to obtain counselling to address parenting concerns). For other appellate court decisions in Canada endorsing related orders, see Neilson, *Responding to Domestic Violence*, chs 8.8.1 and 14.4.1.7. Ontario courts have also ordered counselling for parents under the *CLRA* as a condition of seeking more parenting time and responsibilities. See for example *Blanchard v Walker*, 2012 ONCJ 798, para 110.

346 See for example the trial judge’s order mandating parents to attend counselling in *Kaplanis v Kaplanis*, 2005 CanLII 1625 (ONCA), which was overturned on appeal. While observing that some trial judges have held that courts have inherent jurisdiction to make counselling orders, the Court of Appeal noted that the *Divorce Act* does not specifically authorize orders for parental counselling (paras 14-15). However, in *Lust v Lust*, 2007 ABCA 202, the Alberta Court of Appeal held that the *Divorce Act* does specifically authorize judges to order parents to obtain counselling when there are concerns about their conduct and the care they will provide to children (para 9).

347 Neilson, *Responding to Domestic Violence*, ch 9.2.2.13.

348 See Saskatchewan *VIVA*, s 7(1)(i); Yukon *FVPA*, s 7(1)(i); and Nunavut *FAIA*, s 7(2)(k).

349 See Alberta *PAFVA*, s 4(2)(k); Manitoba *DVSA*, s 14(1)(m); and Northwest Territories *PAFVA*, s 7(2)(i).

350 In Manitoba, for example, some protection orders can require respondents to pay compensation for monetary losses suffered by the protected person or their child as a result of the violence, including expenses for counselling and therapy. See Manitoba *DVSA*, s 14(1)(j)(ii). For other examples, see Northwest Territories *PAFVA*, s 7(2)(j), and Nunavut *FAIA*, s 7(2)(j).

351 See Neilson, *Responding to Domestic Violence*, chs 8.8.1 (suggesting "scheduling meetings or hearings to assess whether or not the [counselling] has resulted in changed behaviour and to re-assess the risk" after counselling, because "[e]vidence of an established pattern of changed behavior has value over and above proof of successful program completion"), and 9.2.2.13 (noting "[r]isk can go up or down and should be reassessed at the end of [counselling] programs before protections are removed or altered. The goal is to assess whether or not the program has resulted in changed behaviour or in new circumstances that alter the level of risk.")

352 The person has a right to refuse to wear the bracelet if the protection order is issued by a family court. Advocates have critiqued this as a limitation of the proposal. See Sarah Leduc, "Domestic violence: 'Electronic bracelets are a first step, but we have to go further'", *France 24*, 26 September 2020, online: <france24.com> [Leduc, "Electronic bracelets"]. In addition to helping protect people with restraining orders, France's government suggested the bracelets could supplement orders evicting respondents from households. The government said it was difficult for France to keep track of the thousands of eviction orders issued against violent spouses, meaning women were unsafe because compliance with protection orders could not be effectively monitored before the bracelet rollout. See Sandrine Morel, "Spain uses GPS trackers to protect women from domestic violence", *The Guardian*, 14 December 2010, online: <theguardian.com>.

353 Leduc, "Electronic bracelets".

354 For more information about strengthening social infrastructure and wraparound services, see Mass Casualty Commission, *Turning the Tide Together Volume 3*, pp 412 and 451. Social infrastructure (including social programs, services, and supports) is necessary to promote the safety, wellbeing, and healing of people in need of protection, people using violence, and their families in cases of intimate partner and family violence. Wraparound services, which include offering people opportunities to learn, to develop skills, and to change, can help people who have used violence against their partners comply with protection orders. These services have the potential to improve the effectiveness of protection orders by ensuring that people are not left alone to navigate complex issues like addictions and entrenched patterns of violence. Increased supports and services in the aftermath of protection orders can also provide an ongoing, informal monitoring function to assess compliance and risk.

