REVIEW OF YUKON'S
FAMILY VIOLENCE PREVENTION ACT

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EXECUTIVE SUMMARY

The Yukon was one of the first jurisdictions in Canada to enact civil legislation to deal with family violence. It was appropriate and timely to undertake this review of the effectiveness of the *Family Violence Prevention Act (FVPA)* and problems with its implementation. This review has allowed recommendations to be made to improve the effectiveness of the Act in responding to and preventing family violence, and to ensure its fairness to those alleged to have committed acts of family violence.

The Department of Justice of the Yukon contracted with the Canadian Research Institute for Law and the Family (CRILF) to conduct a multi-component assessment of the *FVPA*, which was carried out by the authors. The review consisted of:

- an analysis of the *FVPA*;
- a review and analysis of orders issued under the Act;
- conducting focus group and key informant interviews with relevant professionals in the Yukon in the period February to May 2002;
- a survey of reported judicial decisions interpreting the *FVPA;*
- a survey of similar legislation in other jurisdictions, including other jurisdictions within Canada, as well as the United Kingdom, Australia, New Zealand, and the United States; and
- consultation sessions with representatives of government agencies and non-government organizations about a draft of this report in June 2002.

The report concludes with recommendations for legislative and policy reform necessary to improve the effectiveness and fairness of the Act, and suggestions for further research needed in this area.

There were limitations of time and budget in preparing this report. In particular, there were no interviews with victims of domestic violence or respondents to *FVPA* applications. Therefore there are no data on the ultimate effectiveness of orders under the Act in protecting victims of family violence or preventing further violence. The authors did not review criminal case records to determine whether there were concurrent or subsequent criminal charges. The focus group sessions and key informant interviews did, however, provide some impressionistic information on these questions.

Since the *FVPA* came into effect in 1999, it has contributed to an improvement in the protections available to victims of domestic violence in the Yukon. By offering victims who are unwilling or unable to invoke the criminal justice system an expeditious means

of access to the justice system, the *FVPA* has increased the number of victims who have been protected. Allowing for applications to be obtained at a distance through use of telephone and fax is necessary in the Yukon. Allowing for applications to be made with the assistance of Victim Services workers and police officers has been very important for the effective implementation of the Act.

There were 52 applications for an Emergency Intervention Order (EIO) in the first two years that the *FVPA* was in force, of which 51 were granted by the Justice of the Peace.

Of the 51 EIOs granted by a Justice of the Peace:

- 37 were made with the assistance of a Victim Services worker and 12 with the assistance of a RCMP officer;
- 32 identified a First Nations or aboriginal person as applicant, respondent or both;
- 48 of the 51 EIOs were obtained by women against their male partners; one male applicant obtained EIOs at two different times against his adult son, and one female applicant obtained an EIO against her adult son;
- 37 were made in Whitehorse;
- the duration of the EIOs ranged from 7 days to 120 days, with an average of 46 days;
- 47 included a term for no contact, 38 gave exclusive possession of the family home, and 29 restricted the respondent from coming a specified distance from the applicant;
- 47 of the orders were confirmed by a Judge of the Territorial Court; in none of the cases in which the judge failed to confirm the order was it clear that the initial order was made without appropriate legal foundation;
- 2 cases resulted in a charge being laid for breach of the EIO; and
- a review of the EIO in the Yukon Supreme Court was sought by the respondent in 8 cases, with 3 orders being confirmed and 5 being varied or terminated. In most cases in which variation was granted, it was due to a change in circumstances, and it was with the consent of the original applicant.

There was one Victim's Assistance Order and one Warrant of Entry issued under the Act in the first two years that it was in force.

The Act has provided a greater range of options for victims and increased the protections available to them. In particular, some victims of family violence are very reluctant to invoke a criminal justice response, and the Emergency Intervention Order offers these victims of family violence an expeditious alternative to the criminal justice system. The rate of use of emergency orders (taking account of relative population

size) in the Yukon is among the highest in Canadian jurisdictions with similar legislation, which is consistent with Statistics Canada data indicating that the Yukon has a relatively high rate of domestic violence.

While there are clearly some abusers for whom a civil response is inadequate, there are others who are constrained by the knowledge that there is a civil order and that its violation will have legal and social consequences.

Although the authors of this report discovered no evidence of injustice to alleged perpetrators of family violence in the Yukon, our meetings with justice system professionals reveal that there is the need for legislative and institutional reforms to ensure the fairness of the justice system for those who are alleged to have perpetrated domestic abuse. The making of an order under the Act clearly affects the rights of respondents under the *Charter of Rights.* In general, the Act is consistent with the *Charter of Rights*, though some amendments are proposed that are intended to prevent possible *Charter* challenges.

The Yukon has devoted significant resources to domestic violence and appears to have made considerable progress in dealing with this most serious problem. The *FVPA* has been an important part of the response to domestic violence. However, the effectiveness of the Act would be enhanced if it were part of a clearly articulated strategy for responding to and preventing family violence. The articulation of objectives for the Act and its relationship to a broader strategy would also allow for better coordination and linkage of services. Future research should then measure the effects of the Act against the specified objectives.

There are a number of issues related to the *FVPA* that need to be addressed to improve its effectiveness, clarity and fairness. A number of specific recommendations have been made in several areas.

Articulation and Communication of Domestic Violence Response Strategy

The objectives of the *FVPA* should be clarified and articulated. The objectives of the *FVPA* and its relationship to other legal remedies should be communicated to professionals and members of the public in training materials and brochures. The lack of a clear policy statement from the government about situations in which it may be appropriate to invoke the *FVPA* may contribute to some of the frustration that professionals feel in dealing with the Act, and some of the decline in its use in the first half of 2002.

Legislative Reforms

- Change “firearms” to “weapons” in s. 4(3)(e) to allow for the surrender of a broader range of potential weapons that may be used to harm the spouse.

- Emergency Intervention Orders represent a significant interference with the rights of respondents, and are made without notice to the respondent and without a hearing. If the original EIO is made by a Judge of the Territorial Court,

there should be no need for confirmation under s. 5 of the Act by another judge, though there should be the right to apply for a hearing to review the order.

The right of review before the Yukon Supreme Court, provided for in s. 8 of the *FVPA,* may be unduly cumbersome for respondents without access to legal representation and residing outside of Whitehorse, so the legislation should allow for an application for review of an Emergency Intervention Order to be made to the Yukon Territorial Court.

- The statutory maximum for an Emergency Intervention Order (EIO) should be 90 days.

- The *FVPA* should make clear that the terms of an Emergency Intervention Order prevail over the terms of any custody or access order made under the federal *Divorce Act* or territorial legislation (other than child protection laws).

- The concept of “reasonable grounds” as a requirement for the making of an EIO (s. 4(1)) and a VAO (s. 7(1)) is inconsistent with s. 2(5) of the Act. The words "reasonable grounds" should be deleted.

- The term “domestic violence” in s. 7, which is the basis for obtaining a Victim's Assistance Order (VAO), should be replaced by the term “family violence,” which is defined and used elsewhere in the *FVPA.*

- Although arguably Victim Services workers are already protected by s. 15 of the *FVPA*, they should be explicitly mentioned in the immunity provisions of s. 15.

- There are a number of minor technical or typographical errors that should be corrected by legislative amendment.

- There are a number of issues that were identified for possible future legislative action but that require further consideration or were outside the mandate of this review. These include:

    - increase in the maximum penalty for breach of an order or linking breach of the Act to the *Criminal Code*;

    - inclusion of those involved in close personal adult relationships that do not involve cohabitation in the Act;

    - inclusion of “emotional abuse” as a ground for making an order under the Act; and

    - mandatory reporting of child abuse and neglect.

Training and Interagency Co-ordination

Domestic violence cases pose unique challenges and dangers, and there is a need for regular training for all professionals who work in this area, and for improvement of interagency cooperation and coordination. At least some of the training and education programs should involve professionals from different agencies so that they can learn from and about one another. There is a need for all professionals who work with victims of family violence to understand and respect the role of others who work with these difficult cases.

Administration of Justice

All orders made under the Act should state in bold letters that violation of the terms of an order may result in a prosecution under the Act, and a fine of up to $2,000, imprisonment for up to 6 months, or both. Although the orders currently state that it is an offence under the *FVPA* to disobey the terms of an order, the penalty should be specified.

Access to Justice

There should be continuing efforts to improve public education about family violence issues, including ensuring that all victims and respondents are informed of their rights and options under the *FVPA.* Information should be made available to the public through an updated brochure as well as through the media (e.g., radio, television).

Consideration should be given to providing access to individuals other than RCMP available outside of business hours to act as designated individuals to make EIO applications on behalf of victims.

Legal aid should be available to financially eligible applicants and respondents who are involved in the review of applications for an EIO, or the making of an application for a VAO.

Further Research and Review

There is a need for further research to learn how the justice system and related agencies can better protect victims of domestic violence and work to reduce levels of offending and re-offending. Two to five years after the issues identified in this report are addressed, a further and more detailed review should be conducted to ascertain whether the *FVPA* is effectively protecting victims of family violence and treating those alleged to have committed acts of family violence fairly. In order to gain a fuller picture of the effect of the Act, it will be important to survey victims to assess the effect of obtaining an EIO. There is also a need to survey respondents.

Victim Services should include questions about their perceptions of the value and effectiveness of the *FVPA* as part of its planned “client satisfaction” questionnaire.

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Although this report does not identify the individuals who made specific comments that are quoted, the authors wish to thank all participants for their insightful comments and suggestions. Focus group attendees participated enthusiastically and contributed to the report's recommendations. Representatives of these groups and government employees provided very helpful comments on a draft of this report. Specifically, thank you to the members of the RCMP who joined us, the six designated Justices of the Peace, the members of Victim Services, and the representatives from many non-governmental organizations. We must also thank Michael Cozens, Kelly Cooper, Chief Judge Lilles, Judge Faulkner, Judge Stuart and Justice Veale for the time they spent speaking with us in personal interviews.

Thank you to everyone who has contributed to this review of Yukon's *Family Violence Prevention Act*. With thanks to the many who assisted us, we hope that the recommendations for change in this report will assist the Yukon in enhancing the protections afforded to victims of family violence while ensuring the fairness of its justice system.

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REVIEW OF YUKON'S *FAMILY VIOLENCE PREVENTION ACT*

1.0 INTRODUCTION

Over twenty-five percent of all women in Canada are assaulted by a spouse at least once, and for women death at the hands of an intimate partner is more likely than death by the violence of a stranger. Domestic abuse includes one or more elements of physical, sexual, financial and emotional abuse, and often is cyclical, resulting in recurring episodes of abuse over time. Although in some cases the female partner is the aggressor and violence also occurs in same-sex relationships, violence initiated by males against female partners is most prevalent and poses the greatest risk of serious bodily injury.[1]

Until recently, victims of spousal violence had three basic legal avenues for seeking redress and protection. First, the offender may be subjected to criminal prosecution for assault or other appropriate offences. Second, a recognizance (or peace bond) may be obtained under section 810 of the *Criminal Code.* Third, civil legislation permits victims to seek remedies within the context of divorce or separation proceedings, such as exclusive possession of the residence or a no-contact order.

Domestic violence that occurs in an intimate relationship is very different from violence between strangers or mere associates. Often in a familial context there is a relationship of dependence, where the victim[2] requires the offender's financial contribution to the household in order to survive. Some victims may still love their partners and wish to pursue a relationship. Some are fearful of repercussions for themselves or their children if a criminal charge is laid. As a result of these and other factors, victims may not cooperate with police investigations, or may wish to withdraw charges when the tensions within the household ease. Additionally, criminal convictions require proof beyond a reasonable doubt, which may result in perpetrators of domestic violence escaping charges due to insufficient evidence.

Section 810 of the *Criminal Code* allows a Justice of the Peace (or judge) to issue a recognizance (or peace bond), requiring an alleged offender to keep the peace or satisfy other conditions such as staying away from the place where the victim resides or works. The proof required to satisfy the Justice that an order is necessary is that of the civil standard: proof on a balance of probabilities that there may be future violence. The Justice may require the respondent to enter a peace bond with a general requirement to keep the peace, and may impose specific conditions such as no contact with the victim or surrendering firearms. The maximum duration of a recognizance is one year. A

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[1] Canadian Centre for Justice Statistics, *Family Violence in Canada: A Statistical Profile* (Ottawa, 2000); and Canadian Centre for Justice Statistics, *Family Violence in Canada: A Statistical Profile* (Ottawa, 2001). Online: http://www.hc-sc.gc.ca/nc-cn

[2] Generally in this paper we refer to "victims" of domestic violence unless the context requires terminology like complainant, applicant or alleged victim. It should, however, be appreciated that from a legal perspective until the violence has been proven to have been perpetrated, there is no legal "victim."

respondent who breaches the conditions of a peace bond is committing a criminal offence and can be charged for the breach under the *Criminal Code.* As a result, there is a threat of severe repercussions if the respondent breaches the recognizance. However, a peace bond requires a court appearance by the victim, and the offender must be notified of the proceedings. This process can be intimidating for many victims or may take too long to provide assistance in dealing with an immediate problem. Until the hearing is complete, no interim order can be made under s. 810 of the *Criminal Code*.

The third remedy available to victims of domestic violence is provided by provincial and territorial family law, which allows victims to seek exclusive possession orders or no-contact orders as part of the separation or divorce process.[3] Generally these applications are only made in conjunction with a separation and are not available for victims of domestic violence who want the abuse to stop but do not wish to end their relationships with the abusers. Further, access to the traditional civil remedies can be a relatively complex and time-consuming process.

In response to the limitations of the other traditional avenues for seeking legal redress, some jurisdictions in Canada have enacted civil legislation to provide additional options for victims of family violence. Saskatchewan, Prince Edward Island, Alberta, Manitoba, and the Yukon have proclaimed in force domestic violence legislation with provisions allowing victims to seek expeditious access to civil orders granting them exclusive occupation of residences, no-contact orders and other related remedies. Ontario and Nova Scotia have enacted similar legislation, although the legislation in these jurisdictions has not yet been proclaimed in force.

On December 11, 1997, the Yukon Legislature enacted the *Family Violence Prevention Act (FVPA),* which was proclaimed in force on November 1, 1999. The *FVPA* represented a significant change in the response to family violence in the Yukon.

Although its purpose is not clearly stated in the Act or in publications of the Territorial government, it is clear the *FVPA* was enacted with the intent of reducing the reoccurrence of family violence, and to facilitate legal protection for victims. The *FVPA* is intended to supplement the provisions in the *Criminal Code* and the Yukon *Family Property and Support Act* by offering victims an additional, relatively accessible avenue when seeking protection from family violence. It is a civil response to family violence that is intended to enable the justice system to provide an effective and timely response to incidents of family violence or to the threat of family violence. The Act provides for orders to be made prohibiting a person who is believed to pose a threat to an intimate partner from seeing or contacting the victim, and addresses the need of victims of family violence to stay in their own homes with a degree of security by ordering an abusive spouse to leave a shared residence. The *FVPA* contains provisions for immediate emergency relief as well as a process for longer-term assistance orders.

[3] *Family Property and Support Act,* S.Y. 1998, c. 63 as amended.

1.1 Purpose of the Study

Like each of the other avenues for seeking legal relief, the *FVPA* has its strengths and weaknesses. It is appropriate for some cases, but not others. In particular, if the abusive partner is not deterred by the prospect of potential future sanction for violating a court order, the Act may provide little real security. Like each of the statutes that deal with domestic violence, the *FVPA* cannot be understood in isolation from its institutional and legal context.

The implementation of the *FVPA* has posed challenges for those who work in the justice system in the Yukon, and for those in related agencies such as shelters for abused women.

Since the Yukon was one of the first jurisdictions in Canada to enact civil family violence prevention legislation, it is appropriate and timely to undertake a review of the Act and its implementation.

The purpose of this study is to conduct an assessment of the *FVPA* and how it has been implemented. Specifically some of the strengths of the Act and areas where there are problems are identified. The conclusions and recommendations at the end of the report suggest legislative amendments and institutional reforms necessary to improve the effectiveness of the Act.

1.2 Methodology and Limitations

The Department of Justice of the Yukon contracted with the Canadian Research Institute for Law and the Family (CRILF) to conduct a multi-component assessment of the *FVPA*, which was carried out by the authors. The review involved:

- an analysis of the *FVPA*;
- a review and analysis of orders issued under the Act;
- conducting focus group and key informant interviews with relevant professionals in the Yukon (the focus group sessions were conducted in February 2002, and the interviews in the February to May 2002 period);
- a survey of reported judicial decisions interpreting the *FVPA;* and
- a survey of similar legislation in other jurisdictions, including other jurisdictions within Canada, as well as the United Kingdom, Australia, New Zealand, and the United States.

A draft of this report was circulated to representatives of the stakeholders who participated in the focus groups and to government officials, and was the subject of consultation meetings in June 2002 in Whitehorse. This process resulted in revisions that are reflected in the final report.

Section 2.0 of this report includes a comprehensive review and analysis of the *FVPA*, a summary of key themes arising out of focus groups conducted with relevant professionals in the Yukon, relevant case law under the *FVPA*, and a review and analysis of actual orders issued under the Act. Section 3.0 of this report summarizes similar legislation in other jurisdictions, including other jurisdictions within Canada, as well as the United Kingdom, Australia, New Zealand, and the United States. Finally, Section 4.0 offers some concluding remarks and a summary of recommendations.

There were significant limitations of time and budget in preparing this report. For example, there were no interviews with victims of domestic violence or respondents to *FVPA* applications. Therefore there are no data on the ultimate effectiveness of orders under the Act. The authors were also unable to document any cases in which an order may have been made without appropriate legal foundation. The authors did not review criminal case records to determine whether there were concurrent or subsequent criminal charges. The focus group sessions with professionals did, however, provide some impressionistic information on these questions.

2.0 EXPERIENCE WITH THE *FVPA*

2.1 Introduction

The *FVPA* includes provisions for Emergency Intervention Orders (EIOs), Victim's Assistance Orders (VAOs) and Warrants of Entry.

An Emergency Intervention Order (EIO) is intended to offer an expeditious remedy for a victim or potential victim of family violence in a situation of "seriousness or urgency." An EIO can be sought by the applicant [alleged victim] *ex parte* [without notice to the respondent or alleged abuser] from a designated Justice of the Peace. These applications are invariably made using telephone and fax. An EIO will generally give the applicant the right to exclusive possession of the home, and may impose conditions on the respondent, such as requiring him to stay away from the applicant's place of employment. The EIO only takes effect when served on the respondent; the order is usually served on the respondent by a police officer.

An EIO must be confirmed by a Judge of the Territorial Court within a few days of issuance. If, upon review of the documents, the judge fails to confirm the EIO, the applicant and respondent are notified and a hearing is held, where either or both of the victim and respondent may appear, testify and call evidence. The respondent also has the right to seek review of an EIO by making application to the Supreme Court. The EIO is only intended to be in effect for a relatively short period of time, a few weeks to a few months at the most.

While an EIO is a short-term remedy for an emergency situation, a VAO is intended to provide a longer-term remedy for situations that are not urgent; an application for a VAO may, for example, be made prior to the expiry of an EIO in order to provide longer-term protection.

A VAO may only be granted by a Judge of the Territorial or Supreme Court (and not a Justice of the Peace), after giving the respondent prior notice and an opportunity to attend a full hearing. Although the terms of an EIO may be similar to those of a VAO, since the respondent has notice and an opportunity to appear before the court that is making a VAO, this type of order may be in effect for an indefinite period of time.

The final remedy available under the *FVPA* is a Warrant of Entry. This provision of the Act allows a peace officer to obtain a warrant to enter a residence if a victim is believed to be inside and in need of assistance. EIOs, VAOs and Warrants of Entry are discussed in further detail below.

2.1.1 Analysis of EIOs

In the first two years that the *FVPA* was in force, over 50 EIOs were made pursuant to s. 4, which reads:

> 4.(1) An emergency intervention order may be granted ex parte by a designated justice of the peace where that designated justice of the peace has reasonable grounds to conclude that:

(a) family violence has occurred or is likely to occur; and

(b) by reason of seriousness or urgency, the order should be made forthwith in order to ensure the immediate protection of the victim.

(2) In determining whether an order should be made, the designated justice of the peace shall consider, but is not limited to considering, the following factors:

(a) the nature of the family violence;

(b) the history of family violence by the respondent towards the victim;

(c) the existence of immediate danger to persons or property;

(d) the best interests of the victim and any child of the victim or any child who is in the care and custody of the victim.

