CHAPTER 5: Family Violence and Protection Orders

Introduction

In the *Family Law Act* (FLA), family violence is considered under Part 9 - *Protection from Family Violence* when decisions are being made about protection orders. Family violence is also a consideration under Part 4 - *Care of and Time with Children* when determining what is in a child's best interests with respect to guardianship, parenting arrangements and contact with the child. As of January 15, 2024, family violence is also a factor a court must consider under Part 5 - *Division of Property* when determining ownership of companion animals when spouses separate.

Although the FLA pays more attention to family violence than earlier legislation[5], violence continues to raise serious issues in the family justice system. Many of the concerns voiced in this engagement focused on issues that are outside the scope of legislative reform, such as insufficient resources, access to legal services and supports for survivors, inadequate family violence training for people working in the family justice system, as well as failure to comply with or enforce protection orders. However, there were also concerns about issues that legislative reform could improve. The following reforms are proposed to better reflect the modern understanding of family violence and improve the response to family violence in parenting decisions as well as protective orders:

- updating the definition of "family violence"
- expanding who is eligible for protection orders
- adding to the list of risk factors that must be considered in a protection order application
- adding detail about the terms and conditions that may be included in a protection order
- extending the default duration of protection orders from 1 to 2 years
- creating a presumption in favour of making a subsequent protection order
- emphasizing that orders concerning care and time with children need to consider the safety of the child, parents and guardians and other family members when family violence is an issue
- exploring opportunities to improve responses to Indigenous families experiencing family violence

[5] When the *Family Law Act* replaced the former *Family Relations Act*, it introduced a definition of family violence, introduced detailed family violence factors in the best interests of the child analysis, and set out a comprehensive protection order scheme.

Key Changes and How They Help Families

Promoting a modern understanding of family violence:

<u>Proposed changes</u>: Update the definition of family violence to directly reference coercive and controlling behaviour, technology-facilitated violence, financial abuse and litigation abuse.

<u>How this helps families</u>: Helping to ensure all forms of family violence are recognized.

As seen in the blue box below, the current definition of family violence in the FLA includes physical and sexual abuse as well as psychological and emotional abuse, along with a list of behaviours that may constitute psychological and emotional abuse.

"family violence" as defined in section 1 of the *Family Law Act*

"family violence" includes, with or without an intent to harm a family member,

(a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,

(b) sexual abuse of a family member,

(c) attempts to physically or sexually abuse a family member,

(d) psychological or emotional abuse of a family member, including

- **(i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,**
- **(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,**
- **(iii) stalking or following of the family member, and**
- **(iv) intentional damage to property, and**

(e) in the case of a child, direct or indirect exposure to family violence.

Although the definition is broad and flexible enough to capture the many ways that we now understand violence to be perpetrated against an intimate partner or family member, there was considerable feedback that certain forms of abusive behaviour are not always recognized as family violence. These are usually forms of abusive behavior linked to psychological and emotional abuse. Some people still believe family violence is limited to physical and sexual expressions of violence. This is reason for

concern because failing to acknowledge certain expressions of family violence can lead to a protection order not being granted or parenting arrangements being ordered that put family members, including children, at risk.

The intended reforms to the definition of "family violence" will more explicitly reference the following forms of abusive behaviours prevalent in violent family relationships. Although some of the proposed changes to the definition of family violence in the FLA will create further differences between the FLA definition and the definition of family violence that was introduced in the federal *Divorce Act* in 2021, these changes are important because, unlike the *Divorce Act*, the FLA definition is used as a basis for the Act's protective order regime.

Coercive and controlling behaviour – A description of what constitutes coercive and controlling behaviour and the challenges that prevent it from being readily recognized are found in Chapter 5 - *Family Violence and Protection Orders* of the Discussion Paper. Stated simply, it is a pattern of abusive behaviours used to control or dominate a family member or intimate partner. Although the FLA definition already describes psychological and emotional abuse as including "coercion and threats", coercive and controlling behaviour is pervasive yet often difficult to recognize or prove. Coercive and controlling behaviour can have profound impacts on adult victims and children exposed to this form of violence, compromising their independence, self-esteem and safety. Referencing coercive and controlling behaviour in a more direct way in the FLA definition may help parties and the court to fully consider this form of violence. This amendment would align with the definition of family violence in the federal *Divorce Act* as well as proposed amendments that would introduce section 264.01 in the *Criminal Code*. Although not yet in force, section 264.01 would establish an offence for engaging in a pattern of conduct that is intended to or could cause an intimate partner to believe their safety is threatened.[6] The language in both acts will be considered when drafting this amendment to the FLA.