355 In the context of peace bonds, the Supreme Court of Canada has emphasized that conditions "should not be so onerous as effectively to constitute a detention order by setting the defendant up to fail". See *R v Penunsi*, 2019 SCC 39, para 80. For similar reasoning in the bail context, see *R v Zora*, 2020 SCC 14, para 92.

356 *R v Zora*, 2020 SCC 14, para 88.

357 Ontario *FLA*, s 46(1) and Ontario *CLRA*, s 35(1).

358 Ontario *CYFSA*, s 137(3).

359 In cases pre-dating the LCO's sample of decisions, some Ontario judges indicated a willingness to grant protection orders for multiple years at a time (5 to 7 years) and on a permanent basis. See Neilson, *Responding to Domestic Violence*, ch 9.3.1.15, citing *French v Riley-French*, 2012 ONCA 702, para 1 (5 years); *JMM v GSM*, 2006 CanLII 6457 (ONSC), para 90 (5 years); *CS v MS*, 2007 CanLII 6240 (ONSC) (7 years); and *MCJ v JJJ*, 2006 CanLII 23936 (ONSC), para 24 (permanent).

360 *Murray v Choudhary*, 2021 ONSC 883, para 72(11) (5 years).

361 See for example Neilson, Responding to Domestic Violence, ch 9.3.1.15 and Zara Suleman, Haley Hrymak & Kim Hawkins, *Are We Ready to Change? A Lawyer's Guide to Keeping Women and Children Safe in BC's Family Law System*, (Vancouver: Rise Women's Legal Centre, 2021), online: <static1.squarespace.com> [Suleman et al, *Are We Ready to Change?*], pp 30 and 32 (noting: "Where protection orders are granted, they are increasingly very short in duration. This means that women may be required to attend court frequently to keep renewing their protection order, often on the very same evidence, bringing them into further contact with the individuals they are seeking protection from and draining their emotional, financial, and legal resources", and that this is occurring despite British Columbia's legislation providing for a one-year protection order by default. See British Columbia *FLA*, s 183(4). Rise recommends "[e]ven when applications are made without notice, longer-term orders should be the norm, with provisions for the opposing party to bring the matter back to court on short notice and on a without prejudice basis" as set out in British Columbia's legislation.)

362 Neilson, *Responding to Domestic Violence*, ch 9.3.1.15 and note 695, noting research finding longer-term orders provide more effective protection, and George Philp, *One-size-fits-none: A report on modernizing Nova Scotia's Domestic Violence Intervention Act (DVIA)*, (Nova Scotia: Access to Justice and Law Reform Commission of Nova Scotia, 2023), [Philp, *One-size-fits-none*], pp 14-16. On file at the LCO.

363 Neilson et al, *Collaborative Design*, p 17.

364 Hrymak, *Protection Orders in BC*, p 33, and Philp, *One-size-fits-none*, pp 14-16.

365 Hrymak, *Protection Orders in BC*, p 33, and Philp, *One-size-fits-none*, pp 14-15.

366 Neilson et al, *Collaborative Design*, p 17.

367 See Northwest Territories *PAFVA*, ss 4(5) and 7(3).

368 Philp, *One-size-fits-none*, pp 17-18 and Alberta *PAFVA*, s 7; British Columbia *FLA*, ss 183(4) and 187(1)(b); Manitoba *DVSA*, s 8.1; New Brunswick *IPVIA*, ss 5(1) and 9(1)(e); Newfoundland and Labrador *FVPA*, s 7; Northwest Territories *PAFVA*, ss 4(5) and 6(4)(b); Nova Scotia *DVIA*, ss 8(2) and 12(4); Nunavut *FAIA*, ss 10 and 12(1); Prince Edward Island *VFVA*, ss 4(4) and 10(1)(b); Saskatchewan *VIVA*, s 6(1)(b); and Yukon *FVPA*, ss 4(3)(e) and (5), and 8(1)(b).

369 Saskatchewan Ministry of Justice and Attorney General, Victims Services, "Emergency Intervention Order" (March 2010), online: <mobilecrisis.ca>, p 2.