(3) An emergency intervention order may contain any or all of the following provisions;

(a) a provision granting the victim and other family members exclusive occupation of the residence, regardless of ownership;

(b) a provision directing a peace officer to remove, immediately or within a specified time, the respondent from the residence;

(c) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim;

(d) a provision restraining the respondent from communication with or contacting the victim and other specified persons;

(e) a provision requiring the respondent to surrender all firearms in their possession to a peace officer for whatever period up to 180 days that the justice decides; or, where a firearm has been used or its use threatened, the justice shall require the respondent to surrender all firearms in their possession to a peace officer for whatever period up to 180 days that the justice decides;

(f) any other provision that the designated justice of the peace considers necessary to provide for the immediate protection of the victim.

(4) An emergency intervention order may be subject to any terms that the designated justice of the peace considers appropriate.

(5) Subject to subsection 6(1), an emergency intervention order takes effect immediately, and the designated justice of the peace may fix a date for its expiry.

(6) Every emergency intervention order must include the text of subsection 8(1) of this Act.

The most common scenario in which an EIO is made is that a victim flees a violent or potentially violent situation and comes to seek assistance at Victim Services or the RCMP. In some cases the victim may be opposed to the laying of charges, or it may not be appropriate to lay charges. In some cases the victim indicates that she does not want to have a criminal charge laid, because she may hope to continue or resume the relationship, or because she is concerned about the effect that a criminal charge may have on herself, her partner, or her children. Or a criminal charge may not be appropriate because physical violence has not yet occurred or there is insufficient evidence. In these cases, the victim may, after consulting with Victim Services or the RCMP, decide to seek a remedy under the *FVPA.*

The Victim Services worker or RCMP officer may act as a "designated" (or "authorized") person under s. 2(1)(b) of the Act and make an application for an EIO on behalf of the victim. The designate then calls a Justice of the Peace from the list of designated Justices of the Peace (currently six in the Yukon). All of the Justices of the Peace have fax machines, and the Victim Services worker or RCMP member faxes the Justice of the Peace a completed application form for an EIO. This form is usually completed by the designate, based on information provided by the victim. The Justice of the Peace takes an oath or affirmation from the designate over the telephone, and then hears oral evidence from the designate. If the Justice of the Peace finds that the grounds for making an EIO have been satisfied, the Justice of the Peace will issue an EIO, which is faxed back to the designate. A copy of this order is served upon the respondent by a member of the RCMP. The order takes effect upon being served.

Only rarely has an application for an EIO been refused by a Justice of the Peace. During the focus group discussions, discussed in further detail in Section 2.2.2, the Justices of the Peace could identify only one case where one of them believed there was insufficient evidence to grant an EIO.

The researchers conducted a detailed analysis of the EIOs provided to them by Victim Services. Fifty-one EIOs were analyzed. Table 1 summarizes the orders under the *FVPA* during the first two years the Act was in force.

Thirty-seven of the applications for EIOs were completed by Victim Services as designates, and 12 by members of the RCMP. In one instance the category of "victim" was checked off for who was applying, and in one instance no box was checked off.

The vast majority of EIO applications involved spousal abuse and were intended to protect women (48 out of the 51 examined). One man obtained an EIO on two occasions to restrain his adult son, and one EIO was obtained by a woman to restrain her adult son. Forty-four of the applicants indicated that there were children in the household, although it was not always specified if the respondent was the biological parent.

Thirty-seven of the applicants were from Whitehorse, three from Ross River and two from Watson Lake. One victim from each of Porter Creek (a subdivision within Whitehorse city limits), Takhini River (a subdivision just outside of Whitehorse city limits), Teslin, Mayo and Tagish made an application. For the remaining four applications it was unclear where the victim lived. Thirty-two of the 51 EIOs involved disputes where the victim or the respondent, or both, were identified as First Nations or aboriginal.

TABLE 1

ORDERS UNDER THE *FVPA*: NOVEMBER 1999 – OCTOBER 2001

	Year 1 Nov. 1, 1999 to Oct. 31, 2000	Year 2 Nov. 1, 2000 to Oct. 31, 2001	Total Nov. 1, 1999 to Oct. 31, 2001
Emergency Intervention Orders (EIOs)			
Number of EIO Applications Prepared by Victim Services	22	15	37
Number of EIO Applications Prepared by RCMP	9	3	12
Number of EIOs Issued	31	20	51
Number of EIOs Not confirmed by judge (s. 5)	4	0	4
Number of EIOs Reviewed by Supreme Court (s. 8)	5	3	8
Length of EIO – shortest	7 days	30 days	7 days
Length of EIO – longest	120 days	90 days	120 days
Length of EIO – average	42 days	53 days	46 days
Number of Victim's Assistance Orders (VAOs)	1	0	1
Number of Warrants of Entry	1	0	1
Breach of Order (s. 16)[4]	1	1	2

The current forms for an EIO provide a list of possible provisions, based on s. 4(3) of the *FVPA*, with a box beside each for the Justice of the Peace to check off if appropriate. The first provision is that "[t]he respondent may not directly or indirectly communicate with any of the following persons:" followed by a blank line to write names. Forty-seven of the 51 EIOs reviewed contained a "no communication" provision. Ordinarily the communication was not permitted between the respondent and the victim, and sometimes between the respondent and other family members such as children or the victim's parents.

The second provision is for exclusive possession of a shared residence. A blank line for a name is followed by "is granted exclusive occupation of the following residence:" with a space for an address. Thirty-eight of the EIOs gave exclusive occupation to the victims. In one situation exclusive occupation was given to the respondent.

The third possible provision on the EIO form is: "The respondent shall not attend within [blank] meters of the residence located at [blank]." Twenty-nine of the EIOs used this provision to keep the respondent between 10 and 100 meters away from the residence.

[4] In the first year that the *FVPA* was in force, there was one report of an alleged breach of an EIO, but the charge was stayed as the respondent died prior to the trial date. A second alleged breach and violation of s. 16 of the *FVPA* was set for trial in June 2002.

The fourth provision instructs a peace officer to remove the respondent from the residence, which was used in 14 cases.

The fifth provision instructs a peace officer to accompany an individual to the residence to supervise the removal of personal belongings. In 20 EIOs this provision was used to allow the removal of a respondent's belongings, and in five EIOs the provision was used to remove the victim's belongings.

The sixth provision requires a respondent to surrender all firearms in his/her possession to a peace officer for a specified number of days. Twelve EIOs required respondents to surrender firearms for the same length of time as the EIO was in effect. Two EIOs required the respondents to surrender firearms for a time period longer than the life of the EIO, one for 30 days longer and one for 75 days longer.

The seventh provision, based on s. 3(4) of the *FVPA,* requires that the address of the victim be kept confidential, presumably because she has moved since sharing a residence with the respondent. This was used in eight of the EIOs.

Finally, the EIO form leaves a few blank lines at the end of the order for additional provisions that, in accordance with s. 4(3)(f), the Justice of the Peace "considers necessary to provide for the immediate protection of the victim." Provisions inserted included:

- not allowing the respondent within a certain distance from the victim's work (16 EIOs), the victim's school (2), the victim's friend's house (2), the victim's children's daycare centre (3), the victim's vehicle (2), or a specified community centre (1);

- ordering that the respondent surrender house and car keys to a peace officer (5 orders);

- ordering that the respondent continue to make payments on the house for utilities or a mortgage (2);

- ordering that the respondent return certain documents such as legal documents or pictures to the victim (1); and

- ordering that a peace officer escort the victim to her residence to ensure that the respondent is not there (1).

A number of EIOs allowed for the respondent to have contact with the children, usually through a specified third party or Family Services (19 orders allowed for contact with children). Two EIOs specifically indicated that the respondent could have no contact with the children.

Pursuant to s. 5 of the *FVPA*, EIOs must be brought before a Territorial Judge for confirmation. The initial confirmation process is based solely on a review of documents. There is no notice to either party and there is no hearing. The judge reviews the

documents to determine whether there was evidence before the Justice of the Peace to make the EIO.

Section 5 provides:

> 5.(1) Immediately after making an emergency intervention order, a designated justice of the peace shall forward a copy of the order and all supporting documentation, including his or her notes, to the court in the prescribed manner.
>
> (2) Within three working days of receipt of the order and supporting documentation by the court, or, if a judge is not available within that period, as soon as one can be made available, a judge shall:
>
> > (a) review the order in his or her chambers; and
> >
> > (b) confirm the order where the judge is satisfied that there was evidence before the designated justice of the peace to support the granting of the order.
>
> (3) For all purposes, including appeal or variation, an order that is confirmed by a judge pursuant to subsection (2) is deemed to be an order of the court granted on an ex parte application.
>
> (4) Where, on reviewing the order and supporting documentation, the judge is not satisfied that there was evidence before the designated justice of the peace to justify granting the order, he or she shall direct a rehearing of the matter.
>
> (5) Where a judge directs that a matter be reheard:
>
> > (a) the clerk of the court shall issue a summons, in the form and manner prescribed in the regulations, requiring the respondent to appear at the hearing before the court; and
> >
> > (b) the victim shall be given notice of the rehearing and is entitled, but not required, to attend and may fully participate in the rehearing personally or by an agent.
>
> (6) In addition to any other evidence, the evidence that was before the designated justice of the peace may be considered as evidence at the rehearing.
>
> (7) At a rehearing, the onus is on the respondent to demonstrate, on a balance of probabilities, why the order should not be confirmed.
>
> (8) Where the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence.
>
> (9) At the rehearing, the judge may confirm, terminate, or vary the order or any provision in the order, and may include an order for the preservation of privacy.
>
> (10) Despite any other provision of this Act. [sic] an emergency intervention order continues in effect and is not stayed by a direction for a rehearing under this section.

If a Territorial Judge decides that, based on the documents provided, the EIO should not be confirmed a “rehearing” is ordered. The respondent receives a summons to appear at the rehearing date, and the applicant is also notified of the hearing date, though not obliged to attend. Until the rehearing is concluded, the original order continues in effect (s. 5(10)). At the rehearing, both parties have the right to present evidence and make submissions. Section 5(7) places the onus on the respondent to demonstrate on a balance of probabilities why the order should not be confirmed. Thus,

if the respondent does not appear before the court, it is likely that an EIO will be confirmed.

Most of the EIOs were confirmed by a Territorial Judge, with only 4 out of 31 not being confirmed in the first year that the *FVPA* was in force, and all 20 in the second year being confirmed.

The four EIOs that were not confirmed without a hearing in the *FVPA's* first year were further examined. One EIO did not have either box checked off, i.e., it was unclear whether it was confirmed or not confirmed with a rehearing ordered.

Another EIO similarly had neither box selected, but the original EIO was made by a Territorial Judge and not a Justice of the Peace. This raises an interesting issue. All Territorial Judges are *ex officio* designated justices of the peace according to s. 14(2) of the *FVPA.* The *FVPA* does not differentiate, however, between an EIO granted by a Justice of the Peace and one granted by a Territorial Judge. Thus, the Act appears to require that an EIO made by one Territorial Judge is to be reviewed and confirmed by a second Territorial Judge; as discussed below, this is an interpretation given by one of the Territorial Judges.

The third EIO that was not confirmed initially was confirmed at the rehearing. Neither the respondent nor the victim attended the rehearing, so in their absence the judge confirmed the EIO.

The fourth EIO that was not confirmed went to a rehearing, which was delayed due to a difficulty in accommodating the schedule of counsel. By the time that the rehearing occurred, the victim had obtained a peace bond under the *Criminal Code*. The Territorial Judge terminated the EIO at that time.

Thus, out of the total 51 EIOs only one was not confirmed and subsequently terminated by a Territorial Judge on a rehearing, and one of the four EIOs not initially confirmed was later confirmed. In none of the cases was it established that the initial order was made without a proper legal basis.

Eight EIOs were subject to a review by the Yukon Supreme Court under s. 8 of the *FVPA.* Section 8 states:

> 8.(1) At any time after an emergency assistance order has been confirmed or a victim's assistance order has been made the supreme court, on application by a victim or a respondent named in the order, may:
>
> (a) make changes in, additions to, or deletions from the provisions contained in the order;
>
> (b) decrease or extend the period for which any provision in an order is to remain in force;
>
> (c) terminate any provision in an order; or
>
> (d) revoke the order.

(2) On an application pursuant to subsection (1), in addition to any other evidence, the evidence before the designated justice of the peace or the court on previous applications pursuant to this Act may be considered as evidence.

(3) the variation of one or more provisions of an order does not affect the other provisions in the order.

(4) Despite any other provision in this Act, an order under this Act, continues in effect and is not stayed by an application under subsection (1).

(5) An application under subsection (1) may be made independently of any other proceeding in the court or, so as to avoid inconsistency between orders from different proceedings and to consolidate proceedings, it may be made in another proceeding in the court dealing with the same subject matter between the same parties.

(6) Any provision in an order is subject to and is varied by any subsequent order made pursuant to any other Act or any Act of the Parliament of Canada made on the application of the same party.

Five of the eight EIOs subject to review under s. 8 were set aside, as described in further detail below. Three EIOs were varied under s. 8(1).

In one review, the order was varied to allow the respondent to come within 50 meters of the victim's residence only when he was driving down that particular street. Also the EIO was adjusted to allow the respondent to come within 100 meters of the house of a friend of the victim at times when the respondent's attendance was required at the Department of Social Services; apparently it was impossible for the respondent to comply with these two aspects of the order and attend to his work and other life requirements.

Another EIO was varied, with the applicant's agreement, to permit the respondent to communicate with the applicant through a third party in order to have access to the children. The original order had allowed no communication with the applicant but had allowed for visits with the children only if the applicant or Family Services were in agreement.

The third EIO variation amended the EIO to limit the exclusive occupation and surrender of firearms to a term of 60 days instead of 90 days. Additionally, the revised order allowed the respondent access to the applicant and the children with a third party present, while the original EIO had contained a "no-contact" provision.

In the five cases where the Supreme Court decided to terminate the EIO, the applicant usually either consented to the termination of the EIO or made the application to have it set aside. One respondent applied to have a 90-day EIO terminated after 6 weeks because he was doing well with his rehabilitation; the applicant did not oppose the application and the EIO was terminated. In a similar case, a respondent applied to have the EIO terminated and the victim agreed, so the EIO was terminated. In one instance the applicant applied to terminate an EIO 5 days after making her original application because she said that she no longer feared for her safety; the Supreme Court terminated the EIO. In a similar case an applicant applied after 18 days to terminate the

EIO because she was no longer concerned for her safety, so the court set the EIO aside.

In one contested case, discussed in Section 2.1.3, the Supreme Court terminated an EIO because the court concluded that there was no "emergency."

In the first year that the *FVPA* was in effect there were 31 EIOs made. In the second year that the Act was in effect, there were 20 EIOs. Between October 31, 2001, and May 30, 2002, there were only 3 EIOs made. The reason for the decline in use was the subject of some discussion in the focus groups and consultations. The decline in use may in part reflect the fact that many front line workers who have been hired since the Act came into force have not received training and may not be fully aware of its provisions. The fact that the Act was the subject of this review may also have affected its use. The creation of the Domestic Violence Treatment Option may also have had some effect on the use of the *FVPA.* There was no suggestion that the Act does not serve a useful role and should be abandoned.

During 1996, the first year of the Saskatchewan domestic violence law, 295 Emergency Intervention Orders were issued.[5] In 1997 the number of orders issued rose to 331.[6] Fewer emergency orders were issued during a recent nine-month period in Alberta (123).[7] These jurisdictions have populations more than thirty times that of the Yukon.

In Prince Edward Island, in the first 14 months that the Act was in force, there were 64 applications for orders and 47 emergency protection orders were granted.[8] From the introduction of the Act in December 1996 until March of 2001, 125 Emergency Protection Orders were granted.[9] Prince Edward Island has a population approximately five times that in the Yukon.

In Manitoba, between the time that the *Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act* came into effect in September 1999 and January 2001, more than 1300 orders were granted.[10]

Taking rough account of the relative population sizes, the rate at which EIOs were issued in the Yukon in the first two years that the Act was in effect was the second

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[5] Prairie Research Associates Inc. working document, "Review of the Saskatchewan *Victims of Domestic Violence* Act," 1996.

[6] Prairie Research Associates Inc., "Review of the Saskatchewan *Victims of Domestic Violence* Act," February, 1999.

[7] Howard Research and Instructional Systems Inc., "Implementation and Impact of the *Protection Against Family Violence Act*," September, 2000.

[8] Bradford & Associates, "Prince Edward Island *Victims of Family Violence Act* Final Evaluation Report," 2001.

[9] *Ibid.*

[10] *Head v Leader*, [2001] M.J. 366, para.5 (Man Q.B.); affidavit filed by Crown

highest in Canada (after Manitoba) during a comparable period of initial implementation.[11]

2.1.2 Analysis of VAOs and Warrants

Victim's Assistance Orders (VAOs) are intended to have a longer duration than EIOs, and may deal with a broader range of issues. Since VAOs have a wider effect, they can only be granted after notice has been provided to the respondent with the opportunity for a full hearing. The Act allows for an application for a VAO to be made to either the Territorial or the Supreme Court, though the only application to date was made in the Territorial Court.

The VAO has the potential to provide a more flexible and broader remedy than other criminal or civil remedies that may be used in domestic violence cases. For example, in the focus group discussion detailed in Section 2.2.2 of this report, participants suggested the possibility for creative orders, such as possessory or visitation rights for a family pet. Section 7 provides:

> 7.(1) Where, on application, the court believes on reasonable grounds that domestic violence has occurred, the court may make a victim's assistance order containing any or all of the following provisions:
>
> (a) a provision granting the victim and other family members exclusive occupation of the residence, regardless of ownership;
>
> (b) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the victim or other family members, including the residence, property, business, school or place of employment of the victim and other family members;
>
> (c) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the victim, including personal, written 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;
>
> (d) a provision directing a peace officer to remove the respondent from the residence within a specified time;
>
> (e) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim.
>
> (f) a provision requiring the respondent to pay the victim compensation for monetary losses suffered by the victim and any child of the victim or any child who is in the care and custody of the victim as a direct result of the domestic violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application pursuant to this Act;

[11] Statistics Canada, *Family Violence in Canada: A Statistical Profile 2001*, suggests that the rate of spousal violence may be higher in the Yukon than in other parts of Canada, with the Yukon having an annualized rate per million women of 53.3 women killed by partners [7 in 20 years] vs. 10.4 for Canada as a whole.

> (g) a provision granting either party temporary possession of specified personal property, including a vehicle, chequebook, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;
>
> (h) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property that the victim may have an interest in;
>
> (i) a provision recommending that the respondent receive counseling or therapy;
>
> (j) a provision requiring the respondent to post any bond that the court considers appropriate for securing the respondent's compliance with the terms of the order;
>
> (k) any other provision that the court considers appropriate.
>
> (2) A victim's assistance order may be subject to any terms that the court considers appropriate.

The one case in which an application was made for a VAO, *MacNeil* v*. MacNeil*, offered a careful judicial analysis of the entire Act, and is more fully discussed in Section 2.1.3. The applicant, who had experienced verbal abuse and minor assault by the respondent made the VAO application. The judge ordered exclusive occupation for the applicant, with the respondent to pay one-half of the mortgage and taxes due each month. The respondent was not permitted to go to the house or communicate with the applicant or her sons unless the sons initiated the conversation. Additionally, both the respondent and the applicant were prohibited from converting, damaging or dispensing of any chattels that were family assets. The VAO was to be in effect for 90 days.

Although only one VAO has been granted in the Yukon, this is not inconsistent with the trend in other jurisdictions within Canada. In Alberta, six protection orders were granted within the first nine months of the Act's existence,[12] and in Prince Edward Island four VAOs were granted during the first three years, three of which were granted in the first 14 months.[13]

Warrants of Entry are also available within the *FVPA* under s. 11. These warrants may be granted by a Justice of the Peace on the application of a police officer (or other person). The Justice of the Peace must be satisfied that the applicant has not been permitted to enter premises where there are "reasonable grounds" to believe that a victim of family violence will be found. The application may be taken by telephone, and the warrant issued by fax. Only one Warrant of Entry has been granted pursuant to s. 11, which states:

> 11.(1) A designated justice of the peace may issue a warrant if, on an ex parte application by a person who section 2 says may apply for an order, the designated justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that:
>
> > (a) the person who provided the information on oath has been refused access to a cohabitant; and
> >
> > (b) a cohabitant who may be a victim will be found at the place to be searched.

[12] *Supra* note 7.

[13] *Supra* note 8.

(2) A warrant issued by a designated justice of the peace authorizes the person named in the warrant to:

(a) enter, search, and examine the place named in the warrant and any connected premises;

(b) assist or examine the cohabitant; and

(c) seize and remove anything that may provide evidence that the cohabitant is a victim.

(3) Where the person conducting the search believes on reasonable grounds that the cohabitant is a victim, that person may remove the cohabitant from the premises for the purposes of assisting or examining the cohabitant.