Technology-facilitated violence – There are many forms of technology and digital platforms that can be weaponized and used to abuse an intimate partner or family members (e.g. social networking platforms, websites, smart home devices, multiplayer online games, online forums). Online threats, stalking using GPS or social media, hacking into accounts, surveillance, sharing images or personal information

[6] Bill C-332 proposes amending section 264 of the *Criminal Code* to add proposed section 264.01(1), which states that a person commits an offence if they engage in a pattern of conduct with the intent to make their intimate partner believe their safety is in danger or without regard to whether their actions may cause their intimate partner to believe their safety is in danger. As of April 30, 2025, the Bill was at Consideration in Committee stage within the Senate.

without consent and "revenge porn" are just some examples of technology-facilitated violence. Referencing this form of violence in the FLA definition will bring it to people's attention and help to ensure it is considered when decisions about protection orders and safe parenting arrangements are being made. This change will also align with the objectives underlying government's introduction of the *Intimate Images Protection Act*, which also seeks to address harm created from technology-facilitated violence.

Financial abuse – Although the FLA definition includes "restrictions on financial autonomy", feedback suggests that this language does not resonate with survivors. Changing this language to better reflect survivors' experience will help ensure that people experiencing this type of violence recognize they can seek protection under the FLA.

Litigation abuse – Litigation abuse and financial abuse may be linked, for example when litigation is dragged out to drain the other party of their financial resources or the abusive party refuses to comply with disclosure requirements, follow support orders or uses court orders to freeze access to assets. However, there are other ways court and dispute resolution processes can be used against the other party. For instance, applications may be made repeatedly to force a survivor to face the abusive party in court or to frustrate resolution. Where a survivor has a history of mental health or other issues, these may be used against them in court, or the court process may be used to trigger anxiety and other mental health conditions. Specifically referencing litigation abuse within the definition will improve the likelihood that this form of family violence is recognized and taken into account.

Making protection orders a more effective tool:

Proposed change: **Extend FLA protection orders to relationships that have been excluded from eligibility.**

How this helps families: **Help people who currently face barriers obtaining protection from family violence.**

FLA protection orders are only one tool to address family violence. Survivors may seek other protective orders through the criminal justice system, including a peace bond or criminal charges. Amendments to the *Criminal Code of Canada* came into force April 8, 2025 that create a peace bond for circumstances of "domestic violence" which applies to spouses, common law partners and dating partners.[7] Peace bonds are also

[7] The provisions introduced in s.810.03 of the *Criminal Code of Canada* are described at https://lois-laws.justice.gc.ca/eng/AnnualStatutes/2024_22/FullText.html.

available in other categories of relationship as long as the victim fears on reasonable grounds that another person will cause property damage or personal injury to themselves, their intimate partner or their child. Peace bonds and FLA protection orders are both valuable tools to respond to family violence, and one may be preferable to the other in certain circumstances. However, feedback and engagement indicated that people at risk of family violence do not always wish to deal with the police and the criminal justice system. The criminal justice system requires a different, higher evidentiary threshold, and it may be more difficult to prove family violence in a criminal process.

Currently, FLA protection orders are limited to people who are or have been in a spousal relationship and their children, as well as other family members living in the same household. This creates gaps in protection. FLA protections orders are not available under the Act at any time for:

- people who are in a dating or intimate relationship but do not live together;
- people living together in the same household who consider themselves family but are not linked by biology or marriage; and
- people who would be considered family members because they are related by biology or marriage BUT do not live in the same household.

Another gap is evident in cases where a family member may have been eligible to obtain a protection order against a family member living in the same household, but as soon as they no longer live together the eligibility to change or deal with the order is lost.

