



## Improving Protection Orders

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**Submitted by:** Ontario Bar Association

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## **Ontario Bar Association**

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA's Family Law, Child & Youth Law, Criminal Law, and Women Lawyers Forum sections. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario. These members have extensive experience dealing protection orders involving intimate partner violence and family violence, in both the civil and criminal contexts.

## **Comments & Recommendations**

### **Accessing Protection Orders**

Most protection orders in Ontario are not available on an emergency basis, and the wait time for urgent orders is inconsistent and can be months or years. For emergency protection orders, time is of the essence. We support a process similar to Nova Scotia where emergency protection order applications can be made 24/7 over the phone with a limited evidentiary record. This is necessary for the urgent protection that is often needed in this context. This would help fill the gap that currently exists between the time an application is made and when a judge decides on the matter. We think in these cases, there should not be any



inference made at the fulsome hearing that follows based on the granting or denial of an emergency protection order. This process would make it easier to obtain an order quickly to ensure protection of the vulnerable individual and reduce the potential consequences until the matter is heard in full, which we think would make judges less reluctant to grant this as a temporary stopgap. Justices of the Peace can hear these emergency protection order applications in Nova Scotia and other provinces, and we are uncertain if they would have that jurisdiction in Ontario, particularly with the inconsistent patchwork of Unified Family Courts throughout the province. Attention should be given to ensuring that the intended change is workable in the current regime, while continuing the push for completing the full Unified Family Court rollout.

In terms of who can apply for a protection order, the *Family Law Act* (“**FLA**”) currently limits this to spouses, former spouses, or people who have cohabitated with each other. *Children’s Law Reform Act* (“**CLRA**”) orders are broader, being available “against any person” to protect the applicant or their child, though it is noted that this may not extend to all types of relationships, like child-free couples. We support broadening the availability of protection orders similar to Alberta and British Columbia, which relate to familial relationships. B.C. orders are available to “at-risk” family members, and Alberta orders are available to individuals who have been the subject of family violence by a “family member”. This would help cover scenarios in extended family relationships regardless of whether they have lived together.

The *FLA*, the *CLRA*, and the Child, Youth and Family Services Act (“**CYFSA**”), do not specify the forms of violence that would provide recourse for a protection order. Other provinces are more explicit, defining violence broadly to capture the wide range of harms including physical, sexual, psychological, and emotional abuse. We support enumerating some of the types of violence that could support obtaining a protection order, but it must be explicit that the list is non-exhaustive. Some of the potential examples of violence are more straightforward and understood, like stalking, sexual exploitation, financial abuse, harm to



children, forcible confinement, and threats about pets. Others, like coercive control and vicarious responsibility for indirect abuse, are not as intuitive or obvious, and could be particularly confusing for self-represented litigants. While we understand and support the intention of those examples, we think additional thought or descriptions are necessary. We also support the explicit exclusion of self-defence or the “use of reasonable force to protect oneself or others from harm”. This is necessary to avoid unintended consequences which could permit an offending party to claim violence or seek a mutual protection order on that basis. It must be a judicial determination to avoid unintentionally barring legitimate claims of violence as self-defence.

On the topic of expanding who can apply for protection orders, the OBA provided comments to the Ministry of the Attorney General in November, 2025<sup>1</sup> on this issue. We support allowing any person to apply on behalf of an at-risk individual with their informed consent.

Lastly, on legal aid and public legal information, we agree that the current legal aid regime is insufficient. Survivors of intimate partner violence are eligible for a referral guaranteeing two hours of free legal advice, and if they meet the legal and financial eligibility thresholds, can obtain legal aid certificates for representation. The financial eligibility criteria are extremely low (less than minimum wage), even with slightly higher eligibility in cases involving domestic abuse. The coverage for low-income protection order applicants was noted to be six hours of representation (where B.C. lawyers estimated spending approximately 20 billable hours to initiate an *ex parte* protection order application). We strongly support increasing the coverage for survivors of intimate partner violence, including a significant increase in the financial eligibility thresholds specific to cases involving domestic abuse. Family Law Information Centres (“*FLICs*”) should include staff trained on intimate partner violence issues to further assist the public. We believe it is necessary to shift to having a trauma informed legal system with respect to family violence

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<sup>1</sup> <https://oba.org/Our-Impact/Submissions/Proposals-to-Make-Restraining-Orders-More-Accessible-and-to-Streamline-Enforcement-of-Restraining-Or>



and intimate partner violence. Justice Akbarali recommended the creation of Trauma-Informed trial guidelines<sup>2</sup> and that should be a priority for counsel, court staff, and claimants.