As in other jurisdictions in Canada, Warrants of Entry are not commonly used in the Yukon. In the Yukon, one Warrant of Entry was utilized, as described in further detail below. Similarly, in Alberta no warrants permitting entry have been requested.[14]

The one case in the Yukon in which a Warrant of Entry was issued to the RCMP occurred after a series of events one evening. First, the RCMP received a panicked telephone call from a woman claiming that she was receiving harassing telephone calls from an ex-husband who was under a *Criminal Code* peace bond. Upon their arrival at the house, the police officers noted suspicious muddy boots in the foyer, but received no answer when they knocked at the door. Because they were not able to find a key from the landlord and they believed that the woman was being held against her will, the RCMP obtained a Warrant of Entry under the *FVPA*. Upon forced entry, the police officers determined that the woman did not require assistance; there was no evidence of the ex-husband's presence, and the RCMP determined that there was no need for any further action.

It should be noted that the Supreme Court of Canada has held that in the case of a telephone call from a person who is believed to be a victim of domestic violence, the police also have the power at common law in a situation of apprehended urgency to force entry into premises without a warrant to ascertain whether the caller is in danger.[15]

2.1.3 Case Law Summaries

To date four reported judicial decisions in the Yukon have interpreted the *FVPA.* Although the decisions interpret the law and offer an analysis of particular provisions, it is not clear that these cases are being followed by the Justices of the Peace issuing the EIOs. For example, in the decisions described below the judges concur that the length of an EIO should be restricted, and a maximum 30-day time period is generally appropriate. Yet since that decision was rendered, the shortest EIO has been 30 days, and most have been longer. This suggests that further training may be necessary to keep Justices of the Peace informed of judicial decisions and ensure that the decisions of the Justices of the Peace accord with the judicial decisions.

[14] *Supra* note 7.

[15] *R* v. *Godoy*, [1998] S.C.J. 85, Online: QL (SCJ).

MacNeil v. *MacNeil*:[16] In a decision rendered a few months after the Act came into force, Judge Lilles devoted a large portion of the judgement to an analysis of the *FVPA*. Ms MacNeil brought an application for a Victim's Assistance Order under s. 7 of the *FVPA.* Ms MacNeil alleged that Mr. MacNeil, her husband of four years, assaulted her three months before this application, by pushing her against the wall and calling her names while threatening to fight. Further incidents included Mr. MacNeil pushing Ms MacNeil to the floor, pushing her out of the door, telling her not to come back, and throwing her lipstick at her while making obscene and degrading comments. Mr. MacNeil left the residence in December 1999, leaving Ms MacNeil with the mortgage-tax payments, and heating and electrical bills. Mr. MacNeil denied that any assaults took place. The judge, however, found the testimony of Ms MacNeil more credible and granted her the VAO.

In addition to making the VAO under s. 7, Judge Lilles offered some *obiter dicta*[17] comments about EIOs. Judge Lilles noted that the *ex parte* application for an EIO under s. 4 is an "exceptional remedy" that "violates fundamental principles of due process," since the liberty and rights of the respondent may be affected before he has any notice or opportunity to be heard. While this type of legal remedy is justifiable to deal with domestic violence, it should only be used in situations of "urgency or seriousness," and an EIO "is not to be granted simply to alleviate an unhappy situation or to improve a less than ideal family situation." While not specifically referring to the *Charter of Rights*, it is significant that Judge Lilles uses similar language and analysis to sections 7 and 1 of the *Charter.* This would suggest that he recognizes that the granting of an EIO has the potential to infringe on the "liberty and security of the person" of the respondent, and must "accord with the principles of fundamental justice" [*Charter* s. 7]. Any restriction that does not accord with the principles of fundamental justice must be demonstrably justified as necessary to protect victims of domestic violence [*Charter* s. 1].

Judge Lilles indicated that a higher threshold of actual or threatened violence is needed for an EIO ("family violence") than for a VAO ("domestic violence"), and suggested that because an EIO requires the threat of "bodily harm," a "simple assault" that causes no injury might not be sufficient ground to make such an order. Further, he suggested that when it is practical for the victim to apply for a VAO, an EIO should not be granted.

A VAO requires notice to the respondent and is not an *ex parte* application. Although Judge Lilles noted the potential scope of remedies available for use in a VAO, he concluded that they are restricted by the purpose of the legislation. "The remedies must be directed to security and the safety of the victim and to securing the victim's property." Judge Lilles noted that the effect of a VAO may be simply to preserve the status quo, and it should not be used to determine issues of custody, access or ownership of property, except as necessary to protect the victim.

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[16] *MacNeil* v. *MacNeil,* 2000 YTTC 0504, ("*MacNeil*").

[17] *Obiter dicta* [Latin for 'things spoken by the way'] are statements made by a judge that are not strictly necessary for the decision and that therefore are not technically binding on the parties or other judicial officers.

Judge Lilles discussed the difference between the requirement in s. 4 for the granting of an EIO, a finding that there has been "family violence," and s. 7, which refers to "domestic violence" as necessary for the granting of a VAO. Judge Lilles noted that "family violence" is defined in the Act, and requires a finding that there has been "bodily harm" or the threat of bodily harm, while "domestic violence" in s. 7 is not defined in the *FVPA.* Judge Lilles rejected the argument of counsel for the respondent that "domestic violence" is synonymous with "family violence" for the purpose of the Act. Judge Lilles concluded that domestic violence "includes the non-consensual exercise of force or threatened use of force to cause injury or damage to a family member or to property either belonging to that family member or used by that family member in the home." Thus, by Judge Lilles' interpretation, a lower threshold of violence is required for a VAO than for an EIO.

Judge Lilles noted that the standard of proof for granting a VAO is a balance of probabilities, and that both VAOs and EIOs should be time limited because they are not substitutes for relief available under matrimonial property legislation. An EIO should only last long enough to allow an applicant to obtain relief through less drastic means, such as a VAO, a restraining order, or an application for support. Although Prince Edward Island's legislation imposes a statutory time limit for an emergency order and the legislation in the Yukon does not, Judge Lilles used the reasoning from Prince Edward Island case law to conclude that Yukon EIOs should generally be for 30 days or less, and suggested that it "would be difficult to justify any order for longer than 60 days."

A VAO should not be a substitute for remedies available pursuant to other legislation, such as support or restraining orders where appropriate. Judge Lilles concluded that where the parties, like the MacNeils, are located in Whitehorse with easy access to the justice system and legal aid, then VAOs should not exceed 90 days. Although support orders are not appropriate under the *FVPA*, Judge Lilles did note that the broad provisions at the end of ss. 4 (EIO) and 7 (VAO) allowed a Justice of the Peace or a judge to allow for payment of money to insure the victim's safety. Exclusive occupation of the residence is a hollow victory if the victim does not have the financial means to pay the bills. In the case of the MacNeils, insufficient financial information was provided to the court to explain the debts faced by Ms MacNeil. Nevertheless, based on the income information she provided, Judge Lilles ordered a VAO for a period of 90 days, with the respondent to pay one-half of the mortgage and tax payments each month for that period. Exclusive occupation of the family residence was granted to Ms MacNeil, and Mr. MacNeil was prohibited from attending the family residence and from communicating with Ms MacNeil. Both parties were prohibited from converting, damaging or disposing of chattels that constituted family assets.

M.K.S. v. *B.E.S.*:[18] The second written judgement interpreting the *FVPA* was rendered by Justice Veale in the Yukon Supreme Court, and dealt with the relationship between an order under the *FVPA* and a custody order.

[18] *M.K.S.* v. *B.E.S.,* 2000 YTSC 523.

MKS brought an *ex parte* application to seek the assistance from the Court in enforcing a custody order that the RCMP believed conflicted with an EIO. At the time of initial separation, MKS had obtained a custody order for the couple's daughter from the Yukon Supreme Court. When an attempted reconciliation failed and her husband, BES, assaulted and threatened her, MKS fled their rented premises, leaving the daughter with the husband. MKS then obtained an EIO which prohibited BES from coming to the place of work of MKS, and ordered that BES could not "directly or indirectly communicate" with MKS, "except as initiated by her through a third party to arrange her access" to their daughter. MKS made attempts through intermediaries to contact her daughter but was unsuccessful. When she sought the assistance of the RCMP to enforce her custody order, the RCMP said they could not remove the daughter from the residence because the EIO only granted MKS "access," not "custody." Justice Veale concluded that using the word "access" in the EIO did not affect MKS's rights under a custody order, and he clarified that the custody order continues to be in effect and the RCMP should enforce it accordingly.

Justice Veale noted that the *FVPA* is not designed to permanently affect custodial or property rights, and he urged Justices of the Peace to make "their orders legible and with care to ensure there will be no confusion by those who must enforce them."

N.D. v. *D.W.D.*:[19] Justice Veale ruled on another case involving the *FVPA* in August 2000, also dealing with child-related issues.

The respondent, DWD, applied under s. 8 of the *FVPA* for a variation of the EIO granted to his wife, ND. The EIO prohibited DWD from communicating with ND as well as the two children from the marriage. The EIO also allowed for visits between DWD and the children as long as Family Services or Victim Services were in agreement. However, in his application for a variation, DWD indicated, and ND agreed, that DWD should have access to the children. Justice Veale discussed three issues arising out of the application: (1) in what circumstances should the EIO include the children as persons with whom there should be no communication; (2) should Yukon Government agencies such as Family Services or Victim Services be used as intermediaries to supervise or arrange access; and (3) when is it necessary to bring an application under the *Divorce Act* or the *Children's Act* rather than under the *FVPA?*

Section 4(3)(d) of the *FVPA* permits an EIO to restrict communication between the respondent and "the victim or other specified persons." Additionally, section 4(2)(d) of the Act requires the Justice of the Peace to consider the child's "best interests" in any application for an EIO. In the case before him, Justice Veale noted that the family violence was not directed at the children, and should not be grounds for prohibiting communication between DWD and the children.

Secondly, Justice Veale held the preferred approach to designating an intermediary is for the victim to suggest someone. Although Justice Veale recognized that there may be cases where no specific person will be named, he suggested it was inappropriate to

[19] *N.D.* v. *D.W.D.* [2000] YTSC 525 ("*ND* v. *DWD*").

name government agencies to act as intermediaries unless they consented to the appointment.

Finally, Justice Veale indicated that the *FVPA* is not the appropriate legislation to establish custody or property rights, although acknowledging custody and access rights may be "affected" especially if an order is made prohibiting communication with them. He also noted that s. 8(5) of the *FVPA* allows for a joint application to be made under the *FVPA* for the review of an EIO and for custody or access under the *Divorce Act* or *Children's Act.*

At the end of his judgment, Justice Veale noted that he agreed with Judge Lilles's decision in *MacNeil* that 30 days should usually be sufficient for an EIO, noting that an EIO may be extended if necessary by a court application with notice to the respondent under s. 8(1)(b).

M.L.A. v. *R.S.*:[20] The fourth reported case concerning the *FVPA* was also a judgment of Justice Veale, and dealt with a s. 8 application by a respondent to terminate an EIO.

MLA and RS were married. The husband, RS, had engaged in physically abusive behaviour towards MLA in the past. RS took steps to keep MLA out of the family home, such as changing the locks, and MLA became fearful for her safety. She applied for an EIO. A Justice of the Peace granted a 60-day EIO to MLA, specifying that she would have exclusive occupation of the family home; RS was not to communicate with MLA, her children or her parents; and RS was to return legal documents and pictures belonging to MLA.

Acting with counsel, RS applied to the Supreme Court under s. 8 to set aside the EIO, and at first appearance Justice Veale, with the consent of MLA, varied the EIO to remove MLA's parents from the list of persons with whom RS could not communicate. At that time, Justice Veale also requested that the Minister of Justice appoint legal counsel for MLA, as RS had a lawyer. MLA was refused legal aid for the review. In his decision, Justice Veale emphasized that it is not appropriate to invite victims to use the provisions available under the *FVPA* and then leave them without counsel when the order is under a s. 8 review.

Justice Veale examined three issues in this case: (1) Was there sufficient seriousness or urgency in the facts of this case to justify an EIO? (2) Did the actions of RS constitute a deprivation of shelter under the definition of family violence? and (3) Was the 90-day duration of the EIO excessive?

Justice Veale noted that "family violence cases are fact specific and it is unnecessary to place academic constructs to guide Justices of the Peace in their deliberations." However, he emphasized that s. 4 makes clear that "*the threat* of bodily harm" is a sufficient basis for an EIO. Accordingly Justice Veale disagreed with the suggestion of Judge Lilles in *MacNeil* that a "simple assault" (without bodily harm) could not justify an

[20] *M.L.A.* v. *R.S.,* [2000] YTSC 534.

EIO. Justice Veale emphasized that a "simple assault," or even a verbal threat, might, in appropriate circumstances, give rise to a "reasonable fear of bodily harm." Both judges, however, appeared to accept that all of the circumstances of a case need to be considered, and a simple assault that was not recent might not in itself be the basis for an EIO.

As Justice Veale noted, s. 4 "requires that the Justice of the Peace has reasonable grounds to conclude that family violence has or is likely to occur and the matter is serious or urgent enough to require the immediate protection of the victim….It is not necessary to find both seriousness and urgency."

On the facts before him, Justice Veale found that the threat constituted "family violence" and the seriousness was such that the emergency intervention order was reasonable. Justice Veale concluded that the actions of RS in changing the locks and threatening MLA constituted a deprivation of shelter under the definition of "family violence" in the *FVPA*.

Finally, Justice Veale concluded that a 90-day EIO was inappropriate. Agreeing with the analysis of Judge Lilles in *MacNeil*, he stated, "in most cases, a duration of 30 days is adequate." Justice Veale suggested that the purpose of the 30 days is to allow "the parties to either cool off and resume cohabitation, or, proceed to obtain orders under the *Divorce Act* and the *Family Property and Support Act.*" As he noted in *ND* v. *DWD,* the length of an EIO can be extended pursuant to s. 8(1)(b) of the *FVPA*. Because of the time taken up by the court application in the case before him, Justice Veale decreased the EIO from 90 days to 40 days. Thus, the EIO was confirmed except for the deletion of MLA's parents from the list of those with whom RS could not communicate, and the duration of the order was decreased from 90 to 40 days.

2.2 Focus Groups and Key Informant Interviews

2.2.1 Summary of Common Themes

The researchers conducted focus groups in Whitehorse with four groups: the designated Justices of the Peace; a sample of Victim Services workers; a sample of RCMP officers; and a sample of representatives from non-government support agencies such as transition homes, shelters and support agencies. In addition, directed interviews were conducted with other key informants, including the Special Projects Coordinator of Victim Services, a defence lawyer, a Justice of the Yukon Supreme Court and all three of the Territorial Court Judges.

Although some of the concerns and issues arising in the focus groups were unique to the particular group being interviewed, three themes emerged in the group discussions and interviews.

First, those who are involved with the *FVPA* think that it is a valuable tool for victims of domestic violence. Focus group participants repeatedly mentioned how an EIO could

be a beneficial first step toward a victim regaining control and moving away from a violent relationship.

A second common theme emerging from most of the focus group discussions was a perception that the offences section of the *FVPA* (s. 16) may not have enough "teeth." Indeed, participants expressed concerns that an EIO may be viewed by an abuser as just a "piece of paper" because the penalties were not sufficiently severe for a breach of an order. However, some participants believed that the only consequence of a breach is a fine; they were unaware that s. 16 allows for imprisonment for up to six months.

Third, most participants suggested that further training and regular re-training would be valuable for those parties who administer the Act or who assist victims making applications under the *FVPA*. Some of the concerns raised by focus group participants were actually a result of a misunderstanding of the administration of the *FVPA* or of the law itself.

These themes will be discussed in further detail below, in the context of reporting on each of the focus group discussions and on the key informant interviews conducted by the researchers.

2.2.2 Summary of Discussion for Each Focus Group

Justices of the Peace

One focus group consisted of the six Justices of the Peace designated under s. 14 of the *FVPA* to issue EIOs.

The Justices of the Peace were unanimous in their support of EIOs as a tool with high potential for assisting victims of family violence. The Justices of the Peace indicated that the third party application procedure works well because, in their experience, Victim Services workers were emotionally in control and able to explain the situation succinctly.

A second area of consensus of the Justices of the Peace was that the s. 16 offences section of the *FVPA* is too weak. The Justices of the Peace suggested that fines imposed on an offender could hurt the victim as well, especially in low-income domestic situations. The Justices of the Peace suggested that the offences section could be better enforced through the *Criminal Code* (i.e., s. 127).

The other issues arising out of the focus group session with the Justices of the Peace concern the need for standardization and training. Some of the Justices of the Peace have developed a set of questions to ask before issuing an EIO; they suggested that a standard set of questions should exist for all Justices of the Peace to use. Additionally, the Justices of the Peace said that they would benefit from occasional meetings with each other to discuss cases and become aware of what other Justices of the Peace are doing. Because confusion still exists regarding some issues for both the Justices of the Peace and some members of the RCMP who have interacted with the Justices of the Peace in the context of EIOs, the Justices of the Peace suggest that training and

education programs should be carried out on a regular basis for both Justices of the Peace and RCMP.

Summary of the focus group discussion with Justices of the Peace:

- *FVPA* (EIOs) is an important tool for assisting victims of family violence.
- Section 16 (offence provision) is too weak.
- Standardization of the process by Justices of the Peace would be desirable.
- Regular training is needed for both RCMP and Justices of the Peace.

Victim Services Workers

Like the Justices of the Peace, the Victim Services workers were in consensus that the *FVPA* offers useful tools for an immediate response to family violence. They praised the flexibility of the Act, and noted that the paperwork requirement is minimal. They reported that the designate (third party) application system is appropriate and effective. The Victim Services workers believe that the EIOs and VAOs offer an expeditious response that is not connected to criminal charges, and therefore is more appealing to some victims of domestic violence. Some victims of domestic violence are reluctant to seek "official intervention," and are especially concerned about involving the police or the criminal justice process.

The Victim Services workers suggested that their biggest concern relating to the Act is the lack of knowledge and consequent lack of use by the RCMP; this lack of knowledge about the Act was attributed to their rapid turnover. Although sufficient training resources need to be allocated to all groups using the Act, the Victim Services workers suggest that, because of their high turnover, the RCMP need particular attention.

As was suggested by the Justices of the Peace, the Victim Services workers believe that the penalties section of the Act (s. 16) lacks the "teeth" necessary to dissuade offenders from breaching an EIO. The Victim Services workers suggested that the penalty could be linked to the *Criminal Code.*

Some legal concerns arose in the Victim Services workers focus group. It was suggested by some that the definition of "family violence" in the Act may be too restrictive and fails to address incidents such as elder abuse or emotional abuse. The workers also expressed concern that they may not be granted immunity under s. 15, and might therefore become defendants in a civil action bought by a disgruntled respondent or even by a victim who was not protected by the justice system.

Summary of Victim Services workers focus group:

- *FVPA* is an important tool.
- EIOs and VAOs are good options for victims who don't want their partner/cohabitant to be charged criminally.
- *FVPA* "needs more teeth" for a breach.
- Third party application (i.e., Victim Services to Justices of the Peace) works well.
- Biggest problem is the lack of training (due to high turnover) and consequent lack of use by the RCMP.

- Some legal concerns have arisen (especially concerning immunity for victim services and restrictive definitions).

The RCMP

The RCMP officers attending the focus group agreed that an EIO could be a good first step for victims to move on and go forward in their lives. Participants suggested that an EIO can be particularly useful in situations where there is insufficient evidence to meet the criminal standard of proof, or where criminal investigation and prosecution is not appropriate. One participant gave the example of a mother and son dispute where the mother wanted the adult son removed from her house because of his threatening attitude, although there was not yet evidence of violence.

Although the RCMP officers recognized some of the potential benefits of the Act, the process sometimes frustrated them. They were discouraged with their perception that victims often encourage breaches of EIOs by inviting offenders back to the residence, and they expressed frustration at dealing with the same victim and respondent multiple times. Additionally, they asked what was the appropriate definition of "emergency." They were concerned that EIOs were being misused by Victim Services in situations that did not require immediate intervention as two or three days had passed since a violent incident.

The officers indicated that in some cases the information provided by Victim Services to the RCMP is not detailed enough to allow them to serve orders promptly. They also acknowledged that in some cases in which they were serving EIOs obtained through Victim Services that if the evidence of the events was made available to them, they would have proceeded with criminal charges.

The RCMP officers recognized the inherent conflict in balancing the interest of the victim (not charging sometimes because of the wishes of the victim) and an appropriate response to the alleged offender. They expressed concern that if they fail to charge an offender in the particular incident, that offender will most likely re-offend with someone else in the future. In that respect, the RCMP officers suggested that the *Criminal Code* offers a clearer approach for dealing with family violence, and offered more substance in terms of procedures and available penalties. They felt that the penalties available for breach of an order under the Act were insufficient and would be more effective if tied to the *Criminal Code*.