370 For further discussion, see Adam Teperski & Stewart Boiteux, *The long and short of it: The impact of Apprehended Domestic Violence Order duration on offending and breaches*, (Sydney: NSW Bureau of Crime Statistics and Research, 2023), pp 19-20.

371 Neilson, *Responding to Domestic Violence*, chs 8.8.1 at note 458 and 9.2.2.13.

372 Ontario *FLA*, s 46(3)(4) and Ontario *CLRA*, s 35(2)(4). See also Ontario *CYFSA*, s 137(1)(1), for similar statutory language in that restraining order provision.

373 In *Marshall v Reid*, 2018 ONSC 648, the court held that judicial discretion inherent in the statutory phrase "[a] ny other provision that the court considers appropriate" does not extend to imposing provisions requiring the bound person to complete counselling and show remorse before seeking to review the order, because (a) those preconditions did not address the issue of whether the protected person had a continued fear of the bound person, (b) the preconditions were not contained in or contemplated by the statute, and (c) the preconditions may have prevented the bound person from ever applying to terminate the restraining order (para 36).

374 Koshan, "Preventive Justice?", p 261 and note 64.

375 United States Department of Justice, National Institute of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey*, (Washington: Office of Justice Programs, 2000), online: <ojp.gov>, p 52. See also DomesticShelters.org, "Law Enforcement, Justice System and Domestic Violence", (7 January 2015), online: <domesticshelters.org>.

376 Breaches of family law restraining orders, for example, are dealt with under s. 127 of the *Criminal Code* in the absence of specific offence provisions in Ontario's *FLA* and *CLRA*. This means people who violate protection orders may be charged with the criminal offence of disobeying a court order.

377 Erika Day, "Reflections on Bill 11: The Domestic Violence and Stalking Amendment Act" (2017) 40:2 Man L J 56, pp 61 and 82, citing CBC News, "'This is tragic' Winnipeg police say of Camille Runke's death", *CBC News*, 3 November 2015, online: <cbc.ca>.

378 Quenneville, "'Breach him forever'".

379 Suleman et al, *Are We Ready to Change?*, pp 30-31.

380 Koshan, "Preventive Justice?", p 287.

381 Rise Women's Legal Centre reported on this problem in British Columbia. See Suleman et al, *Are We Ready to Change?*, pp 30-31.

382 DVDRC, *2021 Annual Report*, pp 13-14, 17, and 26, showing that in 392 cases involving 434 murders, 27% of cases had a "failure to comply with authority", which was defined as breaching a protection order or other court order.

383 See however Ontario *CYFSA*, s 142(1)(f), which creates a provincial offence for breaching a s. 137 *CYFSA* restraining order, with consequences of a fine up to $5,000 or imprisonment of no more than one year, or both.

384 See s. 127(1)(a) and (b) of the *Criminal Code*.

385 Ontario *FLA*, s 24(5) and (6).

386 Professor Jennifer Koshan notes that British Columbia, Saskatchewan, Manitoba, and Nunavut rely on s. 127 for protection order enforcement. See Koshan, "Preventive Justice?", p 258, note 53.

387 Koshan, "Preventive Justice?", p 258 (footnotes omitted).

388 Alberta *PAFVA*, ss 13.1 and 13.2.

389 Koshan, "Preventive Justice?", p 258 and note 56, citing R A Malatest & Associates Ltd, *Evaluation of the Protection Against Family Violence Act (PAFVA): Final Report*, (Northwest Territories, 2011), p 45.

390 Some judges think Ontario's *Provincial Offences Act*, RSO 1990, c P.33, applies to restraining order breaches. See *CT v CS*, 2021 ONSC 7578, para 23; *SB v JIU*, 2021 ONCJ 614, para 70; and *HG v JRN*, 2022 ONSC 3436, para 118. But see also *Marshall v Reid*, 2018 ONSC 648, where the court noted that the restraining order provisions in Ontario's *FLA* and *CLRA* were amended in 2014 to oust the operation of the *Provincial Offences Act*, and concluded that "the legislature has specifically adopted a more significant penalty for breaches of restraining orders than for other breaches of family court orders" (para 13). The court further noted that the remedies in rules 1(8) and 31 of Ontario's *Family Law Rules* are also available to address restraining order breaches (paras 14-15).