### **Protection Order Processes**

We reiterate our previous comment supporting the ability to obtain emergency protection orders 24/7 over the phone, on an *ex parte* basis and with a limited evidentiary record. We also support mandating timelines for emergency protection order hearings. For example, in Nova Scotia, emergency protection order hearings must be concluded within 24 hours of an application. Both options are meant to provide immediate, interim protection for a limited duration, pending a fulsome hearing. The hearing or review should be automatic, subject to the respondent deciding to not contest it. We do not support the reverse onus that is in place in Manitoba, Nunavut, and New Brunswick; the onus should remain with the applicant to satisfy the court as to the necessity of the order and its duration. The most important consideration in our view is expediency and the ability to get immediate interim protection, followed by a hearing to confirm or vary the order as appropriate. It is also essential to resolve the issue of inconsistent application of the tests for *ex parte* and urgent motions, to provide predictability for parties and judges alike.

As noted in the consultation paper, protection order court forms may require applicants to disclose their address and other sensitive personal information that could endanger them when provided to the person causing harm. The Ontario government advises that applicants can use a different address where they can receive mail. The problem is that many people are unaware of this option, and others do not have an alternative address to use. Additionally, people living in shelters are typically unable to use that address, as many shelters prohibit it for safety reasons. This leaves vulnerable individuals in a bind. Courts should have discretion to keep sensitive personal information confidential. We foresee this being difficult to address practically – particularly if part of a protection order is prohibiting

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<sup>2</sup> *S. v. Ukraine International Airlines JSC*, [2024 ONSC 3303](#).



an individual from proximity to the applicant's residence. Additional options should be explored, like PO boxes, police precincts, or the courthouse, and judges should be explicitly authorized to prohibit the publication of information that could affect safety.

Document service is another complicated consideration in cases of intimate partner violence. In most cases, people applying for protection orders are required to deliver notice, materials, and orders to the respondent. If an individual cannot afford a professional process server, they are left to ask friends or family to effect service, or they must do that themselves, which is extremely risky. The person serving documents must also be at least 18 years old, which poses problems for younger people applying for protection orders if they do not have friends or family to assist (or willing to assist). The Ontario Government website indicates that, in cases where it is not safe for the individual, their friends or family to serve the documents, and they are unable to afford a process server, court staff can be asked to arrange service. Many survivors are unaware of this option, and we are unsure about the restrictions, limitations and reliability of that option. There are a few options that should be considered to improve the status quo. Firstly, the necessity of personal service should be evaluated. Secondly, the option to request that court staff arrange service should be made prominent and reliable. Lastly, the B.C. option should be explored (in 2016, the B.C. government contracted professional process servers to deliver protection orders at no cost to the people in need of protection). It should never be left to the applicant, or even their friends and family, to effect service in cases where violence is present and possible.

It was noted that mutual protection orders are on the rise and that there are concerns in some cases with courts granting mutual orders in the face of little or no evidence of violence. B.C. legislation specifically requires courts, in the context of applications for mutual protection orders, to consider whether the order should be made against one person only. We do not think that is necessary. Courts are already empowered to do so, and the onus is on the party (or parties) to satisfy the Court of the necessity of a protection order.



On the issue of maintaining authoritative up-to-date copies of orders, courts should have their own database that can be relied on, utilizing advancements in technology. It should be sent to police automatically, and coming from the court directly will provide the necessary assurance that an order is authoritative and can be enforced. Currently, Ontario judges have indicated that counsel are responsible for deciphering orders and creating updated copies. This is problematic for self-represented litigants, particularly when an order is repeatedly modified, and it has been noted that police have refused to enforce orders because they could not determine the most recent version. Having the courts maintain a database will resolve these issues.

We support the proposal to clearly delineate the procedures for changing, extending or terminating protection orders. The process is unclear and confusing, varies depending on the type of order, and requires filling out multiple forms. The process should be clearly delineated, ideally in language that a self-represented litigant would be able to understand.

### **Evidence in Protection Order Proceedings**

The consultation paper notes the confusion among parties and judges regarding the different legislation and the associated tests for each. Even within legislation like the *CYFSA*, there are different tests for a section 102(3) order (reasonable fear standard) compared to a section 137 order (best interests of the child). There are also inconsistent decisions on how reasonable fear should be determined, whether it is a subjective assessment or based on an objective reasonable person standard. To resolve these issues, we support aligning with the provinces that utilize a two-part test: (a) the applicant must show that violence has occurred (or is likely to occur), and (b) the order should be made to ensure their immediate protection because the situation is serious or urgent. This creates consistency and resolves the issue surrounding subjective or objective assessments with the current reasonable fear standard.

We support legislatively prohibiting a list of myths and stereotypes that courts must not rely on. The *Criminal Code* has similar prohibited myths for sexual assault. There should not be stigma or inferences made due to delays in leaving the home or delays in seeking a protection



order. Inverse myths should similarly be avoided – for example, if somebody seeks a protection order immediately. These myths should be dispelled for applicants regardless of their sex or gender.