The RCMP officers suggested that the Warrant to Enter (s. 11) was not necessary. If imminent danger is apparent, the RCMP will enter a private residence.[21] In fact, it was suggested that an officer might be criticized for waiting to get a warrant instead of entering immediately. However, as with the EIOs, the participants agreed that more knowledge and training might assist them in understanding the benefits of the existing provisions in the Act. They especially noted that training should involve more "grey

[21] *R* v. *Godoy*, *supra* note 12, establishes that the police are correct in asserting this legal right.

area" scenarios so that RCMP officers can better understand situations where provisions in the *FVPA* would be useful.

Summary of RCMP focus group:

- EIOs are sometimes misused in situations where there is no "urgency."
- EIO is a good "first step" for people to get on with their life.
- Victims sometimes encourage breaches of EIOs.
- In some cases the information provided by Victim Services to RCMP is not detailed enough for serving orders.
- *Criminal Code* is a clearer approach for dealing with family violence.
- There is an inherent conflict in balancing the interest of the victim (not charging sometimes) and an appropriate response to the alleged offender (concern about re-offending).
- Offence provision in s. 16 is not strong enough. Breaches should be tied to the *Criminal Code* (s. 127).
- Warrant to Enter (s. 11) is not necessary. If imminent danger is felt, RCMP will enter.
- More knowledge and training is needed. This is exacerbated by high turnover in staff (25% - 50% per year) .

Non-Government Organizations

The participants from non-government organizations (NGOs), including transition homes and shelters for abused women and support agencies, agreed that the *FVPA* is a valuable tool, but suggested that it needs to be better integrated into the overall scheme for responding to family violence. Inadequate protection of safety was the key theme arising out of this focus group, and the participants emphasized their concern that victims are still living in fear. They agreed that EIOs can be an appropriate first step, but they suggested that VAOs seem to require too much paperwork and a lawyer, and they did not understand the reasons for pursuing a VAO instead of a civil order in Supreme Court.

Although the participants believed Warrants of Entry could be useful, they suggested that the RCMP needed further training. Additionally, they proposed that allowing for a team approach in some circumstances, such as having a trained counsellor accompany the RCMP to the residence, might increase the ability of those entering under the warrant to assess the possibility of danger.

The representatives of the NGOs suggested that the *FVPA* could be expanded in scope. Off-hours, when Victim Services employees are not available, it might be beneficial to have some of the NGO staff able to assist victims as designates making EIO applications rather than relying on the RCMP. They noted that some victims of spousal abuse are reluctant to contact the police and have the involvement of the criminal justice system. Additionally, some representatives of NGOs suggested that the definition of "family violence" should be expanded to include abuse of aged persons as well as emotional and financial abuse.

As was mentioned in other focus groups, the representatives of NGOs suggested that breaches of orders under the *FVPA* do not meet with adequate penalties. They suggested that a harsher penalty or linking the *FVPA* to the *Criminal Code* might be of value. Additionally, they noted that respondents sometimes skirt around provisions of an EIO to engage in indirect contact or harassment, such as by having friends or family members contact the victim. They suggested Justices of the Peace might wish to address this concern in the EIOs.

Summary of NGO focus group:

- The *FVPA* is a good tool to have.
- Better access to the justice system is needed outside of business hours.
- The *FVPA* should be amended to deal with emotional abuse and elder abuse.
- The main concern expressed was for the safety of the victim and that the offender be charged.
- The RCMP need more information and training to sensitize them to the needs of the victim.
- Breaches are not treated severely enough.

Key Informants

Personal interviews with key informants confirmed some of the views expressed in the focus groups, as well as offering some different perspectives. The key informants were a lawyer, the Special Projects Coordinator of Victim Services, a Yukon Supreme Court Judge and the Territorial Court Judges.

All of the key informants agreed that the legislation provided significant new remedies for victims of domestic violence, which they acknowledged to be a serious and prevalent problem in the Yukon. Even the key informants who stated that they were initially sceptical of the Act agreed that it is useful legislation.

The key informants recognized that the *ex parte* nature of the EIO application process raises due process and fairness concerns, but they agreed this may be justified to protect the safety of victims of domestic violence and their children. All of the key informants consider that EIOs are a valuable tool, though they suggested changes that would make the process more appropriate and fair. Several key informants noted that there is no mechanism for a respondent to appeal or state his or her position before a s. 5 review is carried out by a Territorial Judge. Thus during the three working days before confirmation or an order for review, the respondent does not have an opportunity to question the order.

One key informant expressed the view that the processes under the legislation are generally too cumbersome and need to be streamlined. The options need to be more flexible and the Act should involve “more common sense” and less of a focus on legal procedure. One suggestion was to establish a working committee composed of representatives from all groups participating in the focus groups for this study to examine the Act in detail, provision by provision.

Another key informant suggested that the legislation might be overbroad. This key informant questioned what definition of "emergency" is used by those issuing or confirming an EIO.

Additionally, a key informant suggested that the EIOs should have a legislated duration (e.g., 45 days) and that the firearms provision should have a similar maximum. This key informant noted that it makes no sense to have a firearms provision last longer than the EIO.

Another key informant noted that there may be a need for a firearm provision lasting longer than the other provisions in an EIO, but agreed that a legislated maximum duration would be appropriate for EIOs (60 days). Another key informant stated that, although he initially thought that a legislated maximum was required, he had since noted that the time limits imposed by the Justices of the Peace were not excessive. Also, he suggested that there is always the possibility of a court review of the order.

Some informants suggested that the value of VAOs might be limited to a small number of cases; other informants noted that the VAOs do not offer anything different than what is available in a chamber's application under the *Family Property and Support Act*, except that it may be possible to make an application without a lawyer, especially in Territorial Court. Another key informant said that the VAO might just be a faster method to get to the same result. One key informant suggested that the focus should be on making chamber's applications more "user-friendly" to non-lawyers rather than developing a second process through VAOs. Another key informant stated that it was a valuable tool to have even if it might not be frequently used.

The key informants had a range of different views about whether the penalty provision for a breach (s. 16) needs to be stricter. One key informant suggested that the penalties should be linked to the *Criminal Code,* as recommended by some of the focus groups.

Another key informant noted that imprisonment is available as an alternative to a fine, and there would be no obvious benefit to linking the section to the *Criminal Code.* Other key informants agreed that s. 16 is appropriate. While recognizing the need for some mechanism for enforcement, these key informants think that a direct link to the *Criminal Code* would be inappropriate as the EIOs are granted *ex parte,* often through telecommunication and without strict adherence to rules of evidence. Additionally, a key informant noted that, if a respondent breaches an order by committing an offence, such as assault, the penalties under the *FVPA* and the *Criminal Code* will both be available.

Most of the key informants therefore agreed that the existing penalties under s. 16 were appropriate. However, one key informant noted that what may really be of concern to the other focus group participants is not the length of the available sentence per se, but the fact that in volatile domestic disputes a minor infraction of an order can quickly lead to violence and severe harm. Perhaps what would be most appropriate, suggested one key informant, would be to include a clause that requires a warrant of arrest to issue upon breach of an order, unless the Justice of the Peace is satisfied that the breach

was unintentional and did not cause the victim any fear or harm. Another key informant suggested that a warrant for the breach of an order under the *FVPA* should only be issued if the breach involves a threat to safety and it should not be easier to get a warrant than it would be to get a warrant for any criminal offence.

Most key informants questioned the remedies listed under s. 7 (the VAOs), specifically paragraph 7(1)(i): "a provision recommending that the respondent receive counselling or therapy." A recommendation for counselling would not be valuable because there is no penalty for not receiving counselling and it is not mandatory. Nor would an order for mandatory counselling be appropriate, suggested some of the key informants, either because it would not be effective or because it would not be appropriate in a civil matter. The key informants supported deleting paragraph 7(1)(i) from the Act.

One key informant argued that it does not make sense to have the respondent bear the onus of proof if a Territorial Judge refuses to confirm an EIO (s. 5(7)). This key informant asked why a respondent should bear the onus if the judge has refused to confirm based on the evidence before the court and orders a re-hearing?

Another key informant agreed with earlier focus group discussions that the definition of what type of "family violence" is covered ought to be expanded. This informant suggested including emotional abuse and also allowing victims to apply for EIOs directed at individuals who do not live with them (such as an abusive child who visits an older parent in his or her house). Other key informants did not agree that an EIO was the appropriate tool for dealing with emotional abuse. If there is a threat of physical violence, then a victim experiencing emotional abuse may apply for an EIO under the current wording, which covers both harm and a threat of harm. Other remedies are available for emotional abuse, such as a no-contact order in a separation agreement or a peace bond. Key informants suggested that a quick, *ex parte* order such as an EIO is only appropriate where there is an imminent threat of physical harm.

Most key informants suggested that more training is essential for all individuals involved with the Act, and especially the RCMP as the "front-line" agency. Training must be continually updated. Many key informants noted a decrease in the past few months in the number of EIO applications and expressed concern that the public is no longer aware of this remedy and ought to be informed.

Key informants also mentioned the need for legal assistance for a victim who must defend an EIO in a court review. Victim Services should not be thrust into a role as legal counsel, and it is essential for the Act to work that victims are supported through the entire process.

Another issue that was raised by key informants had to do with making orders to protect Aboriginal victims. For constitutional reasons, an order made under territorial (or provincial) legislation cannot grant exclusive possession to a family home on a reserve. However, some protection can be provided by making a no-contact order which does have validity; as long as the victim continues to reside in the home, this may effectively bar the respondent from entry.

In summary, although there is variability in the key informant conclusions, there was general agreement on the following main points:

- There is concern with First Nations victims on reserves, where an EIO cannot grant sole occupancy.
- There is a concern that a respondent has no opportunity to seek review between the granting of the EIO and its confirmation.
- There are issues of inconsistency and lack of clarity in the Act, including the definitions, and in the EIOs that are brought before judges for review.

3.0 LEGISLATION IN OTHER JURISDICTIONS

3.1 Within Canada

3.1.1 Legislation

In addition to the Yukon, four jurisdictions in Canada have proclaimed in force family or domestic violence legislation: Saskatchewan, Prince Edward Island, Alberta and Manitoba. Two provinces have enacted domestic violence legislation that is not yet proclaimed in force: Ontario and Nova Scotia. Most legislation uses the Saskatchewan legislation, which was the first enacted in Canada, as a model, though there is some variation in each jurisdiction.[22] A list of the legislation and a summary of the provisions of most interest to the current study appears in the Appendix.

The definition of which types of familial relationships are covered by the Act varies between jurisdictions. The Yukon definition follows the Saskatchewan model, which could apply to same-sex relationships, as well as parent-child relationships. The Nova Scotia legislation is similarly vague, although the Ontario legislation specifically states that same-sex partners are included. The legislation in Alberta and Prince Edward Island specifically excludes same-sex partners. Most of the provinces and the Yukon require that the respondent and victim be living together, have lived together in the past, or have a child together. In Ontario, however, the definition includes a person who was in a dating relationship with the respondent.

The second row of the table in the Appendix indicates what type of harm is a prerequisite for an order. All of the legislation includes both harm and threat of harm. In most of the legislation, the standard of harm to one's person is "bodily harm" (see Yukon, Saskatchewan, Manitoba, Ontario, and Nova Scotia). In Alberta and Prince Edward Island, however, the term "injury" is used instead.

According to the interpretation of some key informants in the Yukon, "injury" would require a lesser degree of harm than "bodily harm," which is a phrase found in the *Criminal Code,* and suggests to some that a "simple assault" (hitting or pushing a partner without causing any injury*)* might not be sufficient for an order to be made. However, as discussed above in *M.L.A. v. R.S.,*[23] Justice Veale held that a simple assault or the threat of bodily harm without an assault could be the basis for an EIO.

With the exception of Ontario, the legislation allows a designated person to apply for an order on a victim's behalf, often specified as a peace officer or Victim Services worker. Additionally, the legislation allows for applications to be made by facsimile or telephone.

All seven pieces of legislation summarized in the Appendix provide an opportunity for victims to apply for some form of an emergency order, although the terminology differs

[22] B. MacDonald, "The Domestic Violence and Stalking Prevention, Protection and Compensation Act (Underneath the Golden Boy: A Review of Recent Manitoba Laws and How they Came to Be)" (2001), 28 *Man. L.J.* 269.

[23] *M.L.A.* v. *R.S.,* [2000] YTSC 534.

between jurisdictions. The applications may be made *ex parte,* and the standard of proof is the balance of probabilities. Each piece of legislation contains a list of possible provisions for inclusion in the emergency order, with the final provision an open one to allow the judge or justice of the peace to consider other reasonable terms.

Yukon's Emergency Intervention Order (EIO) section is essentially the same as Saskatchewan's, although the Yukon legislation added a firearms restriction to the list of provisions available in the EIO. In Alberta, the broader term of "weapons" is used instead of firearms, as is also the case in Nova Scotia. In Manitoba, the legislation permits the emergency order to contain a provision confiscating the respondent's firearms, explosives and weapons. In Prince Edward Island, emergency protection orders may not exceed 90 days in length without a court order. In Alberta, s. 7(2) of the legislation states that an order cannot exceed one year in duration.

Courts in the Yukon, Saskatchewan, Prince Edward Island, Alberta, Ontario and Nova Scotia must confirm the emergency orders. Manitoba's legislation does not require confirmation of an emergency *ex parte* order made by a Justice of the Peace, though allows a respondent to apply for a review of the order.

All of the legislation except Nova Scotia's Bill 79 allow for a second form of protection order to be granted by the court through a regular application process. Prince Edward Island's legislation is clearly drafted by referring the court to the emergency protection order for a list of provisions that may be included in the court order and then adding some provisions unique to the court order. The other jurisdictions re-list the possible provisions from an emergency order, with the addition of other provisions. The provision recommending counselling to the respondent appears in Yukon's legislation, as well as the legislation of Saskatchewan and Manitoba. Alberta's legislation permits the court to order required counselling for the respondent, as does the legislation in Ontario. Prince Edward Island's law is silent on this matter.

In all jurisdictions except Alberta, the legislation provides for a judicial review of the emergency order before it is confirmed by a judge, as well as for a review after the confirmation. Yukon is unique in that the application for review of an EIO cannot be brought until the EIO is confirmed. In Saskatchewan, Prince Edward Island, Manitoba and Nova Scotia, an application for review can be submitted as soon as an EIO is served upon the respondent. Thus, whereas in other jurisdictions a respondent can immediately question the *ex parte* order and have an opportunity to be heard, in the Yukon the respondent's rights are suspended for a longer period of time. Further, only in the Yukon is the respondent required to make an application to the Supreme Court (or equivalent Superior Court) to have an order reviewed.

Warrants of Entry are provided for in the legislation of the Yukon, Saskatchewan, Alberta and Ontario. The legislation in Ontario's legislation allows for regulations to permit Warrants of Entry. The sections providing for Warrants of Entry are similar for the jurisdictions that have one, although Alberta's legislation requires a judge to issue the warrant as opposed to a Justice of the Peace in the Yukon and Saskatchewan.

All of the jurisdictions have immunity clauses protecting those who act in good faith pursuant to the legislation, except for Manitoba. Most of the provincial and territorial legislation protects a peace officer, a clerk of the court or registrar, and any other person. Prince Edward Island's s. 15, however, specifies that no action lies against a peace officer, the Registrar, a Justice of the Peace, a representative of Victim Services or any other person. Although arguably the additional professionals listed in Prince Edward Island's legislation would be protected by the "any other person" clause in other jurisdictions, it is worth noting the parties that the Prince Edward Island legislation specifically lists, as this was a concern raised in one of our focus group discussions.

Most of the provincial and territorial family violence legislation includes a provision dealing with the consequences of breaching an order under the Act. The legislation from Saskatchewan and Alberta is silent with regard to a penalty, relying on the general summary offence statutes in each province. The wording of Yukon's legislation and Prince Edward Island's legislation is similar, although the amount of the monetary fine and imprisonment differ. Nova Scotia's legislation is also similar, although it includes a provision permitting a peace officer to arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an emergency protection order. The legislation in Manitoba simply specifies that an order filed with the court is a court order and can be enforced as such. Ontario's Act provides that emergency intervention orders shall be enforced by peace officers under the *Criminal Code* s. 127.

The Nova Scotia statute makes clear that the terms of an emergency protection order prevail over the terms of any custody or access order made under the federal *Divorce Act* or provincial legislation (other than child protection laws).

3.1.2 Case Law

A number of reported cases in Saskatchewan have interpreted the *Victims of Domestic Violence Act,* which was the first Canadian jurisdiction to enact this type of civil legislation. Outside of Saskatchewan, there are few reported decisions interpreting domestic violence legislation, and these cases tend to cite the Saskatchewan cases discussed above when interpreting their own legislation.

In 1995, two cases from the Saskatchewan Court of Queen's Bench interpreted the Act.[24] In *Bella,* an emergency intervention order was revoked because the court held that it had been obtained in a situation that was not a true emergency. No blows were struck and the incident of shaking the respondent and pulling her off the couch was brief, followed by an apology by the applicant. There was no reason to believe the incident would be repeated, and the parties continued to reside together for the five days between the incident and the appearance before the Justice of the Peace without further altercation or even argument. The Court made it clear that "an order is not to be granted simply to alleviate unhappiness or discomfort or to improve a less than ideal

[24] *Bella* v. *Bella* [1995] S.J. No. 253 at para. 12 and 13, online: QL (SJ); *Dolgopol* v. *Dolgopol* [1995] S.J. No. 90, online: QL (SJ).

situation, but only to provide protection in a situation of emergency." Additionally, "[t]he violence must be of sufficient seriousness as to justify an emergency intervention. Alternatively, the situation must be of such urgency…meaning a real likelihood of violence occurring or being repeated, as to justify an emergency intervention." Thus, the Act was interpreted to require either seriousness or urgency.

In *Dolgopol*, the Saskatchewan Court held that urgency was required for an emergency order to be made. The Court noted that there was no element of emergency in the application because the domestic violence incident occurred three days before the victim made an application for an emergency order. Thus, the court terminated the order and held that, as the victim was not at risk of immediate harm, she should have waited and made an application to the court.

In a third Saskatchewan case illustrating the reluctance of the court to uphold *ex parte* orders except in clear cases of emergency, an emergency intervention order was set aside by the court.[25] The victim brought an application for the order while the husband was in the psychiatric ward of the hospital. Although she stated that she feared that he would check himself out and come and harm her, she was aware that he was being held in the ward for a minimum of 21 days. The Court held that an *ex parte* order without a judge was not necessary for the victim's immediate protection.

Judicial revocation of emergency orders in Saskatchewan has continued to occur where an element of urgency does not exist,[26] or where there was an isolated incident without likelihood of repetition, and therefore not serious.[27] Saskatchewan's *Victims of Domestic Violence Act* "is a protective 'shield' for a cohabitant. It is a very powerful statute. It must be carefully administered. And it must never be used as a 'sword' against another cohabitant."[28]

The 1998 Prince Edward Island decision in *A.L.G.C. v Prince Edward Island* dealt with a challenge to the constitutional validity of that province's legislation.[29] That decision upheld most of the Act, but some portions of it were ruled unconstitutional. This decision may have implications for the Yukon *FVPA*.

Justice Jenkins J. accepted that a province (or territory) has the jurisdiction to enact this type of civil legislation without infringing on the federal criminal law jurisdiction, and that the statutory delegation of the authority to make an emergency order to a Justice of the Peace is valid. The Court also held that the inclusion of "emotional abuse" in the definition of "family violence" does not render the definition unconstitutionally vague or unduly broaden the definition, because an order cannot be issued without determining that the seriousness or urgency of the circumstances merits the making of an order.

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[25] *McKay-Staruiala* v. *Staruiala* [1996] S.J. No. 722, online: QL (SJ).

[26] *Mosionier* v. *Mosionier* [1997] S.J. No. 732, online: QL (SJ).

[27] *MacDonald* v. *Kwok* [1997] S.J. No. 476, online: QL (SJ).

[28] *Meyers* v. *Roth* [1996] S.J. No. 489 at para. 8, online: QL (SJ).

[29] *A.L.G.C.* v. *Prince Edward Island* [1998] PEIJ 15, online: QL (PEIJ).

The Court also held that the granting of *ex parte* orders does not violate the *Charter*, since the legislation deals with the valid objective of providing emergency protection to victims of violence. The Court also upheld the constitutional validity of the adoption of a civil standard of proof for the making of an emergency order.

One provision of the statute which was ruled unconstitutional was the section that dealt with the confirmation by a judge of the emergency order of the Justice of the Peace. The Court held that it is a violation of the "principles of fundamental justice" for the confirmation process to occur without notice to the respondent, and hence was a violation of section 7 of the *Charter*. It should be noted that at the time of the decision of Jenkins J, unlike in the Yukon, the emergency order in PEI did not contain a statement that the respondent had the right to make an application for review of the order (though this right is in the statute). It is submitted that notwithstanding the decision in *A.L.G.C. v Prince Edward Island,* the confirmation process in Yukon's *FVPA* is valid, since the form used in the Territory does provide the respondent with information about the right to seek review of an EIO. However, the fact there is no right in the *FVPA* for a respondent to seek review of an EIO until after the confirmation of the order (i.e., three days' wait) may be constitutionally problematic. In most other Canadian jurisdictions a respondent may seek review without waiting for confirmation.