391 The LCO's consultations indicate that police in Ontario are not routinely exercising their discretion to make a warrantless arrest for a protection order breach. For more information about this authority, see *Criminal Code*, ss 127 and 495(2), and Toronto Police Service, *Procedure 01-01 Arrest*, (amended 17 September 2024), online: <tps.ca>, pp 1-2.

392 See for example *KK v MM*, 2021 ONSC 3975, Schedule "A", paras 39-42. See also CAS v H, 2016 ONSC 2912, paras 116-117; and *Osmak-Bonk v Bonk*, 2004 ONCJ 167, para 32.

393 See for example Nicholas C Bala and Erika L Ringseis, *Review of Yukon's Family Violence Prevention Act*, (Yukon Territory: Victim Services Office of the Department of Justice, July 2002), online: <web.archive.org>, pp 22-24, 26-27, and 46.

394 See *Criminal Code*, ss 127(1) and 787(1).

395 Alberta *PAFVA*, s 13.1(2).

396 Nova Scotia *DVIA*, s 18, and Prince Edward Island *VFVA*, s 16.

397 New Brunswick *IPVIA*, s 17(a) (designating a protection order breach a "category J" offence), and New Brunswick, *Provincial Offences Procedure Act*, SNB 1987, c P-22.1, ss 56(10) and 57 (increasing the maximum penalty for a category J offence to $500,000 for repeated breaches).

398 Saskatchewan *VIVA*, s 7(1)(j); Yukon *FVPA*, s 7(1)(j); and Alberta *PAFVA*, s 4(2)(j).

399 See New Brunswick *IPVIA*, s 2(2); Nunavut *FAIA*, s 3(4); Prince Edward Island *VFVA*, s 2(3); and Newfoundland and Labrador *FVPA*, s 3(3).

400 Alberta *PAFVA*, s 2(3.1).

401 In the criminal context, Partner Assault Response program staff have told the LCO about men who did not understand the extent of no-contact conditions they were subject to. For example, one man appeared not to know that liking his partner's social media photos was "contact" breaching the protection order.

402 New Brunswick *Regulation*, s 13.

403 British Columbia, "Family orders picklists".

404 Superior Court of Justice & Ontario Court of Justice, *Canadian Police Information Centre (CPIC) Restraining Order Form – Family*, (May 2023), online: <ontariocourtforms.ca>.

405 See also FPT Report, *Making the Links*, pp 69-71, noting that family court restraining orders can be registered on CPIC by the police, but "[t]he police are most concerned with criminal orders and there is an effective process in place for sending criminal orders from the court to the police for entry. There is less emphasis on civil orders and therefore CPIC is sometimes inaccurate in relation to these orders; police agencies may not be informed of changes to civil orders, particularly if they have had no involvement in the case."

406 Ontario, "Getting a restraining order".

407 For more information on this process, see FPT Report, *Making the Links*, pp 71-72.

408 British Columbia, "Protection Order Registry", (updated 17 March 2022), online: <gov.bc.ca>.

409 Leduc, "Electronic bracelets".

410 United Kingdom, "Pioneering approach".

411 Ontario, "Consultation on Restraining Orders". This proposal follows the LCO's recommendation to the Government in August 2024 to provide for the interjurisdictional enforcement of protection orders. See Hansard, *Intimate partner violence*, JP-1030.

412 British Columbia *FLA*, s 191 (extraprovincial orders), and British Columbia, *Enforcement of Canadian Judgments and Decrees Act*, SBC 2003, c 29, s 9.1, together provide for the enforcement in British Columbia of protection orders from other Canadian jurisdictions.

413 FPT Report, *Making the Links*, pp 11 and 85-87.

414 FPT Report, *Making the Links*, p 4.

415 FPT Report, *Making the Links*, p 60 and note 160, citing Peter G Jaffe & Marcus Juodis, "Children as Victims and Witnesses of Domestic Homicide: Lessons Learned from Domestic Violence Death Review Committees" (2006) 57:3 Juv Fam Court J 13.