We do not support legislating a list of respondent risk factors, particularly because they strike at factors that could be discriminatory (e.g., addiction, mental health, employment issues, etc.). We feel less strongly about explicitly legislating applicant factors like pregnancy, age, disability, economic dependence, etc., but think this is unnecessary and that these factors are already being considered in the context of protection orders. We prefer to leave that open for judges to consider as appropriate.

Regarding expert evidence, we understand that retaining experts is cost prohibitive for many parties. The proposals to have either a standing panel of experts or a library of expert evidence, while well-intentioned, are unlikely to work in practice. What happens when the expert evidence library is outdated? Would this process meet the test for expert evidence from the Supreme Court of Canada? Who ensures it is relevant to the issues and what is the assessment of admissibility? There are also concerns about automatically accepting evidence and not being subject to cross-examination.

To address the issue of cross-examination by unrepresented parties, we support the proposal to rely on an *amicus*. This works in the criminal context and avoids potentially re-traumatizing the victim by forcing them to cross-examine their abuser.

For communicating and integrating evidence and orders from related court proceedings (family and criminal courts), this should be communicated directly by the courts to ensure judges are fully aware of all relevant information. On the concern about varying weight family law judges place on criminal court orders, we support explicitly stating (what should already be the case) that judges must accept criminal convictions as proof of the conduct underlying the conviction. Criminal convictions are based on the highest standard of proof possible – beyond a reasonable doubt. Peace bonds are more complicated. Accused persons



engaged in both family and criminal proceedings often seek advice when entering peace bonds regarding the impact it will have on their family law case. If peace bonds have a more significant impact, it will likely result in less people entering into them, resulting in more trials and potential acquittals due to the high criminal standard of proof. The fact that a peace bond has been ordered should be known to the family law judge for context and to avoid conflicting orders, but we do not think it should lead to any inferences.

The final question of this section asks how Ontario should ensure related proceedings are not a bar to protection. The consultation paper noted that judges sometimes refuse protection orders because a criminal order was already in place, and that bail conditions are sometimes amended without notice to the protected person. We would note that, while bail conditions can change, no contact/no attendance terms generally do not get revoked without the informed consent of the other party. Regardless, we support the proposal to explicitly legislate that criminal protection orders are not a bar to obtaining a civil protection order to resolve any ambiguity. More importantly, and related to our other comments throughout this submission is the need to avoid inconsistent or conflicting orders. We do not think there should be any statutory bar to obtaining a protection order when a criminal order exists, but those orders must provide consistent conditions.

### **Protection Order Conditions**

We support legislating a list of conditions or a ‘pick-list’ for protection order decision-makers to consider. It should be explicit that the list is non-exhaustive, and that conditions can be modified by judges as they deem fit. This could include conditions relating to children, weapons conditions, property and financial conditions, conditions to protect animals, and more. We understand that judges already utilize these types of lists internally – and it would be wise to consult with them on best practices. We have additional comments on a few specific conditions in the paper. Conditions to prevent tech-facilitated violence may give the wrong indication that without that condition, certain actions would be permitted. If there is a no contact condition, it does not matter if the person attempts contact in-person or by



social media or otherwise. If any changes were made in that regard, it should be to make more explicit that no-contact conditions apply directly and indirectly, regardless of the medium. For counselling conditions, we do not think mandatory counselling is advisable. The current practice of making increased parenting time contingent on completing counselling strikes a better balance and requires some level of buy-in by the individual.

For conditions that may be impossible to comply with or perpetuate violence, we support the proposal to increase support options and services. A condition prohibiting drinking in the case of addiction, or removing someone from the family home without housing options can worsen the situation. Support options should be made more prominent and accessible, and ideally, stronger social infrastructure and wraparound services are needed. Justice Centres are a good example of this and should be expanded throughout the province.

### **Protection Order Duration**

We do not think there should be statutory limits on the duration of protection orders. Judges should have the flexibility to order what is appropriate in a given case. We support quicker and more flexible ways of obtaining an emergency order with a return date, and with the ability of the parties to apply to vary the order.

Regarding the proposal to base the duration of protection orders conditional on voluntary completion of counselling or an intervention program, followed by a positive risk assessment, we would similarly support maintaining flexibility for judges to decide what is most appropriate in the circumstances. Caution should be exercised in making orders automatically terminate upon completion and a positive risk assessment without returning to the court.

### **Enforcing Protection Orders**

We reiterate our earlier comments supporting courts maintaining a database of up-to-date and accurate protection orders which would be automatically sent to police to improve



enforcement. It was noted that police sometimes cannot find the order in their database, or that they cannot make sense of multiple or conflicting orders.