The Court also ruled that it was a violation of the *Charter* to allow a court to use evidence of the applicant from the original *ex parte* application at a confirmation or review hearing, since the respondent may have no opportunity to cross-examine the applicant or otherwise challenge this evidence, as there is no statutory requirement for an applicant to attend the confirmation or review hearing. It is submitted that this aspect of the decision in *A.L.G.C. v Prince Edward Island* is questionable. There are many constitutionally valid examples in both civil and criminal law of a person being faced with evidence that they may not be able to challenge by cross-examination, hearsay evidence for example. It is true that in the Yukon if the applicant fails to attend a confirmation or review hearing, the respondent may be faced with the statements made to the Justice of the Peace being considered by the court on a review or confirmation hearing without an opportunity to cross-examine the applicant on her statements. However, if the applicant fails to attend, the respondent will have a considerable advantage in challenging any evidence from the prior hearing, which renders the whole process consistent with the principles of fundamental justice.

In response to these rulings of Jenkins J., some amendments were enacted to the Prince Edward Island *Victims of Family Violence Act*.[30]

A final issue which Jenkins J. considered was the constitutionality of lengthy EIOs. Justice Jenkins did not have to rule on this issue, since the order in question was only for 30 days, but he did "offer the opinion that the ninety day period [allowed in the Act] does appear excessive and therefore would be in jeopardy upon a future constitutional challenge." The judge explained:

[30] S.PE.I. c. 11.

> Emergency protection orders are intended to deal with emergencies. They are issued without notice to the respondent….Such an order can preclude a respondent from substantially all his rights regarding both family and property.... While the general legislative response is legitimate, the duration should only be what is necessary to accomplish this by the least drastic means....a shorter maximum duration of no more than thirty days would demonstrate to affected persons the need for expedition, and would be more clearly explainable to, and acceptable by, respondents. Better acceptance should, in turn reflect a high level of acceptance and durability for emergency orders….[31]

As noted above, judges in the Yukon Territory have expressed similar concerns about the maximum duration of EIOs under the *FVPA,* albeit not in constitutional terms. While the geography and difficulty in some localities in obtaining access to the courts and related services may justify a longer maximum duration for orders in the Yukon Territory than elsewhere in Canada, even in the Yukon *ex parte* orders made by a Justice of the Peace of longer than ninety days may be constitutionally problematic.

There are no other reported cases that have ruled on the constitutionality of the confirmation process or the duration of orders, and in all other Canadian jurisdictions the judicial confirmation process is carried out without notice to the respondent, except in Manitoba where there is not even a requirement for confirmation by a judge of an emergency order made by a Justice of the Peace.

In August 2001, the Manitoba Court of Queen's Bench allowed a respondent to proceed with a challenge to the constitutional validity of the *Domestic Violence and Stalking Prevention, Protection and Compensation Act,* although his particular order has been rendered moot.[32] There is, however, no report of a decision on the actual *Charter* challenge.

3.2 Legislation in Other Countries

3.2.1 United Kingdom

In the United Kingdom, civil legal protection against domestic violence is available under the *Family Law Act 1996.* Under this legislation, victims can apply for court orders against someone with whom they have lived, share parental responsibility or currently live, or someone the victim has agreed to marry. Cohabitants are defined as "a man and a woman who, although not married to each other, are living together as husband and wife," thus it appears that same-sex couples are excluded from the legislation.

Although the relevant part of the *Family Law Act 1996* (Part IV) is entitled "family homes and domestic violence," violence does not appear as a defined term. Molestation and harm, including both physical and mental harm, are referenced as important considerations, however. Occupation orders address issues of who may occupy the

[31] Ibid, at para. 35.
[32] *Head* v. *Leader* [2001] M. J. No. 366, online: QL (MJ).

dwelling-house and whose rights to ownership are restricted or suspended. Non-molestation orders, which can be obtained in conjunction with an occupation order or separately, prohibit a respondent from molesting a victim or a relevant child. Thus, the civil orders available to victims in the UK call for an end to the abusive behaviour, and may also prevent the abuser from entering the home.

Applications for orders must be made to a magistrates' court. In any case where it is just and convenient to do so, the court may make an occupation order or a non-molestation order, even though the request is made through an *ex parte* proceeding. The respondent does not need notice of the proceedings. The *Family Law Act 1996* permits the Rules of Court to authorize a prescribed person to represent a victim of domestic violence. Thus, although the law itself does not authorize a designated applicant on behalf of the victim like in many Canadian jurisdictions, the Rules of Court may specify that this is permissible.

In the United Kingdom, the court may attach a power of arrest so the police may arrest an abuser if an order is not obeyed. In fact, if a court is making a non-molestation or an occupation order and it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child, the court is required to attach a power of arrest to one or more provisions of the order. If the court is satisfied that the applicant or child will be adequately protected without a power of arrest, the court is not required to attach the power of arrest.

An occupation order or non-molestation order may be varied or discharged by the court. Applications may be made by the respondent or the victim for a variation or discharge. In the case of non-molestation orders directed at children, the court may vary or discharge the order even if no application is made.

3.2.2 Australia

In 1999, the Working Group of Commonwealth, State and Territory officials prepared a model domestic violence statute based on a previous model and subsequent legislation passed in each of the states and territories.[33] The report contains detailed recommendations for domestic violence provisions as well as a summary of what provisions appear in what legislation.

The terminology used in Australia, as in New Zealand, is that of "protected person" instead of victim or "family member." This is the terminology currently used in the legislation of Victoria and New South Wales. The definitions differ between jurisdictions, such as in Queensland where same-sex couples are included. The model legislation prepared by the Working Group does not include dating relationships. Additionally, the draft report recommends using defendant instead of respondent in the terminology to emphasize that domestic violence is a crime.

[33] Partnerships Against Domestic Violence, *Model Domestic Violence Laws: Report April 1999,* online: <http://www.ag.gov.au/publications/domesticreport.pdf> date accessed 11 March 2002.

Like in Canada, most jurisdictions in Australia allow for interim protection order applications to be made by telephone. Authorized justices, including Justices of the Peace, are able to issue the protection orders. The New South Wales procedure, allowing for an application over the phone where domestic violence is believed to have occurred or is likely to occur, was endorsed by the Working Group. The current Victoria legislation restricts the telephone access to weekends and other hours that are not regular working hours. The Working Group recommended that the police should be able to make the applications on behalf of the protected persons. The consensus, however, was that the exact list of who could make the application in each jurisdiction should vary according to the particular needs and availabilities of the jurisdiction. The Working Group notes that the interim protection orders are for times of emergency, and the evidentiary standard is not high.

The provisions appearing in interim protection orders in Australia are similar to those found in Canadian jurisdictions. The defendant may be restricted from approaching the protected person, and from entering or remaining at the premises, whether or not the defendant has legal or equitable interest in the premises. Although most of the Australian jurisdictions impose a time limit on the interim orders, the actual time limits vary among jurisdictions. In Tasmania the interim orders last 5 days; in Queensland, an order lasts no more than 30 days. The Working Group recommended a period of 14 days with an option for the court to extend the time period, if necessary. The Working Group concluded that an ultimate time limit is necessary because the interim protection order is issued without a hearing.

The Northern Territory provides for variations in interim protection orders over the phone. The Working Group, however, concluded that they did not wish to regularize the use of the phone as an alternative to live evidence and applications, except in emergency situations. An application for a re-hearing can be made to the court.

In addition to interim protection orders, protection orders are available from the court. As in Canadian jurisdictions, the standard of proof for obtaining an order is the civil standard of balance of probabilities.

Some jurisdictions in Australia have maximum time limits for protection orders, such as in Queensland where a protection order lasts for a maximum of 2 years, although a court can extend the order. The legislation in New South Wales and Australian Capital Territory are similar. The Working Group recommends not having an arbitrary length of time for a protection order.

The conditions that can be included on a protection order are similar to those listed for interim orders. The Working Group makes two recommendations: inclusion of a weapons provision and inclusion of a recommendation to therapy condition.

In 1991 the model legislation for Australia included a firearms provision. As is found currently in Victoria as well as in Canadian jurisdictions such as the Yukon, the Working Group recommends expanding the provision to cover all weapons. Rather than restricting a defendant from owning firearms, the Working Group recommends “directing

the defendant to dispose of a thing that the court is satisfied was used, or may be used, by the defendant to commit an act of domestic violence against the aggrieved protected person or a named protected person." Additionally, the Working Group also recommends "prohibiting the defendant from acquiring or having in the defendant's possession" any weapons that must be disposed of according to the order. Thus, the model legislation requires a defendant to give up his or her weapons, and also prevents the defendant from acquiring more during the lifetime of the order.

The Working Group discusses compulsory counselling provisions at great length. Victoria provides a power to compel the defendant to attend counselling. However, representatives from the other Australian jurisdictions questioned whether counselling under compulsion is effective. Thus, model legislation chose to retain the power to recommend counselling but not the power to compel counselling.

Following Queensland, Victoria, Australian Capital Territory and South Australia, the Working Group recommends including a provision in domestic violence legislation allowing the police to enter and search a residence without a warrant. Additionally, the model legislation includes a provision allowing a respondent to be detained for up to four hours, as a "cooling off" mechanism.

Australian legislation currently includes penalties for the breach of a protection order. Breaching an order is a summary offence in Australia. Existing penalties are based upon the 1991 model legislation of six months imprisonment or a $2,000 fine. In Tasmania, the fine is $1,000. The Working Group recommended increasing the penalties from those currently found in any Australian jurisdictions: $24,000 or 1 year imprisonment for a first offence, and 2 years imprisonment for a subsequent offence. In most of Australia, a defendant can be arrested for breaching an order.

One of the interesting recommendations in the 1999 model legislation report is based on a provision in New Zealand's legislation. New Zealand's domestic violence legislation contains provisions allowing for enforcement of foreign domestic violence orders. Similarly, the Australian Working Group recommends harmonizing the domestic violence law across Australia and developing a consistent set of rules to better enable extra-jurisdiction enforcement.

3.2.3 New Zealand

The New Zealand *Domestic Violence Act 1995* took effect on July 1, 1996, replacing the previous *Domestic Protection Act*. The legislative change allowed for a broadening of the definitions of domestic relationship and domestic violence from the previous legislation.[34]

[34] H. Barwick, A. Gray & R. Macky, *A Summary of Domestic Violence Act 1995: Process Evaluation*, July 2000, available on-line: <http://www.justice.govt.nz/pubs/reports/2000/domestic_eval/just_pub.html> date accessed 22 March 2002.

In New Zealand, a "domestic relationship" exists if the respondent is a partner, shares a household or has a close personal relationship to the protected person (see s. 4). Domestic violence consists of physical abuse, sexual abuse and psychological abuse, which includes intimidation, harassment, damage to property and threats. Additionally, the definition of psychological abuse encompasses a child witnessing domestic abuse.

Protection orders in New Zealand may be granted *ex parte*, without notice to the respondent, if the court is satisfied that otherwise there would be a "risk" of harm or undue hardship. The application is made in court. Although one objective of the Act is to make the process simple, inexpensive and quick, a recent analysis of the process suggests that people rarely apply for assistance under the Act without the assistance of a lawyer.[35] If they do, they are usually advised to consult a lawyer.

The protection orders issued in New Zealand contain some standard conditions, including a prohibition against physical, sexual or psychological abuse or threats of abuse. Additionally, a standard clause specifies that a respondent may not encourage another person to engage in behaviour against a protected person, where that behaviour, if engaged in by the respondent, would be prohibited by the order. The protection order also prevents a respondent from watching, loitering near, or hindering access to a protected person's place of residence, business, employment, educational institution, or any other place the protected person visits often.

A non-contact clause is also included as a standard provision of a protection order. Some experts consider New Zealand a model with respect to child contact because it makes the presumption that there should be no contact with the child unless the court is satisfied that the child's and the victim's safety is not at risk.[36] However, with the express consent of the protected person, the non-contact condition may be suspended if the protected person and the respondent are living in the same residence. Thus, exclusive occupation to the protected person is not an automatic condition. The protected person can apply under s. 52 of the Act for an occupation order, which is made by the court according to the conditions that the court thinks fit. Alternatively, if the protected person does not make an application for occupation, the protected person may make an application for a furniture order under s. 66 of the Act, which grants the protected person possession and use of all or any of the furniture, household appliances and household effects in the residence.

Protection orders in New Zealand also contain standard conditions relating to weapons, such that the respondent must not possess any weapons or have any under his or her control. Additionally, the respondent must not hold a firearms license. In addition to the standard conditions, the court may impose special conditions in the protection order. Special conditions may relate to access to children or any other conditions that are reasonably necessary to protect the protected person from further domestic violence.

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[35] *Ibid.*

[36] L. Kelly, "Specific Domestic Violence Legislation: Examples and Advantages" available online: <http://www.domesticviolencedata.org/3_notice/forum/liz_legn.htm> date accessed 9 March, 2002.

If the protection order is granted in New Zealand without notice to the respondent, then it is termed a temporary protection order. A temporary protection order is in effect for a time given in the order, or until it becomes a final order. A temporary order becomes a final order three months after the date on which it is made, provided the respondent has been served with a copy of the order and has not notified the court that he or she wishes to be heard. The court may discharge a final protection order on application by the respondent or the protected person.

If a respondent violates the provisions of a protection order, that respondent is liable on summary conviction to a maximum fine of $5,000 or to imprisonment for up to 6 months. Additionally, the police are given the power to arrest for breach of a protection order without warrant. A respondent so arrested cannot be released on bail during the first 24 hours following the arrest.

3.2.4 United States

Currently all 50 states in the United States have civil law statutes permitting victims of domestic abuse to obtain some form of protective order. In addition to civil laws, temporary criminal law restraining orders, considered to be the more powerful legal tool for stopping domestic violence, are available in all states.[37] Some states allow police to issue emergency protective orders when court is not in session. Victims then must go to court on the next business day to obtain a temporary restraining order.[38]

Many of the states have a longer history of experience with civil domestic violence solutions than Canadian provinces. Through a statistical comparative analysis of the responses to female partner abuse in Buffalo, New York, Toronto and London, Ontario, one author concluded that pro-arrest policing policies play a vital role in restricting domestic violence against women.[39] This study was conducted before any civil domestic violence legislation was enacted in Canada, although a civil remedy was available in New York. Although focussing on the effect of police arrest policies, the author suggested that pro-arrest policies are not sufficient, however, and complementary civil remedies outside the sphere of the criminal law would be valuable in Canada to prevent domestic violence.[40]

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[37] Nolo Law for All, "Domestic Violence: Taking Action FAQ," online: <http://www.nolo.com/lawcenter/faqs/detail.cfm/objectid/7574C275-8115-489A-A9352495> date accessed 27 January 2002.

[38] *Ibid.*

[39] M. A. Drumbl, "Civil, Constitutional and Criminal Justice Responses to Female Partner Abuse: Proposals for Reform" (1993), 12 Can. J. Fam. L. 115.

[40] *Ibid*.

One of the key purposes of civil and criminal legislation involving emergency or protection orders is the prevention of further abuse. Little research has quantitatively investigated whether protective orders save lives and deter violence, however.[41]

American studies have found that 23% to 50% of women who receive a protective order are revictimized, though only a minority of women report their revictimization to the police or courts.[42] Revictimization is more likely for women of lower socio-economic status and racial minority group membership; revictimization is also more likely if the perpetrator has a previous arrest history and shares biological children with the victim.

A recent US study investigated factors reducing time to domestic violence revictimization.[43] The study investigated the prevalence and time to revictimization among three intervention groups. The average number of days to revictimization with the group that received some form of a court protective order was 629 days, whereas for the group whose spouse was arrested the number of days to revictimization was 622. The number of days to revictimization for the group that had both an arrest and a protective order was 608 days. These differences, however, were not statistically significant. Thus, no one intervention seemed more effective than the others in reducing the prevalence or time to revictimization.

However, the authors note that some interventions may result in greater feelings of empowerment for certain women, which may facilitate reduced revictimization. The authors also suggest that other variables may be moderating the relationships, such as initial police response, past court experiences, and socio-economic status. It appears that no solution to domestic violence may be appropriate for all victims at all times. Rather, it is important to have a variety of solutions available so that a particular victim in a particular situation may choose an option that is most likely to assist in the recovery and empowerment process.

One of the strengths of the Yukon's *FVPA* is that it provides additional remedies for victims of domestic violence and those who assist the victims. If a victim worries that an arrest will result in anger, hostility and ultimate reprisal by the respondent, the victim can still seek protection through alternative remedies. In order to better assist victims and ensure that appropriate remedies are available, however, further research is clearly needed.

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[41] N. White, "Court Orders can Trigger Abuser's Violent Behavior," online: <http://www.s-t.com/projects/DomVio/courtorders.HTML> date accessed 27 January 2002.

[42] D.P. Mears, M. J. Carlson, G. W. Holden & S.D. Harris (2001), "Reducing Domestic Violence Revictimization: The Effects of Individual and Contextual Factors and Type of Legal Intervention," 16 *Journal of Interpersonal Violence* 1260, at 1263.

[43] *Ibid*.

4.0 CONCLUSION AND RECOMMENDATIONS

The Yukon was one of the first jurisdictions in Canada to enact civil legislation to deal with domestic violence, so it was appropriate and timely to undertake this review of the effectiveness of the *Family Violence Prevention Act* and problems with its implementation.

Since the *FVPA* came into effect in 1999, it has contributed to an improvement in the protections available to victims of domestic violence in the Yukon, though use of the Act has fallen significantly in the first half of 2002.

While there is apparently no publicly available document that sets out the objectives of the Act,[44] it is apparent that the Act is intended to offer victims an expeditious means of securing access to the civil justice system, as an alternative or supplement to a criminal justice response. By offering victims who are unwilling or unable to invoke the criminal justice system a means of access to the justice system, the *FVPA* increases the number of victims who can be protected. Allowing for applications to be obtained at a distance through use of telephone and fax is necessary in the Yukon. Allowing for applications to be made with the assistance of Victim Services workers and RCMP officers has been very important for the effective implementation of the Act.

The objectives of the *FVPA* should be clarified and articulated. Future research should then measure the effects of the Act against the specified objectives.

The Yukon has devoted significant resources to domestic violence and has made significant progress in dealing with this most serious problem. The *FVPA* has been an important part of the response to domestic violence. However, the effectiveness of the Act would be enhanced if it were part of a clearly articulated strategy for responding to and preventing family violence. The articulation of such a strategy would allow for better coordination and linkage of services, and may reduce the frustration that some professionals feel about the Act.

Like all of the social and legal responses to domestic violence, the *FVPA* cannot be understood in isolation. Its effectiveness and limitations must be understood in the context of a range of legal, institutional and social factors. While there are clearly some abusive spouses for whom a civil response is inadequate, there are others who will be constrained by the knowledge that there is a civil order and that its violation will have legal and social consequences. Although the justice system can and must be improved to increase protections for victims of violence, the justice system alone will never eliminate family violence or be able to ensure the safety of all victims.

While the authors of this report discovered little evidence of injustice to alleged perpetrators of family violence as a result of *FVPA* applications, some of the court

[44] The authors of this report were provided with Yukon Justice, "*Family Violence Prevention Act*: Policy & Procedure Training Manual" (revised May 2001). This is a helpful document, but it does not give a clear statement of the objectives of the Act or a clear indication of when the Act should be used in the alternative to or in addition to a criminal justice response or other legal process.

decisions and our meetings with justice system professionals reveal that there is also the need for legislative and institutional reforms to ensure the fairness of the justice system for those who are alleged to have perpetrated domestic abuse. Further, the failure to introduce some of the reforms recommended here to ensure the fairness of the *FVPA* may result in successful *Charter* challenges.

There are a number of issues related to the *FVPA* that need to be addressed to improve its effectiveness, clarity and fairness. A number of specific recommendations of the authors of this report are set out here, and further issues are identified that the government of the Yukon Territory may wish to address.

4.1 Articulation and Communication of Domestic Violence Response Strategy

The objectives of the *FVPA* and its relationship to other legal remedies should be communicated to professionals and members of the public in training materials and brochures. The lack of a clear policy statement from the government about situations in which it may be appropriate to invoke the *FVPA* may contribute to some of the frustration that professionals feel in dealing with the Act, and some of the decline in its use in the first half of 2002.

4.2 Legislative Reforms

- Change "firearms" to "weapons" in s. 4(3)(e) to allow for the surrender of a broader range of potential weapons that may pose a threat of harm. An order for the surrender of any weapon should continue to be a matter of judicial discretion.