416 FPT Report, *Making the Links*, p 155.

417 See for example *Osmak-Bonk v Bonk*, 2004 ONCJ 167, paras 23-33, where the family court mistakenly allowed communications between the mother and father for parenting without knowing about a bail release order that prevented the father from contacting the mother. It took the family court almost eight months to change the restraining order to bring it into alignment with the father's bail conditions. This delay could have caused serious safety risks if the mother had reported a breach, because the police had no way to know whether the family or criminal court order took precedence. The process to change the order also required a court appearance and accumulated lawyers' fees. For other examples of cases in which family courts were missing information about criminal court proceedings, see *Lekic v Ismail*, 2023 ONSC 6753, where the court did not know the outcome of the respondent husband's criminal charges for harassing the wife (para 4), and *Simcoe Muskoka Child, Youth and Family Services v JMW*, 2023 ONSC 741, where the court was "in the dark" about the terms of the respondent father's criminal undertaking (which he refused to provide), and the court did not know whether the undertaking "adequately addresses the safety of [the child] and the Respondent Mother" (paras 5, 55, 57-58 and 60).

418 FPT Report, *Making the Links*, pp 85-87.

419 FPT Report, *Making the Links*, pp 104-116.

420 FPT Report, *Making the Links*, p 64.

421 *R v SSM*, 2018 ONSC 4465, para 45.

422 *R v SSM*, 2018 ONSC 4465, paras 44-45.

423 *R v SSM*, 2018 ONSC 4465, paras 46 and 52.

424 *R v SSM*, 2018 ONSC 4465, para 58.

425 *R v SSM*, 2018 ONSC 4465, paras 59-60.

426 *R v SSM*, 2018 ONSC 4465, paras 60-61.

427 Linda C Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection)*, 2nd ed, (Ottawa: Department of Justice Canada, 2013) (modified 28 December 2022), online: <justice.gc.ca> [Neilson, *Enhancing Safety*], p 5.

428 See for example Office of the Privacy Commissioner of Canada, "Responsible information-sharing in situations involving intimate partner violence", (8-10 October, 2024), online: <priv.gc.ca>, note 4.

429 FPT Report, *Making the Links*, p 146, citing British Columbia Critical Components Project Team, *Keeping Women Safe: Eight Critical Components of an Effective Justice Response to Domestic Violence* (Victoria: Government of British Columbia, 2008), p 32.

430 FPT Report, *Making the Links*, p 146 and note 371, citing Department of Justice Canada, *Spousal Abuse Policies and Legislation: Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation*, (Ottawa: Family, Children and Youth Section, 2003), p 83.

431 FPT Report, *Making the Links*, pp 155-156.

432 FPT Report, *Making the Links*, pp 7 and 78-81.

433 FPT Report, *Making the Links*, pp 6 and 68-69.

434 The FPT Report recommends court coordinators conduct the cross-referencing in order to identify families simultaneously navigating the family, child protection and criminal legal systems. See FPT Report, *Making the Links*, pp 7, 77-78, and 81-82.

435 FPT Report, *Making the Links*, pp 8, 81-82, and 100-102. See also Neilson, *Responding to Domestic Violence*, ch 8.5.1.

436 FPT Report, *Making the Links*, p 152.

437 The FPT Report notes that "[t]he different sectors of the justice system operate independently of one another with their own particular experts, assessors and services. In many cases, victims of family violence will be subject to multiple risk assessments by different agencies or shelters intervening on their behalf. A lack of communication between the sectors responding to family violence cases increases the danger that potential risks associated with families in distress may not be consistently identified or fully appreciated." FPT Report, *Making the Links*, p 155.