It was also noted that police sometimes refuse to enforce orders if they perceive a breach to be minor or non-threatening. This is primarily because of the limited options available for enforcing breaches and the seriousness of the main enforcement route under section 127 of the *Criminal Code* (Disobeying a Court Order). Police may not think certain breaches warrant *Criminal Code* enforcement. They may also not anticipate the Crown pursuing it, focusing on more serious issues due to backlog issues and *Jordan* timelines. We support the proposal to add provincial arrest and offence provisions to fill the space between taking no action and laying criminal charges.

On the topic of indirect non-compliance, the paper noted scenarios like the respondent enlisting family or friends to stalk, harass, or intimidate survivors, and using “burner accounts” on social media in violation of the protection order. Rather than complicating matters with vicarious responsibility, we think a simpler way is to mirror no contact criminal orders by explicitly prohibiting indirect communications. This should be the legislated default and not something that would need to be included in every order. It should explicitly exclude lawyers communicating about litigation to avoid disputes.

Regarding whom should be responsible for informing protected persons and respondents about the content of an order, the consequences of breaching it, and how to report a breach, it was noted that courts rarely explain this in detail. This has resulted in unintentional breaches, not due to malice, but because of real confusion or misunderstanding the terms and extent of conditions. We support the New Brunswick approach which requires drafting protection orders in plain-language that all parties can understand. We further support a standardized information/guidance sheet that could be distributed to parties to help them better understand the process and their options.



On the question about Ontario creating a protection order database, we reiterate our strong support for doing so. This would assist self-represented parties, reduce the frequency of conflicting orders, and provide police with authoritative and up-to-date copies that give them the assurance they need to focus on necessary enforcement. B.C. has a confidential database of civil and criminal protection orders that are entered into a registry by courts or police at the time they are issued, varied, or terminated. Police have 24/7 access and can easily obtain the most recent order. Ontario should do the same, and it should similarly be an internal confidential database accessible by courts and police.

For monitoring compliance of protection orders, the *status quo* is a complaints-based process, relying on survivors to report breaches. There is currently no standardized monitoring of compliance. Two interesting examples were provided in the paper from other jurisdictions. One was a UK pilot project where some family courts invite courts and agencies to review orders between three months to one year after they were made. While we think this is a good idea, current resourcing constraints would likely make it unworkable, subject to an infusion of judicial resources. The second was electronic monitoring bracelets that courts in France can recommend to alert survivors and police to non-compliance. We think this should be explored as an option for exceptional cases, but it raises a number of questions and potential issues that must be addressed. Some of those questions and concerns are:

- What is the cost and who pays?
- Who monitors compliance?
- What privacy protections are in place?
- Does it stigmatize the individual wearing it, particularly the victim?
- How have public safety concerns been addressed (e.g., a loud alarm going off in a public place)?
- Has it led to police showing up with wrong intentions (e.g. if parties have reconciled without informing courts, lawyers, or police)?

Clarity is needed on these points to ensure it works as intended, and we think it should be limited to exceptional cases that require it.



On the issue of providing recognition, registration, and interjurisdictional enforcement of protection orders from other jurisdictions, we provided a submission on this issue. We support streamlining the registration and enforcement of protection orders from other provinces and territories through a simple administrative process. This is preferable to deeming orders to be enforceable, which would still require steps to make law enforcement aware of the orders for enforcement. By registering the order with the court, the registered orders would automatically be sent to law enforcement and entered into the Canadian Police Information Centre. This should be approached in conjunction with the adoption of a confidential Court database of protection orders.

The confidential Court database of protection orders would also assist with the issue of improving legal system and cross-sector coordination of protection orders. This could be developed to ensure that courts are aware of related proceedings (e.g. family, child protection, criminal, immigration, etc.) to avoid inconsistent or contradictory orders for the same family or individuals.

### **Civil Protection Order Legislation**

We support the proposal to create new standalone civil protection order legislation. As was noted throughout the paper, there is a complicated mix of statutes and tests for obtaining protection orders in Ontario. This has caused confusion for the parties involved and the courts themselves. It would be beneficial to consolidate the existing civil protection order regimes (and the enhancements) into one statute. The existing provisions in the *FLA*, *CLRA*, and *CYFSA* regarding protection orders could be deleted entirely, or replaced with a reference to the new legislation to assist self-represented litigants attempting to navigate the process.

### **Conclusion**

We appreciate the opportunity to provide comments and recommendations to the LCO on ways to improve protection orders in Ontario. We commend the LCO for undertaking this critical work, culminating in a detailed consultation paper with hundreds of footnotes and



references. The epidemic of intimate partner violence and family violence must be a top priority. We would be happy to discuss this further, answer any questions you may have, and work with the LCO and other stakeholders toward the shared goal of eliminating intimate partner violence and family violence in all its forms.