- Emergency Intervention Orders represent a significant interference with the rights of respondents, and are made without notice to the respondent and without a hearing. Respondents should have the right seek the review of an EIO before a judge of the Yukon Territorial Court prior to the 3-day confirmation decision.

- The statutory maximum for an Emergency Intervention Order (EIO) should be 90 days. If a longer period of protection is required, a victim should return to court for a Victim's Assistance Order, or other relief under family law legislation or a recognizance under s. 810 of the Crimi*nal Code*.

- If the original EIO is made by a Judge of the Territorial Court, there should be no need for confirmation under s. 5 of the Act by another judge, though there should be the right to apply for a hearing to review the order.

- In s. 1, the term "court" is defined to include both "the Territorial Court and the Supreme Court." At least in theory, a s. 5 confirmation and rehearing for an EIO could be held in either court, though in practice it is always done by a Territorial Court. A VAO can be sought in either court under s. 7. But the review of an EIO can only be sought by a respondent under s. 8 in the Supreme Court. Given the

greater accessibility of the Territorial Court to unrepresented individuals and those outside of Whitehorse, a s. 8 review should be possible in either level of court. If respondents have a choice, it seems more likely that a review will be sought in Territorial Court, which is the level of court that carries out emergency order reviews under legislation in most other jurisdictions in Canada. However, if there is also a related Supreme Court matter, for example dealing with property issues or custody or access, it may be appropriate to have a review in the Supreme Court.

- The *FVPA* should specify that the terms of an Emergency Intervention Order prevail over the terms of any custody or access order made under the federal *Divorce Act* or territorial legislation (other than child protection laws). Protection from violence must be a priority, and Justices of the Peace and judges making orders are required by s. 4(2)(d) to have regard to the "best interests" of the child in making an EIO. This, however, makes it even more important to address the recommendations above about a fair review process and a limited duration for EIOs.

- Judge Lilles in *MacNeil*,[45] suggested that the use of the term "reasonable grounds" in s. 4(1) of the *FVPA* is "superfluous and confusing." Section 2(5) provides that findings are to be based on the civil standard of proof, proof on the balance of probabilities. The concept of "reasonable grounds" as a requirement for the making of an EIO (s. 4(1)) and a VAO (s. 7(1)) is inconsistent with s. 2(5) of the Act and with the legislation in other Canadian jurisdictions. It may also suggest a low standard that is inconsistent with the fact that this is an *ex parte* application, and may be open to challenge under the *Charter of Rights.* The words "reasonable grounds" in ss. 4(1) and 7(1) should be deleted, though training for Justices of the Peace and other professionals should explain that this is intended to reflect present practice and law, not to require a major change in practice.

- Although "family violence" is a defined term in s. 1, the term "domestic violence" is used in s. 7 as the basis for obtaining a VAO. In *MacNeil*, Judge Lilles suggested that this was an intentional distinction, with "domestic violence" being a broader concept. In all other jurisdictions, just one term is used throughout the statute, and it seems likely that this was the intent in the Yukon *FVPA.* The term "domestic violence" in s. 7 should be replaced by "family violence" (or in the alternative if there is an intent to have a broader concept of "domestic violence" for the granting of a VAO, this should be made clear and a definition should be provided in the Act).

- Although arguably Victim Services workers are already protected by s. 15 of the *FVPA*, they should be explicitly mentioned in the immunity provisions of s. 15 (as in Prince Edward Island).

- There are a number of minor technical or typographical errors that should be corrected by legislative amendment:

[45] Para 39.

- S. 2(1)(b) refers to a person "authorized by the regulations to apply on behalf of a victim…," while s. 17(d) refers to a "designated person." The same term should be used.

- In s. 5(10), the period after "Act" should be a comma.

- In s. 8(1), the first letters of "supreme court" should be capitalized.

- S. 8(1) of the *FVPA* reads, "At any time after an emergency assistance order has been confirmed or a victim's assistance order has been made…" There is no "emergency assistance order" under the *FVPA*, and "emergency intervention order" was undoubtedly intended.

- The Regulations skip from s. 19 to s. 21. S. 21 should be renumbered as s. 20, and the following sections should be renumbered accordingly.

- An "or" should be inserted between s. 17(1)(a) and 17(1)(b) in the Regulations.

There were a number of other issues raised in the course of this review that could be the subject of legislative reform, but that are not the subject of recommendations in this report. These issues may, however, merit further study. They are:

- Increasing the penalties for breach of orders: There are real concerns in every jurisdiction about abusers failing to comply with the terms of recognizances, restraining orders and civil court orders such as those obtained under the *FVPA*. Some abusers, especially those with histories of criminal behaviour, lack respect for court orders and these orders may simply become "pieces of paper" that are ignored by these individuals. In these cases, a criminal response and immediate, effective police action are needed. However, It is not clear that increasing penalties or directly linking enforcement of *FVPA* orders to the *Criminal Code* would increase the likelihood of compliance. Indeed, to this point there have not been any completed prosecutions for breach of the Act, so it may be premature to conclude that the penalties are inadequate.

  Although some of those involved in the administration of justice do not seem to be aware of it, the *FVPA* provides for the possibility of imprisonment for breach of an order. All professionals need to be trained to understand punishment in the form of imprisonment is possible, and respondents and victims should be aware of this. All orders made under the Act should state in bold letters that violation of the terms of an order may result in a prosecution under the Act, and a fine of up to $2,000, imprisonment for up to 6 months, or both.

  It would seem that the most significant problems with enforcement and compliance relate to the reluctance of victims to contact the police to report a breach. There is a concern that directly linking the enforcement of these orders to the *Criminal Code* might have the effect of making some victims, especially those with a mistrust of the

police and the criminal justice system, even more reluctant to seek assistance under the Act and to report a breach.

- Inclusion of close personal adult relationships not involving cohabitation: In a number of jurisdictions, those involved in non-cohabiting familial or dating relationships can obtain emergency civil restraining orders under family protection legislation. There is clearly the potential for violence and stalking behaviour in these types of relationship, but we did not hear any representations that in the Yukon the existing *Criminal Code* provisions are inadequate to deal with this type of situation.

- Inclusion of "emotional abuse": Emotional abuse is a serious concern in many intimate relationships, and often exacerbates the effect of violence or threats. However, in view of the exceptional nature of the *ex parte* remedies under the *FVPA* and the difficulty in establishing a legally operative definition of emotional abuse for the purposes of this Act, it seems preferable to deal with this in the context of applications for exclusive possession under the *Family Property and Support Act,* or under other family law statutes.

4.3 Training and Interagency Co-ordination

There is widespread recognition of the need for more education and training for professionals about the Act, and in dealing with domestic violence in general. Domestic violence cases pose unique challenges and dangers, and there is a need for regular training for all professionals who work in this area, and for improvement of interagency cooperation and coordination. At least some of the training and education should involve professionals from different agencies so that they can learn from and about one another.

Members of the legal profession, including Crown prosecutors, also should receive education about the Act and about domestic violence issues.

There is a need for all professionals who work with victims of family violence to understand and respect the role of other professional groups who work with these difficult cases.

4.3.1 Justices of the Peace

The designated Justices of the Peace need more information about the Act and should develop more standardized practices. There should be a standard set of questions or a checklist to provide guidance to Justices of the Peace about how to deal with EIO applications, though clearly each case will have to be dealt with individually.

4.3.2 Police and Victim Services

Given the high rate of turnover of the RCMP and their vital role in dealing with domestic violence cases, regular training is especially important for this professional group. The RCMP need regular training in how to most effectively provide information, support and

protection to victims of family violence. There should be information provided to the police about the relationship and priority of orders under the *FVPA* and other legislation.

Some other suggestions for changes in administration of the Act were made by Victim Services personnel that related to matters within the jurisdiction of Victim Services (e.g., policies and checklist for follow-up to victims). Other concerns were voiced that reached beyond the mandate of this research project, but these issues may need to be addressed in the future (e.g., additional follow-up support to victims; monitoring programs for Victim Services and police responses).

4.3.3 Shelters

There needs to be better communication and relationships between shelter workers and professionals in the justice system, though in the Yukon these relationships seem to be improving. It is important to involve shelter workers in training and the development of policies, though it is also important to respect the role and autonomy of shelters.

Other professionals and community volunteers who work with victims of domestic violence should also be encouraged to attend education sessions about the Act.

4.3.4 Child Protection and Victim Services

Children living in homes where there is spousal violence are at risk of emotional harm as well as direct physical injury. Those who work with adult victims of spousal abuse need training to help understand the risks to children, and in appropriate cases concerns of child abuse and neglect must be directly addressed. This issue must be addressed with much sensitivity since many victims of domestic violence are apprehensive about child protection involvement, and may not seek help if they think that doing this may result in the apprehension of their children. Further, care must be taken not to "punish" victims of domestic violence by inappropriately removing their children from their care. Ultimately, however, the protection of children must be a priority to the protection of the right of privacy of adults. Victim Services workers and police need training about child abuse and neglect issues, and may need to improve communication with Family Services workers.

Since the Yukon does not have mandatory reporting of any child abuse or neglect, it would not be appropriate at this time to recommend mandatory reporting of domestic violence cases to Family Services for a child protection response. The Yukon is the only jurisdiction in North America without mandatory reporting of child abuse and neglect and serious consideration should be given to increasing the protection afforded to children by requiring this. Legislation and policies already mandate reporting of child abuse or neglect by teachers, day care workers, police, and Victim Services workers. Given the apprehensiveness of many victims of domestic violence about child protection involvement, if mandatory child abuse reporting legislation is enacted, it should not require the reporting of cases merely because domestic violence has occurred in the family in which the child lives.

4.4 Administration of Justice

All orders made under the Act should state in bold letters that violation of the terms of an order may result in a prosecution under the Act, and a fine of up to $2,000, imprisonment for up to 6 months, or both. Although the orders currently state that it is an offence under the *FVPA* to disobey the terms of an order, the penalty should be specified.

4.5 Access to Justice

There should be continuing efforts to improve public education about family violence issues, including ensuring that all victims and respondents are informed of their rights and options under the *FVPA.* Information should be made available to the public through an updated brochure as well as through the media (e.g., radio, television).

Consideration should be given to providing access to individuals other than RCMP available outside of business hours to act as designated individuals to make EIO applications on behalf of victims. It may, however, be a challenge to find suitable individuals, whether professionals or volunteers. Although shelter workers or community nurses are available in most communities, this type of role would seem to be inconsistent with their professional roles and responsibilities.

Legal aid should be available to financially eligible victims and respondents who are involved in the review of applications for an EIO, or the making of an application for a VAO. For all individuals, issues of personal safety and maintaining possession of their homes are vital to their individual well-being. Access to legal services may be essential to secure personal safety and possession of the home.

4.6 Further Research

There is a clear need for further research to learn how the justice system and related agencies can more effectively protect victims of domestic violence and reduce levels of offending and reoffending. It is recommended that a further in-depth review of the operation of the legislation should be undertaken two to five years after the implementation of the changes recommended in this report, to ascertain whether they have been effective.

Victim Services are already planning to have a “client satisfaction” survey. Questions should be included in this survey about their perceptions and any concerns about the *FVPA.*

A more in-depth future study should contact victims on a few occasions over a period of months to establish the effectiveness of orders made under the Act in preventing further violence, and to discover more about factors that make victims reluctant to report a breach. It is also important to ascertain what happens after the expiry of EIOs.

There is also a need to survey respondents. Do they feel that they have been treated fairly? What types of legal or social changes would victims and offenders see as helpful, especially in situations of interactive domestic violence?

This research study represents a first attempt to review the issues and concerns that have arisen as a result of the introduction of the *Family Violence Prevention Act* in the Yukon. Further analysis is necessary to understand the effects of the civil remedies available under the Act in curbing domestic violence. This review did not ascertain how many cases involved situations in which the police are laying criminal charges in addition to assisting a victim in obtaining an EIO. Further investigation of police files to confirm the relationship is necessary, but it appears that EIOs offer an important civil alternative to the criminal justice system as a response to family violence.

APPENDIX

COMPARISON OF SELECT PROVISIONS OF CANADIAN DOMESTIC VIOLENCE LEGISLATION

APPENDIX: COMPARISON OF SELECT PROVISIONS OF CANADIAN DOMESTIC VIOLENCE LEGISLATION

Note: The table below summarizes legislation from the seven jurisdictions in Canada that have passed domestic violence legislation. Where the province or territory name is indicated, the reference is to the following legislation:

Yukon	*Family Violence Prevention Act,* S.Y. 1997, c. 12.
Saskatchewan	*The Victims of Domestic Violence Act,* S.S. 1994, c. V-6.02.
Prince Edward Island	*Victims of Family Violence Act,* S.P.E.I. 1996, c. 47.
Alberta	*Protection Against Family Violence Act,* R.S.A. 2000, c. P-27.
Manitoba	*The Domestic Violence and Stalking Prevention, Protection and Compensation Act,* S.M. 1998, c.D93.
Ontario	*Domestic Violence Protection Act, 2000,* S.O. 2000, c. 33 (not yet proclaimed in force).
Nova Scotia	Bill 79, *Domestic Violence Intervention Act,* 2d Session, 58th General Assembly, Nova Scotia, 2001 (assented to 22 November, 2001, not yet proclaimed in force).

Province/Territory	Provision
Yukon	**Definition of "cohabitants" required to enable a victim to apply** 1 "Cohabitants" means (a) persons who have resided together or who are residing together in a family relationship, spousal relationship or intimate relationship; or (b) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time.
Saskatchewan	2(a) "Cohabitants" means (i) persons who have resided together or who are residing together in a family relationship, spousal relationship or intimate relationship; or (ii) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time.
Prince Edward Island	1(d) "family relationship" means (i) a man and a woman who are or have been married to one another or have cohabited in a spousal or sexual relationship; or (ii) members of the same family.
Alberta	1(d) "family members" means (i) a man and a woman who are or have been married to one another or who are residing or have resided together in an intimate relationship, (ii) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time, (iii) persons who reside together and are related to one or more persons in the household by blood, marriage or adoption, (iv) any children in the care and custody of a person referred to in subclauses (i) to (iii), or

	(v) persons who reside together where one of the persons has care and custody over the other pursuant to an order of the court.
Manitoba	1 “Cohabitants” means (a) persons who reside together or have resided together in a family, spousal or intimate relationship; or (b) the persons who are the biological or adoptive parents of a child, regardless of their marital status or whether they have lived together at any time.
Ontario	2(1) Subject to subsection (2), the following persons may apply for an intervention order or an emergency intervention order: 1. A spouse or former spouse, within the meaning of Part III of the *Family Law Act*, of the respondent. 2. A same-sex partner or former same-sex partner, within the meaning of Part III of the *Family Law Act*, of the respondent. 3. A person who is cohabiting with the respondent, or who has cohabited with the respondent for any period of time, whether or not they are cohabiting at the time of the application. 4. A person who is or was in a dating relationship with the respondent. 5. A relative of the respondent who resides with the respondent. (2) A person must be at least 16 years old to apply for, or be the respondent to an application for, an intervention order or an emergency intervention order.
Nova Scotia	1(g) “victim” means a person who is at least sixteen years of age and has been subjected to domestic violence by another person who (i) has cohabited or is cohabiting with the victim in a conjugal relationship, or (ii) is, with the victim, the parent of one or more children, regardless of their marital status with respect to each other or whether they have lived together at any time.
Yukon	**Definition of “family violence”** 1 “family violence” means: (a) any intentional or reckless act or omission that causes bodily harm or damage to property; (b) any act or threatened act that causes a reasonable fear of bodily harm or of damage to property; (c) forced confinement; (d) sexual abuse; or (e) depriving a person of food, clothing, medical attention, shelter, transportation, or other necessaries of life.
Saskatchewan	2(d) “domestic violence” means: (i) any intentional or reckless act or omission that causes bodily harm or damage to property; (ii) any act or threatened act that causes a reasonable fear of bodily harm or of damage to property; (iii) forced confinement; or (iv) sexual abuse.
Prince Edward Island	2(1) “family violence” in relation to a person, is violence against that person by any other person with whom that person is, or has been, in a family relationship. (2) In subsection (1), violence includes (a) any assault of the victim; (b) any reckless act or omission that causes injury to the victim or damage to property; (c) any act or threat that causes a reasonable fear of injury to the victim or damage to property; (d) forced confinement of the victim; (e) actions or threats of sexual abuse, physical abuse or emotional abuse of the victim.
Alberta	1(e) “family violence” includes (i) any intentional or reckless act or omission that causes injury or property damage, the purpose of which is to intimidate or harm a family member, (ii) any act or threatened act that causes a reasonable fear of injury or property damage, the purpose of which is to intimidate or harm a family member,

	(iii) forced confinement, and (iv) sexual abuse, but is not to be construed so as to limit a parent or a person standing in the place of a parent from using force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances;
Manitoba	2(1) Domestic violence occurs when a person is subjected by a cohabitant of the person to: (a) an intentional or reckless or threatened act or omission that causes bodily harm or damage to property; (b) an intentional, reckless or threatened act that causes a reasonable fear of bodily harm or damage to property; (c) conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse; (d) forced confinement; or (e) sexual abuse.
Ontario	1(2) For the purposes of this Act, domestic violence means the following acts or omissions committed against an applicant, an applicant's relative or any child: 1. An assault that consists of the intentional application of force that causes the applicant to fear for his or her safety, but does not include any act committed in self-defence. 2. An intentional or reckless act or omission that causes bodily harm or damage to property. 3. An act or omission or threatened act or omission that causes the applicant to fear for his or her safety. 4. Forced physical confinement, without lawful authority. 5. Sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation. 6. A series of acts which collectively causes the applicant to fear for his or her safety, including following, contacting, communicating with, observing or recording any person.
Nova Scotia	5(1) For the purpose of this Act, domestic violence has occurred when any of the following acts or omissions has been committed against a victim: (a) an assault that consists of the intentional application of force that causes the victim to fear for his or her safety, but does not include any act committed in self-defence; (b) an act or omission or threatened act or omission that causes a reasonable fear of bodily harm or damage to property; (c) forced physical confinement; (d) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation; (e) a series of acts that collectively causes the victim to fear for his or her safety, including following, contacting, communicating with, observing or recording any person. (2) Domestic violence may be found to have occurred for the purpose of this Act whether or not, in respect of any act or omission described in subsection (1), a charge has been laid or dismissed or withdrawn or a conviction has been or could be obtained.
Yukon	**Who may apply for an order on behalf of victim** 2.(1) The following persons may apply for an order under this Act: (a) a victim; (b) a member of a category of persons authorized by the regulations to apply on behalf of a victim with the victim's consent, or (c) any other person on behalf of the victim with leave of a judge of the Supreme Court or of a designated justice of the peace, where the nature of the family violence gives reasonable ground to believe that another person should be allowed to apply on behalf of the victim. (2) Applications must be made in person by the applicant appearing before a designated justice of the peace, unless no designated justice of the peace is readily available. (3) If no designated justice is readily available to hear the application in person, then the application may be made to a designated justice of the peace by telecommunication, and a facsimile order appearing to have been signed by the justice of the peace is as effective as the original document signed by the justice.