438 FPT Report, *Making the Links*, pp 121 and 124-125.

439 FPT Report, *Making the Links*, pp 5 and 50-51.

440 FPT Report, *Making the Links*, pp 9 and 111-115.

441 FPT Report, *Making the Links*, pp 8 and 99-100.

442 FPT Report, *Making the Links*, pp 11, 149-150.

443 The FPT Report observed that most high-risk committees do not have a family legal system representative: "Given that there is no state party involved in family law matters, the question of who should participate on such a committee is a difficult one." FPT Report, *Making the Links*, pp 50-51.

444 Toronto Region Intimate Partner Violence High-Risk Committee, "Announcement", (16 August 2024). On file at the LCO.

445 FPT Report, *Making the Links*, pp 6 and 65-66.

446 Professor Linda Neilson advises family lawyers to anticipate the impact of family court orders on subsequent proceedings, and consider including "provisions such as 'subject to the provisions of any subsequent criminal court or civil protection order made in response to facts arising after the date of this order' or 'subject to the provisions of any subsequent criminal order, after taking into account the particulars of this agreement or order', 'subject to arrangements for contact made after the date of this order by child protection authorities[',] or 'subject to contact arrangements in a family court order made after the date of this civil protection order'." Neilson, *Enhancing Safety*, pp 68-69.

447 FPT Report, *Making the Links*, pp 6 and 66-68.

448 See for example New Brunswick *IPVIA*, s 12 and British Columbia *FLA*, s 189(2).

449 See for example New Brunswick *IPVIA*, s 12(1).

450 British Columbia *FLA*, s 189(1).

451 British Columbia *FLA*, s 189(2).

452 FPT Report, *Making the Links*, pp 6 and 69-72.

453 FPT Report, *Making the Links*, pp 7 and 82.

454 FPT Report, *Making the Links*, p 83.

455 FPT Report, *Making the Links*, p 83.

456 FPT Report, *Making the Links*, pp 8 and 95-99.

457 FPT Report, *Making the Links*, p 96.

458 FPT Report, *Making the Links*, p 96.

459 FPT Report, *Making the Links*, pp 8 and 95-99.

460 See for example *PF v SF*, 2011 ONSC 154, para 33, citing *Callon v Callon*, [1999] OJ No 3108 (Div Ct), and holding that "the reason for a restraining order is to provide the litigants with some element of order in the context of difficult and acrimonious litigation", and *Grundy v Dickie*, 2022 ONSC 3629, para 54. Note however that orders regarding conduct in Ontario's *FLA* are designed for this purpose. See Ontario *FLA*, s 47.1.

461 The judge in *Children's Aid Society of Toronto v BB*, 2012 ONCJ 646, determined a child was in need of protection in part because the mother could not obtain a peace bond to protect herself and her child from intimate partner violence perpetrated by the father (paras 130 and 133, holding that "[t]he mother claims to have been violently assaulted (and in her words, terrorized) by the father, yet she continued to see him, had intimate relations with him and went to visits with him. She had the opportunity to protect herself by obtaining a peace bond, but did not follow through with this. This court recognizes that the dynamics of violence are complex. However, the evidence is clear that the mother was unable to protect herself, let alone a vulnerable infant during this time.")

462 See for example *Akyuz v Sahin*, 2023 ONSC 1024, paras 101-105, and *LAB v JAS*, 2020 ONSC 3376, para 46.

463 Koshan, "Preventive Justice?", p 295.

464 United Kingdom Home Office, Policy Paper, "Domestic Violence Disclosure Scheme factsheet", (updated 3 January 2024), online: <www.gov.uk>.

465 However, only Saskatchewan and Alberta's laws have come into force. See University of New Brunswick, Muriel McQueen Fergusson Centre for Family Violence Research, Atlantic Community of Practice for Supporting the Health of Survivors of Family Violence in Family Law, "Legal Bulletin – Issue No. 6", (Alliance of Canadian Research Centres on Gender-Based Violence: March 2023), online: <alliancevaw.ca>.

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473 *PNR v MYR*, 2025 ONSC 1802, para 75, citing Melanie Randall, “Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law” (2013) 36:2 Dal LJ, p 477.

