

FAMILY VIOLENCE PROTECTION ACT

*New options for victims of family violence
in emergency situations in Newfoundland
and Labrador*



Department of Justice
Government of Newfoundland
and Labrador
www.gov.nl.ca/just

Overview

As of July 1, 2006 the *Family Violence Protection Act* is law in Newfoundland and Labrador. This law provides for new justice system responses in the form of Emergency Protection Orders (EPOs) to help adult victims of family violence and their children in emergency situations.

This legislation fills a gap in the justice process for victims by providing for a broader range of more immediate responses than those available through the *Criminal Code*. All criminal justice responses to family violence will remain in place. The *Family Violence Protection Act* will provide additional responses.

What is an Emergency Protection Order (EPO)?

This is a Court Order that the Provincial Court can grant in urgent situations to provide immediate protection when family violence has occurred. In this EPO, the Judge may place various restrictions on the respondent. The EPO is temporary with a maximum duration of 90 days. Judges will consider each application individually, so the actual duration of the EPO will vary from case to case (within this 90 day maximum limit). The EPO is meant to offer an immediate response and to provide time to put longer term plans in place. Because it is a short-term emergency response, an Emergency Protection Order cannot be extended or renewed.

Does an EPO Replace a Criminal Charge?

No. If the police have evidence that a criminal offence has taken place, they will still lay criminal charges under the *Criminal Code of Canada*. Therefore, a criminal investigation, criminal charges and an application for an EPO may occur at the same time.

The *Family Violence Protection Act* is not intended to decriminalize family violence.

How is an EPO Application Made?

Because of its emergency nature, the EPO application is normally made by the police. This can happen on a 24-hour basis. Applications must be accompanied by sworn/affirmed documents and can only be made with the victim's consent. To be eligible to apply:

- a person must live or have lived with the respondent in a conjugal relationship (regardless of marital status and including same-sex couples)
- or a person must have one or more children with the respondent regardless of whether they have lived together

The legislation designates the following groups or individuals as being able to make applications:

Police may apply at a Provincial Court by fax any time or by fax or in person during regular Court hours.

Lawyers may apply at a Provincial Court by fax or in person during regular Court hours.

Direct Applicants/Victims must apply in person at Provincial Court during regular Court hours.

How Long Will the Application Process Take?

Normally, the judge will decide if an EPO will be granted within 24 hours of receiving the application.

Conditions That May Be Included in an EPO:

- Exclusive temporary occupancy of the home for applicant
- Police removal of respondent
- Police accompaniment to remove personal belongings
- Temporary possession or control of personal property for applicant (i.e., vehicle, medical cards, I.D. documents)
- Police seizure of firearms/weapons from respondent
- Temporary care and custody of child
- Restrain respondent from further acts of family violence
- Payment of rent or mortgage by respondent
- Restrain respondent from terminating utilities
- Any other condition the Court considers necessary to protect the applicant or property

What Happens if an EPO is Violated?

Violation of an EPO is an offence and a first offence may result in a fine up to \$2000, a jail term of up to 6 months or both. A second or additional offence may mean a fine up to \$5000, a jail term up to 12 months or both.

Is an EPO Subject to Review?

Respondents may apply to Provincial Court within 10 days of receiving notice of the EPO if they wish to have the Judge review it. Respondents may also apply to have the EPO set aside. Applicants or respondents wishing to apply to vary or terminate the EPO may make application to Provincial Court. Forms for these applications are available at Provincial Court.

Will an EPO Result in a Criminal Record?

No. An EPO is granted under provincial legislation. Since the EPO is not a criminal conviction, it will not result in a criminal record.

How do I Find Out More?

Additional information is available on the Department of Justice website www.gov.nl.ca/just

Application forms are available at the Provincial Court and its website www.provincial.court.nl.ca

A Sincere Word of Thanks

The *Family Violence Protection Act* results from a true partnership with the community through the Justice Minister's Committee on Violence Against Women. Representatives on the Committee include:

Provincial Advisory Council on the Status of Women; Provincial Transition House Association; Regional Coalition Against Violence; NL Sexual Assault Centre; John Howard Society; Aboriginal Women's representative, Women's Policy Office; senior officials of the RNC; RCMP; Provincial Court; Public Prosecutions; Victim Services; Probation; Secure Custody; Policy and Strategic Planning; Legal Aid; and Civil Law Division

The willingness of members to work together and to place priority on the development and implementation of this law has been an exciting process. It clearly shows the value of working together on important public protection issues such as family violence.

The Department of Justice appreciates the efforts of everyone who has worked hard to contribute to this legislation in order to make concrete improvements in the justice system's response to family violence.