



# **Proposals to Make Restraining Orders More Accessible and to Streamline Enforcement of Restraining Orders Made Outside Ontario**

**Submitted to:** Ministry of the Attorney General

**Submitted by:** Ontario Bar Association

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## Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to comment on proposals to make restraining orders more accessible by allowing individuals to apply for a restraining order on behalf of an at-risk person, and for potential new legislation to streamline the enforcement of restraining orders made in other provinces and territories in Ontario.

## 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 and Child & Youth Law 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 with all aspects of family law proceedings, restraining orders and extra-provincial orders, and intimate partner violence contexts.



## Comments & Recommendations

### Background

Currently, when a person fears for their safety or the safety of their child, they can apply for a criminal protection order or a civil restraining order. In Ontario, civil restraining orders include family law, child protection and human trafficking restraining orders. An individual can obtain a family law restraining order under the *Family Law Act* (“**FLA**”) against a spouse, a former spouse or a person with whom they cohabited. A *Children’s Law Reform Act* (“**CLRA**”) restraining order can be obtained against any person where there is an application in court related to a child.

The Ministry of the Attorney General is consulting about potential new regulations under the *FLA* and *CLRA* to determine who could assist at-risk individuals by bringing applications for restraining orders on their behalf. The Acts have already been amended to provide for this ability – but the specifics on who could apply and how were left to the regulations currently under consultation.

The second aspect of the consultation is regarding potential new legislation to streamline the enforcement of restraining orders made in other provinces and territories.

### Bringing Restraining Orders on Behalf of an At-Risk Individual

The consultation asks about listing “designated representatives” who would be permitted to bring applications for restraining orders on behalf of at-risk individuals with their consent. It also asks what conditions should be prescribed for courts to grant leave to other persons to bring applications on behalf of at-risk individuals.

In our view, the process for bringing restraining orders on behalf of an at-risk individual should be standardized without the need to specify “designated representatives”. Any



individual should be permitted to do so with the consent of the individual. A standardized form should be created for this purpose which includes the criteria for valid consent, mirroring section 21 of the *Child, Youth, and Family Services Act* (“*CYFSA*”). The criteria includes having the necessary capacity, being reasonably informed as to the nature and consequences of the consent, that the consent is without coercion or undue influence, and with a reasonable opportunity (and recommendation) to obtain independent advice. In a family law context where relationships are complex and often involve children, the potential consequences of granting a restraining order should be outlined (i.e., the at-risk individual may be prohibited from contacting the person entirely regardless of changing circumstances).

It is not clear from the consultation who would provide evidence and how it would be provided. Where possible, the at-risk individual should provide the facts and evidence to support the necessity of a restraining order through an affidavit for the representative to utilize. When there is no consent and leave is sought, the method for providing evidence needs to be outlined. Additionally, consideration should be given to protecting against forced consent and specifying how an at-risk individual would revoke consent.

### **Potential New Legislation to Streamline Enforcement of Restraining Orders Made in Other Provinces and Territories**

Currently, if an at-risk individual has a restraining order from another province or territory and they want to be protected in Ontario, they must apply to the court for a declaration that allows the order to be enforced, or for a new restraining order under Ontario legislation. We agree that this process should be streamlined – similar to how the *CYFSA* was amended to recognize extra-provincial child protection orders.

We support the proposed broad definition of a “restraining order” to effectively include all civil restraining orders made in other provinces. This would define a “restraining order” as an order that prohibits a person from being in physical proximity to, contacting or



communicating with or engaging in harassing or threatening behavior towards another person or going to or being within a certain distance from a particular place. This definition would cover all family law related restraining orders in addition to restraining orders made in the human trafficking context, which we do not see a principled reason to exclude.

We support the proposal to enforce these extra-provincial orders by registration with the courts through an administrative process. This is preferable to deeming orders to be enforceable, which would still require additional steps to make law enforcement aware of the orders so they can be enforced. It is also preferable to requiring a separate court application, which would be time-consuming and costly. By registering the order with the court through an administrative process, the registered orders would automatically be sent to law enforcement and entered into the Canadian Police Information Centre – avoiding the necessity of this additional step if orders were deemed to be enforceable.

In terms of challenging an extra-provincial order recognized for enforcement purposes in Ontario, its enforcement may be challenged by the person against whom the order is made on various grounds. In other Canadian jurisdictions that streamline the enforcement of restraining orders made in other provinces and territories, a restraining order usually cannot be challenged except in the province or territory that made the order. If, however, the restraining order is registered with the court for enforcement purposes, it may be challenged on limited procedural grounds or on the ground that the order is contrary to public policy.

In our view, the right balance is only allowing challenges on limited grounds. If a restraining order was already considered and granted by a court in a different province, the enforcement process should not be a fresh opportunity to relitigate the order. The limited grounds could include where the at-risk individual consents to the challenge being heard before an Ontario court; where there are serious fairness concerns; where the order was overturned by the court that made it or is no longer valid; or where there is a material change in circumstances that is likely to affect the best interests of the child. The last proposed limited ground, being



where a restraining order conflicts with a parenting order and the best interests of the child warrant varying or setting aside the order, is critical. If a parenting order conflicts with a restraining order, the court should be permitted to amend the restraining order to align with the parenting order *where appropriate*.

The limited grounds above strike the right balance of certainty and fairness. It avoids making the enforcement process another opportunity to challenge the order generally, while still providing the individual subject to the order with legitimate and specific grounds when challenges can be advanced.

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*The OBA would be pleased to discuss this further and answer any questions that you may have.*