Example

Anna lives in the same household as her sister and her brother-in-law, Dion. Anna obtains a protection order because she is at risk of violence from Dion. If Anna moves to a safer residence, Dion is no longer considered her family member under the FLA's protection order provisions because they no longer live in the same household. This means neither Anna nor Dion can apply to change the terms of the existing order or apply for another protection order after the initial order expires. Expanding the meaning of family member to include relatives who live in another household would address this problem.

The intended changes to Part 9 of the FLA would extend eligibility for protection orders to the three types of relationships described above and ensure that parties do not lose the ability to deal with a protection order that has been granted just because they no longer live in the same household (see Figure 5.1). The proposed changes would align

with the inclusion of dating partners in the domestic violence peace bonds, reflect the way that Indigenous and other cultures view family as being broader than the current definition of family member in the FLA and give the court authority to deal with an issue they are already facing. There is anecdotal information that people in these types of relationships are already being referred to the FLA protection order process, because there is some confusion over who meets the current definition of at-risk family member. The amendments would enable the courts to deal with those applications. It would remain the role of the court to determine in every application whether the family member is at risk of violence and a protection order is warranted.

Figure 5.1 – Persons who may seek protection from under the FLA

I am at risk of violence – can I apply for a protection order under the FLA? The proposed policy reforms would allow a person at risk of family violence to apply for a protection order if the person responsible for the violence is related in one of the following ways (underlined purple text shows the changes from the existing legislation and they are described in the following examples):

Example

Kate lived with her aunt and uncle while she was going to college. She was happy to get a job and move out, because her uncle made her uncomfortable. Now he keeps dropping by her apartment, pretending he's there to help or fix something, refusing to leave. He's touched her "accidentally". Kate tried to say something to her aunt, but she refused to listen. Even though Kate doesn't live with her uncle anymore, she can apply for a protection order to prevent him from being near her apartment.

Example

Leigh met AJ through an online dating site and they soon started meeting in person. It was great at first, but when Leigh tried to end the relationship AJ wouldn't leave Leigh alone. Even though Leigh didn't respond, AJ would send dozens of texts every day and always seemed to know where Leigh was. Leigh found a tracking device under the bumper of their car. Even though Leigh and AJ never lived together, they had been dating. Leigh could apply for a protection order preventing AJ from communicating with Leigh or being within a certain distance of Leigh's home and workplace.

Example

Charity is a single parent with a toddler, Dex. Charity doesn't have any family and very few friends to support or help out. She was having a hard time until she met Matt. Matt's been like an older brother. He moved in with Charity and had her add his name to her bank account because he said she needed help managing her money. He set up routines and schedules for her and Dex and made sure they followed them. He looked after Dex while Charity was at work because he said it wasn't good for Dex to be with strangers. Charity was grateful for the help, but she's starting to feel trapped. She's realized Matt has stopped her from seeing the few friends she has. When she suggested she and Dex would be fine on their own now, Matt got really angry and said she wasn't fit to care for Dex. He threatened to empty the joint account and take Dex for his own good, since he was basically Dex's uncle. Charity is afraid for herself and Dex but doesn't know how to get Matt out of their lives. Even though Charity and Matt aren't in a romantic relationship and aren't siblings by blood, they've considered themselves family, so Charity can apply for a protection order to restrict Matt from communicating with her or being in her home or at her workplace or Dex's daycare.

Proposed change: Add additional risk factors that the court must consider when determining whether a protection order is needed.

How this helps families: Promote more comprehensive risk analysis in protection order applications.

A judge deciding an application about a protection order must consider a list of risk factors currently set out in section 184 of the FLA. It is a non-exhaustive list, allowing the judge to consider any other risk factors that are relevant. If a child is involved, the court must also consider whether the child may be exposed to family violence if a protection order is not made, and whether there should be an order protecting the child if an order is made to protect the child's parent or guardian.