474 *PNR v MYR*, 2025 ONSC 1802, para 73.

475 Honourable Beverley Brown, Wîyasôw Iskweêw, “Restorative Justice Committee Pilot Project”, (Alberta Court of Justice and Court of Queen’s Bench of Alberta, 6 February 2024), online: <rjalbertacourts.ca> [Honourable Beverley Brown, “Restorative Justice”], p 3.

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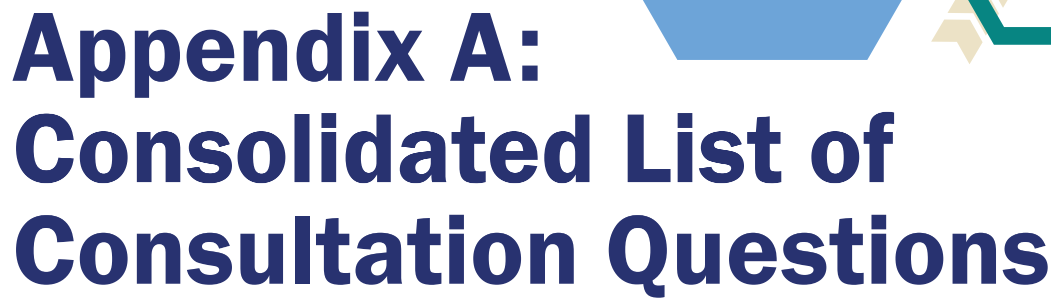
478 United Kingdom, “Pioneering approach”.



# Appendix A: Consolidated List of Consultation Questions

## Consultation Questions about Accessing Protection Orders

1. Should Ontario establish emergency access to protection orders?
   a. Should Ontario require protection order applications to be heard and decided within a specific timeframe?
2. Should the types of intimate and family relationships eligible for protection orders be expanded in the *FLA*, *CLRA*, and/or *CYFSA*?
3. Should Ontario define violence in the *FLA*, *CLRA*, and/or *CYFSA* for restraining order eligibility? If yes, what forms of violence should be included?
4. Who should be able to apply for protection orders on behalf of people in need of protection, with their consent (and/or by leave of the court)?
   a. Should courts be able to consider granting a protection order without an application?
5. Do you support increased funding for legal aid to access protection orders? What additional changes, such as strengthening protection order advocates, would you recommend?

## Consultation Questions about Protection Order Processes

6. What procedural reforms, such as implementing review procedures, would make emergency protection orders effective? How can applicants' need for emergency orders be balanced with respondents' rights?
7. How can Ontario improve urgent and *ex parte* motions in protection order proceedings?
8. How can Ontario protect sensitive information and improve document service in protection order processes?
9. What trauma-informed court procedures could improve protection order proceedings?
10. What interim protective measures might reduce the risk of retaliation and other violence between the date of the protection order application and the court's decision?
11. Are procedural reforms needed to address litigation abuse in protection order proceedings and claims for mutual protection orders?
12. Should courts be responsible for updating protection orders to reflect modifications? What do you recommend about how to maintain up-to-date and accessible copies of protection orders?
13. How can the procedures for changing, extending, or terminating protection orders be easier, safer, and/or faster?

## Consultation Questions about Evidence in Protection Order Proceedings

14. Should the reasonable fear standard for evaluating a restraining order application be replaced by a different standard of proof?
    a. Should the evidentiary standards for emergency and non-emergency protection orders be different?
    b. Is it a problem that the two different types of restraining orders in the *CYFSA* rely on different evidentiary standards (best interests vs. reasonable fear)?
15. Do courts have enough information about applicants' safety needs, the history of violence, the risk to children, etc., when evaluating the need for a protection order?
    a. If not, what might safe, appropriate, and effective pathways to collect and communicate this information look like, and who should be responsible?
16. Should Ontario legislatively prohibit a list of myths and stereotypes that courts must not rely on?
17. How can children's experiences, wishes and safety needs be better ascertained, integrated into the evidentiary record, and weighed by the court in protection order proceedings?
18. Who should conduct risk assessments, how often, and using what tool(s)? How should risk assessments be introduced as evidence and relied on by courts?
19. Should Ontario legislate a list of risk factors to consider when evaluating a protection order application?
20. Should the use of expert evidence in protection order cases be expanded? If so, how?
21. How should courts address the issue of cross-examination by unrepresented parties?
22. Should courts weigh the impact of granting a protection order on respondents? If so, to what extent?
23. How should evidence and/or orders from related court proceedings be communicated and integrated into the family court record (and vice versa), if at all?
24. How should Ontario ensure related proceedings are not a bar to protection?