	(4) The documents in support of an application must be prepared and used substantially as prescribed by the regulations, or as directed by a designated justice if no regulation directs what is to be done. (5) At the hearing of an application for an order, the standard of proof is to be on a balance of probabilities.
Saskatchewan	8.(1) An application for an order may be made by: (a) a victim; (b) a member of a category of persons designated in the regulations on behalf of a victim with the victim's consent, or (c) any other person on behalf of the victim with leave of the court or the designated justice of the peace. (2) An application for an emergency intervention order is to be in the form and manner prescribed by the regulations and may include an application by telecommunication. (3) At the hearing of an application for an order, the standard of proof is to be on a balance of probabilities.
Prince Edward Island	4… (6) An application for an emergency protection order may be made by (a) a victim; (b) a member of a category of persons designated in the regulations on behalf of, and with the consent of, the victim; or (c) if a victim is incapable of giving consent, any person on behalf of the victim with leave of the justice of the peace. (7) An application for an emergency protection order may be made by telecommunication.
Alberta	6(1) An application for a protection order may be made (a) by a person who claims to have been the subject of family violence by a family member, (b) on behalf of a person referred to in clause (a), with that person's consent, by a person or a member of a category of persons designated in the regulations, or (c) by any other person on behalf of a person referred to in clause (a), with leave of the judge. (2) An application for an emergency protection order must be made in accordance with the regulations, and may be made by telecommunication. (3) Unless this Act otherwise provides, notice of an application under this Act must be given to the respondent or claimant, as the case may be. (4) An application to the Court of Queen's Bench under this Act must be made by originating notice unless it is further to proceedings that have been commenced.
Manitoba	4(2) An application for a protection order may be submitted (a) in person, by the subject; (b) in person, by a lawyer or peace officer with the subject's consent; or (c) by tele-communication, by a lawyer or peace officer with the subject's consent and in accordance with section 5. … 5(2) The designated justice of the peace may administer an oath to a person and receive the person's evidence by telephone if the oath and evidence are recorded verbatim.
Ontario	
Nova Scotia	7 (1) An application for an emergency protection order may be made by (a) a victim; (b) a member of a class of persons designated in the regulations on behalf of the victim and with the victim's consent; or (c) any other person on behalf of the victim and with leave of the designated justice of the peace. (2) An application for an emergency protection order is to be in the form and to be made in the manner prescribed by the regulations.
Yukon	**Emergency Intervention Orders** 4.(1) An emergency intervention order may be granted ex parte by a designated justice of the peace where that designated justice of the peace has reasonable grounds to conclude that:

	(a) family violence has occurred or is likely to occur; and (b) by reason of seriousness or urgency, the order should be made forthwith in order to ensure the immediate protection of the victim. (2) In determining whether an order should be made, the designated justice of the peace shall consider, but is not limited to considering, the following factors: (a) the nature of the family violence; (b) the history of family violence by the respondent towards the victim; (c) the existence of immediate danger to persons or property; (d) the best interests of the victim and any child of the victim or any child who is in the care and custody of the victim. (3) An emergency intervention order may contain any or all of the following provisions; (a) a provision granting the victim and other family members exclusive occupation of the residence, regardless of ownership; (b) a provision directing a peace officer to remove, immediately or within a specified time, the respondent from the residence; (c) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim; (d) a provision restraining the respondent from communication with or contacting the victim and other specified persons; (e) a provision requiring the respondent to surrender all firearms in their possession to a peace officer for whatever period up to 180 days that the justice decides; or, where a firearm has been used or its use threatened, the justice shall require the respondent to surrender all firearms in their possession to a peace officer for whatever period up to 180 days that the justice decides; (f) any other provision that the designated justice of the peace considers necessary to provide for the immediate protection of the victim. (4) An emergency intervention order may be subject to any terms that the designated justice of the peace considers appropriate. (5) Subject to subsection 6(1), an emergency intervention order takes effect immediately, and the designated justice of the peace may fix a date for its expiry. (6) Every emergency intervention order must include the text of subsection 8(1) of this Act.
Saskatchewan	3(1) An emergency intervention order may be granted ex parte by a designated justice of the peace where that designated justice of the peace determines that: (a) domestic violence has occurred and (b) by reason of seriousness or urgency, the order should be made without waiting for the next available sitting of a judge of the court in order to ensure the immediate protection of the victim (2) In determining whether an order should be made, the designated justice of the peace shall consider, but is not limited to considering, the following factors: (a) the nature of the domestic violence; (b) the history of domestic violence by the respondent towards the victim; (c) the existence of immediate danger to persons or property; (d) the best interests of the victim and any child of the victim or any child who is in the care and custody of the victim. (3) An emergency intervention order may contain any or all of the following provisions; (a) a provision granting the victim and other family members exclusive occupation of the residence, regardless of ownership; (b) a provision directing a peace officer to remove, immediately or within a specified time, the respondent from the residence; (c) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim; (d) a provision restraining the respondent from communication with or contacting the victim and other specified persons; (e) any other provision that the designated justice of the peace considers necessary to provide for the immediate protection of the victim. (4) An emergency intervention order may be subject to any terms that the designated justice of the peace considers appropriate. (5) Subject to subsection 4(1), an emergency intervention order takes effect immediately.

Prince Edward Island	4.(1) A justice of the peace, on the application of any person pursuant to subsection (6) in the prescribed form and without notice to any other person, may make an emergency protection order if he or she determines (a) family violence has occurred; and (b) the seriousness or urgency of the circumstances merits the making of an order. (2) In determining whether to make an order the justice of the peace shall consider the following factors: (a) the nature of the family violence; (b) the history of family violence by the respondent towards the victim and whether it is more probable than not that the respondent will continue the family violence; (c) the existence of immediate danger to the victim, other persons or property; and (d) the best interests of the victim and any child or other person in the care of the victim. (3) An emergency protection order may contain any or all of the following provisions; (a) a provision granting the victim or other family members exclusive occupation of the residence for a defined period regardless of any legal rights of possession or ownership; (b) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time; (c) a provision directing a peace officer to accompany a specified person, within a specified time, to the residence to supervise the removal of personal belongings; (d) a provision restraining the respondent from directly or indirectly communicating with the victim or other specified person; (e) a provision requiring the respondent to stay away from any place identified specifically or generally in the order; (f) a provision awarding temporary care and custody or day-to-day care of a child to the victim or some other person; (g) a provision granting temporary possession of specified personal property, including an automobile, cheque book, bank card, health services card or supplementary medical insurance cards, identification documents, keys or other personal effects; (h) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property; (i) a provision restraining the respondent from committing any further acts of family violence against the victim; (j) a provision prohibiting the publication of the name and address of the victim; (k) any other provision that the justice of the peace considers necessary to provide for the immediate protection of the victim. (4) A justice of the peace may make an emergency protection order subject to such conditions as the justice considers appropriate but the duration of the order shall not exceed 90 days unless otherwise ordered by a judge. (5) Subject to subsection 5(1), an emergency intervention order takes effect immediately.
Alberta	2(1) An order under this section may be granted by a provincial court judge or a designated justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines (a) that family violence has occurred, and (b) that, by reason of seriousness or urgency, the order should be granted to ensure the immediate protection of the claimant. (2) In determining whether an order should be granted, the provincial court judge or designated justice of the peace must consider, but is not limited to considering, the following: (a) the nature of the family violence; (b) the history of family violence by the respondent toward the claimant; (c) the existence of any immediate danger to persons or property; (d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant. (3) An order under this section may include any or all of the following: (a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members; (b) a provision restraining the respondent from communicating with or contacting the claimant and other specified persons; (c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

	(d) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time; (e) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant; (f) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence; (g) any other provision that the provincial court judge or designated justice of the peace considers necessary to provide for the immediate protection of the claimant. (4) An order under this section may be subject to any terms and conditions that the provincial court judge or designated justice of the peace considers appropriate. (5) Subject to section 5(1), an order under this section takes effect immediately on the granting of the order. (6) An order under this section must indicate the date, time and place at which the order is scheduled for review at a hearing by a justice of the Court of Queen's Bench, which may not be later than 7 working days after the granting of the order.
Manitoba	4(1)…an application for a protection order may be made to a designated justice of the peace without notice in the manner prescribed by the regulation. … 6(1) A designated justice of the peace may grant a protection order without notice where the justice determines on a balance of probabilities that (a) the respondent is stalking the subject or subjecting him or her to domestic violence; and (b) the subject believes that the respondent will continue the domestic violence or stalking. … 7(1) A protection order granted under subsection 6(1) may include any of the following provisions that the designated justice of the peace considers necessary or advisable for the immediate protection of the subject: (a) a provision prohibiting the respondent from following the subject or a specified person from place to place; (b) a provision prohibiting the respondent from communicating with or contacting the subject or a specified person (c) a provision prohibiting the respondent from attending at or near, or entering, any place that the subject or a specified person happens to be or attends regularly, which may include a place where the subject or person resides, works or carries on business; (d) a provision directing a peace officer to remove, immediately or within a specified time, the respondent from the residence; (e) a provision granting the subject or respondent temporary possession of necessary personal effects (f) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of necessary personal effects in a safe and orderly manner; (g) a provision directing the respondent to deliver up to a peace officer, until a further order is made under the *Criminal Code* (Canada), the *Firearms Act* (Canada) or this Act, (i) any firearm, weapon, ammunition or explosive substance that the respondent owns, possesses or controls, and (ii) any document that authorizes the respondent to own, possess or control an item referred to in subclause (i); (h) when an order includes a provision under clause (g), a provision that, if the respondent does not deliver up the items referred to in the order, a peace officer may for the purpose of seizing of the items enter and search any place where the officer has reason to believe the items are located, with such assistance and force as are reasonable in the circumstances.
Ontario	4.(1) On application, without notice to the respondent, the court or a designated judge or justice may make an emergency intervention order if the court or designated judge or justice is satisfied on a balance of probabilities that, (a) domestic violence has occurred; (b) a person or property is at risk of harm or damage; and (c) the matter must be dealt with on an urgent and temporary basis for the protection of the person or property that is at risk of harm or damage. (2) An application under this section shall contain a summary of all previous and current court proceedings and orders affecting the

	applicant and respondent, including all applications and orders under this Act. (3) An emergency intervention order may only contain a provision that the court could include in an intervention order under paragraph 1, 2, 3, 4, 5, 6 or 7 of subsection 3 (2) which the court or designated judge or justice considers appropriate in the circumstances for the urgent protection of a person or property that is at risk of harm or damage. (4) Subject to subsection (5), any provision of an emergency intervention order may be subject to such terms as the court or designated judge or justice, as the case may be, considers appropriate, including a term that specifies the period of time for which the provision shall be in force. (5) A provision of an emergency intervention order described in paragraph 7 of subsection 3 (2) shall cease to be in force if an order or final determination with respect to the respondent's ownership, possession or control of weapons is made under the *Criminal Code* (Canada) or the *Firearms Act* (Canada).
Nova Scotia	6(1) Upon application to a designated justice of the peace, the justice of the peace may make an emergency protection order to ensure the immediate protection of a victim of domestic violence if the justice of the peace determines that (a) domestic violence has occurred; and (b) the order should be made forthwith. (2) In determining whether to make an order pursuant to this Section, the justice of the peace shall consider, but is not limited to considering, (a) the nature of the domestic violence; (b) the history of domestic violence by the respondent towards the victim; (c) the existence of immediate danger to persons or property; and (d) the best interests of the victim and any child of, or in the care and custody of, the victim. (3) In determining whether to make an order pursuant to this Section, the standard of proof is to be on a balance of probabilities. 8(1) An emergency protection order may do any or all of the following: (a) grant the victim or other family members exclusive occupation of the victim's residence for a defined period regardless of any legal rights of possession or ownership; (b) direct a peace officer to remove the respondent from the victim's residence immediately or within a specified time; (c) direct a peace officer to accompany a specified person, within a specified time, to the victim's residence to supervise the removal of personal belongings; (d) restrain the respondent from directly or indirectly communicating with the victim or any other specified person; (e) require the respondent to stay away from any place identified specifically or generally in the order; (f) grant temporary possession of or control over specified personal property, including an automobile, cheque book, bank card, health services card or supplementary medical insurance cards, identification documents, keys, utility or household accounts or other personal effects; (g) restrain the respondent from taking, converting, damaging or otherwise dealing with property; (h) restrain the respondent from committing any further acts of domestic violence against the victim; (i) prohibit the publication of the name and address of the victim or any other information that may identify the victim; (j) require a peace officer to seize (i) any weapons, and (ii) any documents that authorize the respondent to own, possess or control a weapon referred to in subclause (i); (k) award temporary care and custody of a child of the victim to the victim or to another person; (l) do any other thing that the designated justice of the peace considers necessary to ensure the immediate protection of the victim or any child. (2) A designated justice of the peace may make an emergency protection order for a period not exceeding thirty days. (3) A provision of an emergency protection order made pursuant to clause (1)(j) ceases to be in force upon an order or final determination with respect to the respondent's ownership, possession or control of weapons being made under the *Criminal Code*

	(Canada) or the *Firearms Act* (Canada). (4) An emergency protection order prevails over any order respecting custody of or access to a child including an order made under the Divorce Act (Canada) or the Maintenance and Custody Order Act but does not prevail over any order made under the Children and Family Services Act respecting custody of or access to a child.
Yukon	**Confirmation of Emergency Order** 5.(1) Immediately after making an emergency intervention order, a designated justice of the peace shall forward a copy of the order and all supporting documentation, including his or her notes, to the court in the prescribed manner. (2) Within three working days of receipt of the order and supporting documentation by the court, or, if a judge is not available within that period, as soon as one can be made available, a judge shall: (a) review the order in his or her chambers; and (b) confirm the order where the judge is satisfied that there was evidence before the designated justice of the peace to support the granting of the order. (3) For all purposes, including appeal or variation, an order that is confirmed by a judge pursuant to subsection (2) is deemed to be an order of the court granted on an ex parte application. (4) Where, on reviewing the order and supporting documentation, the judge is not satisfied that there was evidence before the designated justice of the peace to justify granting the order, he or she shall direct a rehearing of the matter. (5) Where a judge directs that a matter be reheard: (a) the clerk of the court shall issue a summons, in the form and manner prescribed in the regulations, requiring the respondent to appear at the hearing before the court; and (b) the victim shall be given notice of the rehearing and is entitled, but not required, to attend and may fully participate in the rehearing personally or by an agent. (6) In addition to any other evidence, the evidence that was before the designated justice of the peace may be considered as evidence at the rehearing. (7) At a rehearing, the onus is on the respondent to demonstrate, on a balance of probabilities, why the order should not be confirmed. (8) Where the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence. (9) At the rehearing, the judge may confirm, terminate, or vary the order or any provision in the order, and may include an order for the preservation of privacy. (10) Despite any other provision of this Act. [sic] an emergency intervention order continues in effect and is not stayed by a direction for a rehearing under this section.
Saskatchewan	5.(1) Immediately after making an emergency intervention order, a designated justice of the peace shall forward a copy of the order and all supporting documentation, including his or her notes, to the court in the prescribed manner. (2) Within three working days of receipt of the order and supporting documentation by the court, or, if a judge is not available within that period, as soon as one can be made available, a judge shall: (a) review the order in his or her chambers; and (b) confirm the order where the judge is satisfied that there was evidence before the designated justice of the peace to support the granting of the order. (3) For all purposes, including appeal or variation, an order that is confirmed by a judge pursuant to subsection (2) is deemed to be an order of the court granted on an ex parte application. (4) Where, on reviewing the order, the judge is not satisfied that there was evidence before the designated justice of the peace to justify granting the order, he or she shall direct a rehearing of the matter. (5) Where a judge directs that a matter be reheard: (a) the local registrar shall issue a summons, in the form and manner prescribed in the regulations, requiring the respondent to appear at the hearing before the court; and

	(b) the victim shall be given notice of the rehearing and is entitled, but not required, to attend and may fully participate in the rehearing personally or by an agent. (6) The evidence that was before the designated justice of the peace shall be considered as evidence at the rehearing. (7) At a rehearing, the onus is on the respondent to demonstrate, on a balance of probabilities, why the order should not be confirmed. (8) Where the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence. (9) At the rehearing, the judge may confirm, terminate, or vary the order or any provision in the order.
Prince Edward Island	6.(1) As soon as practicable after making an emergency protection order and in any event within two working days, the justice of the peace shall forward a copy of the order and all supporting documentation, including notes or tape recordings of the proceedings, to a judge in the prescribed manner. (2) Within five working days of the receipt of the emergency protection order and all supporting documentation by the court, a judge shall review the order and where the judge is satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, he or she shall (a) confirm the order; or (b) vary the order and the order as confirmed or varied shall be deemed to be an order of the court. (3) Where, on reviewing the emergency protection order, the judge is not satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, the judge shall direct a rehearing of the matter in whole or in part before a judge. (4) Where a judge directs that a matter be reheard: (a) the Registrar shall issue a summons in the prescribed form requiring the respondent to appear before the court; (b) the Registrar shall give notice of the rehearing to the victim and the victim is entitled to attend and may fully participate in the hearing personally or by counsel; (c) the Registrar shall give notice of the rehearing to a peace officer and to Victim Services in the areas where the alleged family violence occurred and the victim and respondent reside and the peace officer and a representative of Victim Services are entitled to attend the rehearing; (d) the Registrar shall issue a subpoena to the applicant and the applicant is required to attend the rehearing; and (e) where a child is identified on an emergency protection order, the Registrar shall give notice of the rehearing to the Director of Child Welfare. (5) The evidence that was before the justice of the peace shall be considered as evidence at the rehearing. (6) Where the respondent fails to attend the rehearing, the order may be confirmed in the respondent's absence. (7) At the rehearing, the judge may confirm, terminate, or vary the order. (8) The respondent is entitled to be heard and to examine and cross-examine witnesses at the rehearing. (9) The court may issue a subpoena to the victim.
Alberta	3(1) If a provincial court judge or a designated justice of the peace grants an emergency protection order, the judge or justice of the peace must, immediately after granting the order, forward to the Court of Queen's Bench a copy of the order and all supporting documentation, including any notes. (2) A hearing referred to in section 2(6) must be based on affidavit evidence and any other sworn evidence. (3) The evidence that was before the provincial court judge or designated justice of the peace may also be considered as evidence at the hearing. (4) At the hearing, the justice of the Court of Queen's Bench may, whether or not the claimant or the respondent is in attendance, (a) revoke the order, (b) direct that an oral hearing be held, (c) confirm the order, in which case the order becomes an order of the Court of Queen's Bench, or (d) revoke the order and grant an order under section 4.
Manitoba	
Ontario	4…

	(8) Every emergency intervention order shall, (a) advise the applicant and the respondent that they are entitled to a hearing before the court for the purpose of asking for the variation or termination of the emergency intervention order if either one requests a hearing within 30 days after the respondent is served with the order; and (b) set out the procedures to be followed in order to make the request. (9)Upon making an emergency intervention order, a designated judge or justice shall promptly forward a copy of the order and all supporting documentation, including any reasons for the order, to the court. … 5(2) If a request for a hearing in respect of an emergency intervention order made by a designated judge or justice is not made by the applicant or respondent within the required 30-day period, a judge of the court shall review the emergency intervention order and the supporting documentation, without holding a hearing, and, (a) shall confirm the order if he or she is satisfied that there was evidence before the designated judge or justice to support the granting of the order; or (b) shall order a hearing of the matter if the judge is not satisfied that there was evidence before the designated judge or justice to support the granting of the order or is not satisfied that the evidence before the designated judge or justice supported one or more of the provisions contained in the order. (3) If the judge confirms the emergency intervention order under clause (2)(a), the confirmed emergency intervention order shall be deemed, for all purposes, to be an intervention order made by the court and the clerk of the court shall notify the applicant and respondent of the confirmation.
Nova Scotia	11(1) As soon as practicable after making an emergency protection order and in any event within two working days, the designated justice of the peace shall forward a copy of the order and all supporting documentation, including a transcript or tape recording of the proceedings, to the court in the prescribed manner. (2) Within such period of time, as the regulations prescribe, of the receipt of the emergency protection order and all supporting documentation by the court, a judge shall review the order and, where the judge is satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, the judge shall (a) confirm the order; or (b) vary the order and the order as confirmed or varied shall be deemed to be an order of the court. (3) Where, on reviewing the emergency protection order, the judge is not satisfied that there was sufficient evidence before the justice of the peace to support the making of the order, the judge shall direct a hearing of the matter in whole or in part before a judge. (4) Where a judge directs that a matter be heard, (a) the clerk of the court shall issue a summons in the prescribed form requiring the respondent to appear before the court; (b) the clerk of the court shall give notice of the hearing to the victim and the victim is entitled to attend and may fully participate in the hearing personally or by counsel; and (c) where a child is identified in the emergency protection order, the clerk of the court shall give notice of the hearing to a peace officer and the peace officer is entitled to attend the hearing. (5) The evidence that was before the justice of the peace shall be considered as evidence at the hearing. (6) Where the respondent fails to attend the hearing, the emergency protection order may be confirmed in the respondent's absence. (7) At the hearing, the judge may confirm, terminate or vary the emergency protection order.
Yukon	**Victim's Assistance Order** 7.(1) Where, on application, the court believes on reasonable grounds that domestic violence has occurred, the court may make a victim's assistance order containing any or all of the following provisions: (a) a provision granting the victim and other family members exclusive occupation of the residence, regardless of ownership;