Explicitly identifying additional circumstances that increase survivors' vulnerability and therefore risk of violence in the Act may help a court better understand an at-risk family member's unique circumstances and ensure protection orders are made in appropriate cases. The proposed amendments would add the following risk factors:

Living with a disability, neurodiversity, language barrier, legal status to be in Canada or another vulnerability that makes it difficult to access services – Personal circumstances that limit the ability to communicate may have the effect of isolating the at-risk family member or prevent them from accessing services increase their vulnerability and risk of family violence. Explicitly including these factors in the FLA would promote a more comprehensive risk analysis.

Living in a rural or remote location – Many at-risk family members living in rural or remote locations are isolated from other people as well as services. This increases risk of violence and decreases opportunity to report violence and seek help. It also increases the time police or RCMP need to respond to a call for assistance, with some survivors living hours away from the nearest detachment or being separated by water or poor roads. This risk factor disproportionately affects Indigenous families as many Indigenous communities are located in rural and remote regions of BC.

Non-compliance with court orders – The FLA lists circumstances of the family member that the order is to be made against (i.e. the restrained family member) which may increase the risk of violence (e.g. access to weapons, substance abuse). Non-compliance with previous court orders is linked to issues with authority, increased risk of violence and recidivism. This is an important risk factor to explicitly name in the FLA as it can impact whether a protection order is needed and what terms should be included to reduce risk.

Adding language to the FLA to directly point to these risk factors will help survivors better explain the circumstances that increase their risk of violence. It may also assist the court by providing a more fulsome list of factors to consider when analyzing risk of violence.

Proposed change: Expand the list of terms and conditions that may be included in a protection order.

How this helps families: Promote including terms in protection orders that prevent technology-based violence and protect survivors with companion animals.

Section 183(3) of the FLA sets out terms that a court may include in a protection order. The list is broad and includes a catch-all provision that allows a court to include any term necessary to protect the safety of the at-risk family member or implement the protection order. Although this could be used by a court to include a provision related to preventing technology-based violence, feedback and analysis suggests that protection orders often do not adequately respond to abuse perpetrated using technology. Many people are unaware of how technology can be used against another person. More clearly identifying technology-based violence in the protection order provisions, including the terms and conditions suggested in section 183, will bring this form of violence and the need to address it in protection orders to the attention of judges, lawyers and advocates, and survivors.

Additional language to consider including in protection orders that address technology-based violence might be:

- expanding "following the at-risk family member" beyond physically following to include using technology to surveil, track, monitor, harass or similarly interfere;
- clarifying that "directly or indirectly communicate" includes electronic communication including text, email, social media; and
- preventing interference with the at-risk family member's personal, professional and online reputation.

Currently section 183 suggests that a protection order may direct police to accompany a person to the family residence to supervise the removal of personal belongings. The proposed change would clarify this may include the retrieval of a companion animal and their accessories.

Making protection orders more responsive to survivors' needs:

Proposed change: **Extend default length of protection orders from 1 to 2 years from the date the order is made.**

How this helps families: **Protecting survivors longer, while risk still exists.**

Protection orders made under the FLA are in effect for one year from the date the order is made, unless the court specifies another time period. This "default" time period ensures that protection orders do not linger indefinitely, past the time when there is no longer a risk of violence, without constraining the court from ordering a longer or shorter duration based on what is most appropriate in an individual case. Those who have experienced family violence or supported survivors point out that many families are still experiencing high levels of conflict and are embroiled in family law proceedings more than a year after a protection order is made. Extending the default period would provide additional time for issues to be resolved and conflict to ease, reducing risk.

The proposed amendments would extend the default period from one to two years from the date the protection order is made. This aligns with the duration recently established for domestic violence peace bonds under the Criminal Code[8] as well as recommendations in recent reports on protection orders from advocacy organizations in BC.[9,10] A court will continue to have discretion to order an FLA protection order remain in effect for another period of time (i.e. longer or shorter than two years).