## Consultation Questions about Protection Order Conditions

25. Should Ontario legislate a statutory list of conditions for protection order decision-makers to consider? What should be on the list?
    a. In what areas are conditions missing, being overlooked, or falling short of what is needed to provide protection?
    b. How can we encourage courts to identify and draft conditions that are responsive to applicants' unique safety needs?
26. What do you recommend about how to improve conditions relating to children, weapons, property and finances, tech-facilitated violence, and animals?
    a. Should courts be authorized to mandate counselling and electronic monitoring in protection order conditions?
27. Some conditions may be impossible to comply with or perpetuate violence (such as those that remove the respondent from the family home and render them unhoused). How can courts evaluate potential conditions more effectively? What supports and services should be activated when protection order conditions are imposed, and by whom?

## Consultation Questions about Protection Order Duration

28. Should Ontario legislate minimum and/or maximum durations of protection orders?
    a. What factors should guide judicial discretion to determine the appropriate duration of emergency and non-emergency protection orders?

29. Should courts consider making the duration of protection orders conditional on voluntary completion of counselling or an intervention program, followed by a positive risk assessment?

## Consultation Questions about Enforcing Protection Orders

30. How can we improve police enforcement of protection orders?

31. If Ontario creates standalone civil protection order legislation, should breaches of emergency protection orders be prosecuted through provincial arrest and offence provisions or via s. 127 of the *Criminal Code*? What about non-emergency orders?
    a. Should restraining orders in ss. 102(3) and 137 of Ontario's *CYFSA* have the same enforcement mechanism and consequences for breaches?

32. Are the consequences of breaching a protection order an appropriate and effective deterrent? If not, what other responses should be considered?
    a. What do you recommend about how to address a respondent's indirect non-compliance with a protection order?

33. Who should inform protected persons and respondents about the content of a protection order, the consequences of breaching the order, and how to report a breach?

34. Should Ontario create a protection order database? If so, how can we improve record-keeping to ensure a protection order database is accurate and up to date? Who should have access to the database?

35. Should protection order compliance be monitored on an ongoing basis? If yes, how?

36. Should Ontario provide for the recognition, registration, and interjurisdictional enforcement of protection orders from other jurisdictions?

## Consultation Question about Improving Coordination

37. How can we improve legal system and cross-sector coordination for protection orders, including on the topics of identifying and linking proceedings; sharing information, evidence, and orders; avoiding conflicting court orders and expectations; using technological solutions; and through specialized courts?
    a. Should Ontario legislate a hierarchy of court orders to determine precedence in the event of a conflict?
    b. Is expanding the Integrated Domestic Violence Court (IDVC) a viable strategy for better protection order coordination? If so, how should cases that do not meet the IDVC's criteria be addressed?

## Consultation Question about Civil Protection Order Legislation

38. Should Ontario reform protection orders through new standalone civil protection order legislation, amendments to the *FLA*, *CLRA*, and *CYFSA*, or some combination?

## Consultation Questions about Supplementary Strategies

39. Should Ontario:

    a. Strengthen education, training, and data collection relating to protection orders?

    b. Enact a version of Clare's Law?

    c. Create a Civil Resolution Tribunal to hear some types of protection order applications?

    d. Introduce restorative and transformative justice options for people in need of protection?

    e. Invest in ongoing and follow-up care for families affected by violence?

40. What other strategies should Ontario adopt to improve the accessibility and effectiveness of protection orders?

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