	(b) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the victim or other family members, including the residence, property, business, school or place of employment of the victim and other family members; (c) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the victim, including personal, written 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; (d) a provision directing a peace officer to remove the respondent from the residence within a specified time; (e) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim. (f) a provision requiring the respondent to pay the victim compensation for monetary losses suffered by the victim and any child of the victim or any child who is in the care and custody of the victim as a direct result of the domestic violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application pursuant to this Act; (g) a provision granting either party temporary possession of specified personal property, including a vehicle, chequebook, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects; (h) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property that the victim may have an interest in; (i) a provision recommending that the respondent receive counselling or therapy; (j) a provision requiring the respondent to post any bond that the court considers appropriate for securing the respondent's compliance with the terms of the order; (k) any other provision that the court considers appropriate. (2) A victim's assistance order may be subject to any terms that the court considers appropriate.
Saskatchewan	7.(1) Where, on application, the court determines that domestic violence has occurred, the court may make a victim's assistance order containing any or all of the following provisions: (a) a provision granting the victim and other family members exclusive occupation of the residence, regardless of ownership; (b) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the victim or other family members, including the residence, property, business, school or place of employment of the victim and other family members; (c) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the victim, including personal, written 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; (d) a provision directing a peace officer to remove the respondent from the residence within a specified time; (e) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings in order to ensure the protection of the victim. (f) a provision requiring the respondent to pay the victim compensation for monetary losses suffered by the victim and any child of the victim or any child who is in the care and custody of the victim as a direct result of the domestic violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application pursuant to this Act; (g) a provision granting either party temporary possession of specified personal property, including a vehicle, chequebook, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects; (h) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property that the victim may have an interest in; (i) a provision recommending that the respondent receive counselling or therapy; (j) a provision requiring the respondent to post any bond that the court considers appropriate for securing the respondent's compliance

	with the terms of the order; (k) any other provision that the court considers appropriate. (2) A victim's assistance order may be subject to any terms that the court considers appropriate.
Prince Edward Island	7.(1) Where, on application by a victim in the prescribed form to a judge of the court, the judge determines that family violence has occurred, the judge, within 10 days of receipt of the application or as soon as possible after that, may make a victim assistance order containing any of the following provisions: (a) a provision referred to in subsection 4(3); (b) a provision for access to children on such terms as the judge may determine, but in making such provision the court shall give paramount consideration to the safety and well-being of the victim and the children; (c) any other provision the judge considers appropriate. (2) The judge may make a victim assistance order subject to such conditions as the judge considers appropriate. (3) The existence of other proceedings between the victim and the respondent does not preclude the judge from making a victim assistance order.
Alberta	4(1) An order under this section may be granted by a justice of the Court of Queen's Bench on application if the justice determines that the claimant has been the subject of family violence. (2) An order under this section may include any or all of the following: (a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members; (b) a provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence; (c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties; (d) a provision requiring the respondent to reimburse the claimant for monetary losses suffered by the claimant and any child of the claimant or any child who is in the care and custody of the claimant as a direct result of the family violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under this Act; (e) a provision granting either party temporary possession of specified personal property, including a vehicle, cheque book, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects; (f) a provision restraining either party from taking, converting, damaging or otherwise dealing with property that the other party may have an interest in; (g) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the claimant, including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, with the claimant and other family members or their employers, employees, co-workers or other specified persons; (h) a provision directing a peace officer to remove the respondent from the residence within a specified time; (i) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant; (j) a provision requiring the respondent to post any bond that the Court considers appropriate for securing the respondent's compliance with the terms of the order; (k) a provision requiring the respondent, and any other family member that the Court considers appropriate, to receive counselling; (l) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence; (m) any other provision that the Court considers appropriate.
Manitoba	14(1) Where, on application, the court determines that the respondent has stalked the subject or subjected him or her to domestic

	violence, the court may make a prevention order with any terms or conditions it considers appropriate to protect the subject or remedy the domestic violence or stalking, which may include any of the following: (a) a provision prohibiting the respondent from following the subject or a specified person from place to place; (b) a provision prohibiting the respondent from communicating with or contacting the subject or a specified person; (c) a provision prohibiting the respondent from attending at or near, or entering, any place that the subject or a specified person happens to be or attends regularly, which may include a place where the subject or person resides, works or carries on business; (d) subject to any order made under section 13 of *The Family Maintenance Act,* a provision granting the subject temporary exclusive occupation of the residence, regardless of ownership; (e) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time; (f) subject to any order made under *The Marital Property Act,* a provision granting either party temporary possession of specified personal property, which may include vehicles, household furnishings, clothing, medical insurance cards, identification documents and keys; (g) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal, in a safe and orderly manner, of personal property owned by a party or granted to him or under clause (h) a provision directing the respondent to deliver up to a peace officer, until a further order under the *Criminal Code* (Canada), the *Firearms Act* (Canada) or this Act, (i) any firearm, weapon, ammunition or explosive substance that the respondent owns, possesses or controls, and (ii) any document that authorizes the respondent to own, possess or control an item referred to in subclause (i); (i) when an order includes a provision under clause (h), a provision that, if the respondent does not deliver up the items referred to in the order, a peace officer may for the purpose of seizing of the items enter and search any place where the officer has reason to believe the items are located, with such assistance and force as are reasonable in the circumstances; (j) a provision requiring the respondent to pay compensation to the subject for any monetary loss suffered by the subject as a result of the domestic violence or stalking, which may include (i) loss of income, (ii) expenses relating to new accommodations, moving, counselling, therapy, medicine and other medical requirements, and security measures, and (iii) legal fees and other costs related to making an application under this Act; (k) a provision prohibiting the respondent from taking, converting, damaging or otherwise dealing with any property in which the subject has an interest; (l) a provision authorizing the seizure, until further order of the court of any personal property of the respondent used in furtherance of the domestic violence or stalking; (m) a provision recommending that the respondent receive counselling or therapy; (n) a provision requiring the respondent to post a bond, with or without sureties or a cash deposit, in an amount the court considers appropriate to secure the respondent's compliance with the order; (o) if the subject and respondent reside or have resided in the same premises, a provision prohibiting the respondent from entering upon the premises while the subject is residing there; (p) if an order has been made under clause 10(1)(c) (no entry to spouse's premises) or (d) (non-molestation) of *The Family Maintenance Act* by a judge of the court, a provision revoking that part of the order.
Ontario	3.(1) On application with notice to the respondent, the court may make a temporary or final intervention order if it is satisfied on a balance of probabilities that, (a) domestic violence has occurred; and (b) a person or property may be at risk of harm or damage. (2) An intervention order may contain any or all of the following provisions that the court considers appropriate in the circumstances for the protection of any person or property that may be at risk of harm or damage or for the assistance of the applicant or any child:

	1. Restraining the respondent from attending at or near, or entering, any place that is attended regularly by the applicant, a relative of the applicant, any child or any other specified person, including a residence, property, business, school or place of employment. 2. Restraining the respondent from engaging in any specified conduct that is threatening, annoying or harassing to the applicant, a relative of the applicant, any child or any other specified person. 3. Requiring the respondent to vacate the applicant's residence, either immediately or within a specified period of time. 4. Requiring a peace officer, within a specified period of time, to accompany the applicant, respondent or a specified person to the applicant's residence and supervise the removal of that person's or another named person's belongings. 5. Restraining the respondent from contacting or communicating with the applicant or any other specified person, directly or indirectly. 6. Restraining the respondent from following the applicant or any other specified person from place to place, or from being within a specified distance of the applicant or other specified person. 7. Requiring a peace officer to seize, i. any weapons where the weapons have been used or have been threatened to be used to commit domestic violence, and ii. any documents that authorize the respondent to own, possess or control a weapon described in subparagraph i. 8. Granting the applicant exclusive possession of the residence shared by the applicant and the respondent, regardless of ownership. 9. Requiring the respondent to pay the applicant compensation for monetary losses suffered by the applicant or any child as a direct result of the domestic violence, the amount of which may be summarily determined by the court, including loss of earnings or support, medical or dental expenses, out-of-pocket expenses for injuries sustained, moving and accommodation expenses and the costs, including legal fees, of an application under this Act. 10. Granting the applicant or respondent temporary possession and exclusive use of specified personal property. 11. Restraining the respondent from taking, converting, damaging or otherwise dealing with property in which the applicant has an interest. 12. Requiring the respondent to attend specified counselling. 13. Recommending that a child attend specified counselling at the respondent's expense. (3) An application under this section shall contain a summary of all previous and current court proceedings and orders affecting the applicant and respondent, including all applications and orders under this Act. (4) Subject to subsection (5), any provision of an intervention order described in subsection (2) may be subject to such terms as the court considers appropriate, including a term that specifies the period of time for which the provision shall be in force. (5) A provision of an intervention order described in paragraph 7 of subsection (2) shall cease to be in force if an order or final determination with respect to the respondent's ownership, possession or control of weapons is made under the *Criminal Code* (Canada) or the *Firearms Act* (Canada). (6) A provision of an intervention order described in paragraph 1, 2, 3, 4, 5, 6, 7 or 8 of subsection (2) shall be enforced by peace officers under the *Criminal Code* (Canada). (7) A provision of an intervention order described in paragraph 9, 10, 11, 12 or 13 of subsection (2) may be secured by a requirement that the respondent, (a) post a bond in the form and amount that the court considers appropriate; or (b) enter into a recognizance in a form acceptable to the court.
Nova Scotia	
Yukon	**Review of an Order** 8.(1) At any time after an emergency assistance order has been confirmed or a victim's assistance order has been made the supreme court, on application by a victim or a respondent named in the order, may: (a) make changes in, additions to, or deletions from the provisions contained in the order; (b) decrease or extend the period for which any provision in an order is to remain in force; (c) terminate any provision in an order; or

	(d) revoke the order. (2) On an application pursuant to subsection (1), in addition to any other evidence, the evidence before the designated justice of the peace or the court on previous applications pursuant to this Act may be considered as evidence. (3) the variation of one or more provisions of an order does not affect the other provisions in the order. (4) Despite any other provision in this Act, an order under this Act, continues in effect and is not stayed by an application under subsection (1). (5) An application under subsection (1) may be made independently of any other proceeding in the court or, so as to avoid inconsistency between orders from different proceedings and to consolidate proceedings, it may be made in another proceeding in the court dealing with the same subject matter between the same parties. (6) Any provision in an order is subject to and is varied by any subsequent order made pursuant to any other Act or any Act of the Parliament of Canada made on the application of the same party.
Saskatchewan	6.(1) At any time after a respondent has been served with an order, the court, on application by a victim or respondent named in the order, may: (a) make changes in, additions to, or deletions from the provisions contained in the order; (b) decrease or extend the period for which any provision in an order is to remain in force; (c) terminate any provision in an order; or (d) revoke the order. (2) On an application pursuant to subsection (1), the evidence before the designated justice of the peace or the court on previous applications pursuant to this Act shall be considered as evidence. (3) The variation of one or more provisions of an order does not affect the other provisions in the order. (4) Notwithstanding any other provision in this Act, an emergency intervention order continues in effect and is not stayed by a direction for a rehearing pursuant to section 5 or an application pursuant to subsection (1). (5) Any provision in an order is subject to and is varied by any subsequent order made pursuant to any other Act or any Act of the Parliament of Canada.
Prince Edward Island	10.(1) At any time after a respondent has been served with an emergency protection order or a victim assistance order, the court, on application by a victim or respondent named in the emergency protection order or a victim assistance order, may (a) make changes to, or terminate, any provision of an emergency protection order or a victim assistance order; (b) decrease or extend the period for which any provision in an emergency protection order or a victim assistance order is to remain in force; or (c) revoke the emergency protection order or a victim assistance order. (2) On an application pursuant to subsection (1) (a) the evidence before a justice of the peace on previous applications pursuant to this Act shall be considered as evidence; and (b) the respondent has the right to be heard and the right to examine and cross-examine witnesses. (3) the variation of one or more provisions of an emergency protection order or a victim assistance order does not affect the other provisions in the emergency protection order or a victim assistance order. (4) Unless otherwise ordered by the court, an emergency protection order or a victim assistance order is deemed to be an order of the court and continues in effect and is not stayed by a direction for a rehearing pursuant to section 6 or an application pursuant to subsection (1). (5) Any provision in an emergency protection order or a victim assistance order is subject to and is varied by any subsequent emergency protection order or a victim assistance order made pursuant to any other Act or any Act of the Parliament of Canada. (6) An emergency protection order that has been varied pursuant to clause 6(2)(b) shall be served on the respondent in the prescribed form and manner. (7) Notice to the respondent on an emergency protection order shall be deemed to give the respondent notice of the court's confirmation of the existing emergency protection order and notice of the respondent's right to initiate a court hearing.

Alberta	
Manitoba	10.(1) At any time after a respondent has been served with an emergency protection order or a victim assistance order, the court, on application by a victim or respondent named in the emergency protection order or a victim assistance order, may (a) make changes to, or terminate, any provision of an emergency protection order or a victim assistance order; (b) decrease or extend the period for which any provision in an emergency protection order or a victim assistance order is to remain in force; or (c) revoke the emergency protection order or a victim assistance order. (2) On an application pursuant to subsection (1) (a) the evidence before a justice of the peace on previous applications pursuant to this Act shall be considered as evidence; and (b) the respondent has the right to be heard and the right to examine and cross-examine witnesses. (3) the variation of one or more provisions of an emergency protection order or a victim assistance order does not affect the other provisions in the emergency protection order or a victim assistance order. (4) Unless otherwise ordered by the court, an emergency protection order or a victim assistance order is deemed to be an order of the court and continues in effect and is not stayed by a direction for a rehearing pursuant to section 6 or an application pursuant to subsection (1). (5) Any provision in an emergency protection order or a victim assistance order is subject to and is varied by any subsequent emergency protection order or a victim assistance order made pursuant to any other Act or any Act of the Parliament of Canada. (6) An emergency protection order that has been varied pursuant to clause 6(2)(b) shall be served on the respondent in the prescribed form and manner. (7) Notice to the respondent on an emergency protection order shall be deemed to give the respondent notice of the court's confirmation of the existing emergency protection order and notice of the respondent's right to initiate a court hearing.
Ontario	5.(1) Upon receiving a request for a hearing in respect of an emergency intervention order from the applicant or respondent within the required 30-day period, the clerk of the court shall set a date for the hearing of the matter, which shall be not later than 14 days after the date the court received the request for the hearing. … (4) If a date for a hearing of the matter is set under subsection (1), the clerk of the court shall notify the applicant and respondent of the date of the hearing. … (6) If no request is made within the required 30-day period in respect of an emergency intervention order made by the court, the emergency intervention order shall be deemed, for all purposes, to be an intervention order made by the court on the day after the expiry of the required 30-day period. (7) An emergency intervention order that is the subject of a request for a hearing by the applicant or respondent remains in force and is not stayed by the making of the request.
Nova Scotia	12(1) Notwithstanding subsection 11(2) and at any time after a respondent has been served with an emergency protection order, the court, on application by a victim or respondent named in the order, may (a) make changes to, or terminate, any provision of the order; (b) decrease or extend the period for which any provision in the order is to remain in force; or (c) revoke the order. (2) On an application pursuant to subsection (1), the evidence before a justice of the peace on previous applications pursuant to this Act shall be considered evidence. (3) Unless otherwise ordered by the court, an emergency protection order continues in effect and is not stayed by a direction for a hearing pursuant to subsection 11(3) or an application pursuant to subsection (1). (4) On an application pursuant to clause (1)(b) the judge may extend the emergency protection order for a period not to exceed thirty days from the expiration date of the original order.

Yukon	**Warrant of Entry** 11.(1) A designated justice of the peace may issue a warrant if, on an ex parte application by a person who section 2 says may apply for an order, the designated justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that: (a) the person who provided the information on oath has been refused access to a cohabitant; and (b) a cohabitant who may be a victim will be found at the place to be searched. (2) A warrant issued by a designated justice of the peace authorizes the person named in the warrant to: (a) enter, search, and examine the place named in the warrant and any connected premises; (b) assist or examine the cohabitant; and (c) seize and remove anything that may provide evidence that the cohabitant is a victim. (3) Where the person conducting the search believes on reasonable grounds that the cohabitant is a victim, that person may remove the cohabitant from the premises for the purposes of assisting or examining the cohabitant.
Saskatchewan	11.(1) A designated justice of the peace may issue a warrant where, on an ex parte application by a person designated in the regulations, the designated justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that: (a) the person who provided the information on oath has been refused access to a cohabitant; and (b) a cohabitant who may be a victim will be found at the place to be searched. (2) A warrant issued by a designated justice of the peace authorizes the person named in the warrant to: (a) enter, search, and examine the place named in the warrant and any connected premises; (b) assist or examine the cohabitant; and (c) seize and remove anything that may provide evidence that the cohabitant is a victim. (3) Where the person conducting the search believes on reasonable grounds that the cohabitant is a victim, that person may remove the cohabitant from the premises for the purposes of assisting or examining the cohabitant.
Prince Edward Island	
Alberta	10(1) A judge may issue a warrant, on application by a person designated in the regulations and without notice to the respondent, if the judge is satisfied by information on oath that there are reasonable and probable grounds to believe that (a) the person who provided the information on oath has been refused access to a family member, and (b) the family member may have been the subject of family violence and will be found at the place to be searched. (2) A warrant issued by a judge authorizes the person named in the warrant (a) to enter the place named in the warrant and any other structure or building used in connection with the place, (b) to search for, assist or examine the family member, and (c) with the family member's consent, to remove the family member from the premises for the purpose of assisting or examining the family member.
Manitoba	
Ontario	19(1) The Lieutenant Governor in Council may make regulations, (a) respecting the seizure, retention, return or disposal of items required to be seized pursuant to a provision in an intervention order or an emergency intervention order described in paragraph 7 of subsection 3 (2), including authorizing the court or a designated judge or justice to issue a warrant authorizing the entry and search of a dwelling or other place;
Nova Scotia	
Yukon	**Immunity** 15. No action lies or shall be instituted against a peace officer, a clerk of the court or any other person for any loss or damage suffered by a person by reason of anything in good faith done, authorized to be done, or authorized to be omitted by any of them: (a) pursuant to or in the exercise of any power conferred by this Act or the regulations; or

	(b) in the carrying out of any decision or order made pursuant to this Act or the regulations or any duty imposed by this Act or the regulations.
Saskatchewan	15. No action lies or shall be instituted against a peace officer, a local registrar or any other person for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them: (a) pursuant to or in the exercise of any power conferred by this Act or the regulations; or (b) in the carrying out of any decision or order made pursuant to this Act or the regulations or any duty imposed by this Act or the regulations.
Prince Edward Island	15. No action lies against a peace officer, the Registrar, a justice of the peace, a representative of Victim Services or any other person for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done (a) pursuant to or in the exercise of any power conferred by this Act or the regulations; or (b) in the carrying out of any decision or order made pursuant to this Act or the regulations or any duty imposed by this Act or the regulations.
Alberta	12 No action lies against a peace officer, a clerk of a court or any other person by reason of anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them in good faith (a) pursuant to or in the exercise or purported exercise of any power conferred by this Act or the regulations, or (b) in the carrying out or purported carrying out of any decision or order made under this Act or the regulations or any duty imposed by this Act or the regulations.
Manitoba	
Ontario	14. No action or other proceeding shall be instituted against a peace officer, clerk of the court or any other person for any act done in good faith or for any alleged neglect or default in good faith, in the execution or intended execution of, (a) the person's duty under this Act; or (b) the person's duty to carry out the provisions of an order made under this Act.
Nova Scotia	17 No action or other proceeding shall be instituted against a peace officer or clerk of the court or any other person for any act done in good faith or for any alleged neglect or default in good faith, in the execution or intended execution of (a) the person's duty under this Act; or (b) the person's duty to carry out the provisions of an order made under this Act.
Yukon	**Consequences of Breach** 16.(1) A person commits an offence if they: (a) knowingly make a false statement in an application or a hearing under this Act, (b) disobey an order made under this Act, (c) obstruct a peace officer carrying out an order under this Act. (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of up to $2,000 and imprisonment for up to six months, or both. (3) For their second or subsequent offence under paragraph (1)(b), a person is liable on summary conviction to a fine of up to $5,000 and imprisonment for up to 12 months, or both.
Saskatchewan	
Prince Edward Island	16. Any person who (a) fails to comply with the provisions of an emergency protection order or a victim assistance order; (b) falsely and maliciously makes an application under this Act; (c) obstructs any person who is performing any function authorized by an emergency protection order or a victim assistance order; or (d) publishes any information in contravention of an emergency protection order or a victim assistance order, is guilty of an offence and upon summary conviction is liable 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 in the case of a second or subsequent offence, to a fine of not more than $10,000 or imprisonment for a term of not more than two years, or to both.
Alberta	
Manitoba	10(2) A protection order and any document forwarded under subjection (1) shall be filed in the court, and when the order is filed it becomes an order of the court and is enforceable as such.
Ontario	4… (6) A provision of an emergency intervention order shall be enforced by peace officers under the *Criminal Code* (7) An emergency intervention order prevails over any order made under the *Children's Law Reform Act*, the *Divorce Act* (Canada) or the *Family Law Act* against or affecting the applicant or respondent or any child.
Nova Scotia	18 Any person who (a) fails to comply with the provisions of an order made pursuant to this Act; (b) falsely and maliciously makes an application under this Act; (c) obstructs any person who is performing any function authorized by an order; or (d) publishes any information in contravention of an order, is guilty of an offence and upon summary conviction is liable, in the case of a first offence, to a fine of not more than five thousand dollars or to imprisonment for a term of not more than three months, or to both, and, in the case of a second or subsequent offence, to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than two years, or to both. 19 A peace officer may arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an emergency protection order. 20 (1) In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not exceed five thousand dollars nor shall the term of imprisonment exceed ninety days. (2) An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order.