Proposed change: **Introduce a presumption in favour of making a subsequent protection order upon application, unless there is evidence no risk exists.**

How this helps families: **Make it easier for survivors to stay safe after an initial protection order ends.**

Research and feedback from survivors of family violence report the re-traumatizing experience of seeking protection in an adversarial court system. While it may be inevitable that the applicant must prove they are at risk of violence before an initial

[8] On April 8, 2025, section 810.03 of the *Criminal Code of Canada* came into force, introducing peace bonds specifically for situations where there is a "fear of domestic violence". A recognizance ordered under this provision will be in force for up to 2 years if there is a previous conviction for violence against an intimate partner or child. https://laws.justice.gc.ca/eng/AnnualStatutes/2024_22/FullText.html

[9] Battered Women's Support Services. (2024). *Justice or 'Just' a Piece of Paper? Protection Orders in British Columbia*. https://www.bwss.org/wp-content/uploads/BWSS_Justice-or-Just-a-Piece-of-Paper.pdf.

[10] Hrymak, H. (2024). *Protection Orders in BC and the Urgent Need for a Specialized Process and Coordinated Reform*. Rise Women's Legal Centre. https://www.womenslegalcentre.ca/s/Protection-Order-Report.pdf.

protection order can be granted, it is a burden to make their case each time a protection order expires, and a new order is needed. This is exacerbated in cases where an initial protection order functioned to suppress or prevent violence, but the survivor believes violence is likely to recur once the consequences imposed by the order no longer apply. On the other hand, protection orders restrict respondents and have criminal consequences if they do not comply with the terms. Legislation needs to balance recognizing the impacts of trauma and protecting vulnerable parties against unreasonable ongoing restrictions on respondents who were initially determined to be a risk.

The intended change would introduce a presumption in favour of making a subsequent protection order if the survivor or someone on their behalf applies for one. This would shift the burden to the person responsible for the violence to demonstrate the risk is gone. This may be achieved by submitting evidence showing, for example, that the source of the conflict has been resolved, counselling or anger management programs have been completed, or the parties no longer live in the same region. It would be the role of the court to determine whether, based on the evidence, the respondent had demonstrated there was no longer a risk to the protected person and therefore no need for another protection order.

Under the proposed change, the presumption would also apply to protection orders that are made in response to “without notice” applications. Without notice applications are generally applied for on an urgent basis and the court must be satisfied that giving the other party notice of the application would create a real risk of danger or serious consequences before making a without notice protection order. When a protection order is made without notice, it may be a short-term order (e.g. a few weeks or months) with the expectation that the order will be served on the restrained party and both parties will return to court to determine whether a longer-term order should be made. The proposed change may address some of the concerns with shorter-term orders by reducing some of the trauma associated with having to repeat the story of violence and prove risk, from the beginning. Upon hearing the initial application and based on the evidence presented, the court would have found a risk of violence and sufficient danger to warrant making the initial protection order on a without notice basis. The presumption would not restrict the respondent’s opportunity to present their own evidence or refute the applicant’s evidence. Nor would it prevent the court or the respondent from asking questions of the applicant. The presumption would simply shift the starting point of the inquiry from asking “How are you at risk?” to asking “How are they not at risk, considering the evidence demonstrating risk that the court has already heard?”

Considering family violence when determining parenting arrangements:

Proposed change: Emphasize in the parenting arrangements provisions that the court must consider what arrangements are needed to ensure their safety if a party, the child or another family member is at risk of family violence.

How this helps families: Promoting safer parenting arrangements for the child, the parties, and other family members when there is a risk of violence.

Section 40 of the FLA sets out the legislative parameters for parenting arrangements. The proposed change would add language to section 40 to state that where the child, their parent or another family member is at risk of family violence, the parties or the court must consider what is needed within the parenting arrangements to ensure everyone's safety. The proposed change would not specify particular arrangements that may improve safety in the FLA, as the specific arrangements that will be needed to address the risk of violence will depend on the circumstances of each family and the resources that are available to them. The objective is not to punish the abusive parent or prevent them having a relationship with the child, it is ensuring the relationship and the time spent together is in the child's I (not the abusive parent's) best interests.

Although there is a proposal to emphasize safe parenting arrangements, no changes are that would direct when and how claims of parental alienation syndrome might be made under the FLA. The issue of parental alienation/alienating behaviours is divisive. The suggestion that such allegations should be banned in legislation is based on concern that parents responsible for family violence are using false parental alienation allegations to shift the focus away from violence they are responsible for, accusing the survivor parent of withholding the children or poisoning their relationship with the child. Frequently, the effect of this is to silence the survivors of family violence, most often women and children. This issue has received attention outside Canada as well, including by the United Nations Committee on the Elimination of Discrimination Against Women. Right now, very few jurisdictions ban parental alienation arguments in court. There are even fewer examples of legislative bans being effective.[11] At this point in time, a focus on education and training, not only on alienating behaviours but on their use and misuse in the context of family violence, is more likely to achieve the objectives than a legislative ban. Parental alienation is also discussed in Chapter 3 - *Child Centred Decision Making*, in the context of the best

[11] For example, Spain passed the Rhodes Law in 2021, banning parental alienation arguments being made in court, however parental alienation has been subsequently used to justify judicial decisions despite the legislation and the advice of the General Council of the Judiciary.

interests of the child analysis. There was feedback both for and against including parental alienation within the best interests of the child analysis; at this time there is no intention to introduce changes that would specifically require or disallow considering this.

Indigenous perspectives:

Indigenous women, girls and two-spirit people are disproportionately impacted by family violence; however it was often described as being ignored or not dealt with. There is a lack of information about the options that are available to deal with family violence and insufficient resources to support those in need of protection and safe housing. Feedback from those who had experience with protective orders often described negative experiences when the order was not followed and they tried to have it enforced. This feedback points to the need for more resources to support Indigenous families dealing with violence, including the survivor, the children, and the family member responsible for the violence. There is also a real need for information, including information about protective orders and how to obtain them. Training and education for all players in the family justice system that considers family violence through a trauma-informed, culturally sensitive lens is also needed, including a focus on police and enforcement. These responses are important, however they are outside the scope of legislative amendments to the FLA.

Dialogue with Indigenous people suggests that there are some legislative amendments that will have meaningful impacts for Indigenous families dealing with violence. Many Indigenous people, particularly those living on reserve lands, live in rural and remote regions of BC. As discussed above, this increases risk for family violence as the isolation increases vulnerability and affects the time it takes for help to respond. People in these regions also have less access to legal resources and supports for survivors. Specifying in the FLA that living in a rural or remote community is a risk factor that must be considered when making decisions about protection orders will help paint a more accurate picture of risk for Indigenous survivors who apply for FLA protection orders.

We received feedback that some First Nations communities are using Band Council Resolutions (BCRs) to address safety concerns. While BCRs are more commonly used to deal with risks to the community such as drug and gang activity, they have also been used to deal with family violence. In these situations, the only way to keep the victims of family violence safe may be to require the family member responsible for the violence to leave the community. The Chief and Council will usually issue a BCR that bans the violent family member from the community until certain conditions have

been met, e.g. completing counselling, anger management or recovery treatment programs. When used appropriately, a BCR can reduce risk to the victims while at the same time encouraging the perpetrator to deal with underlying issues and history of trauma that contributed to the violence. BCR are limited, however, as they only prevent the violent family member from entering the Indigenous community and will not protect the survivor if they leave the community, for example, to go to work or to attend an event in another community. However, if the perpetrator is banned from their community without being connected to wellness resources, the violent behaviour is unlikely to stop and more issues may arise. Things that may promote the effective use of BCRs to deal with family violence include:

- including a history of BCRs being made to address family violence as a risk factor the court should consider when deciding whether to make a protection order under the FLA.
- exploring whether it is possible to register BCRs in the provincial Protection Order Registry while they are in effect so police are aware of the terms when responding to an incident and courts do not make protective orders that conflict with the terms of the BCR.
- providing Indigenous families dealing with family violence with information about options to address the violence and reduce risk, including BCRs, FLA protective orders and criminal justice system responses such as peace bonds and other criminal orders.

Ensuring parenting arrangements are safe for Indigenous children and their family members is another important issue. We heard that Indigenous survivors are often reluctant to disclose family violence given the long history Indigenous people have of their children being taken from them by child welfare agencies. Many families are looking for resources and supports that wrap around the family and facilitate healing rather than breaking the family apart. Where possible, parenting arrangements should build in supports that are available in the community, including support from extended family. For example, there are communities that have supervised parenting facilities that provide a safe place for family members to spend time together with support from community members (i.e. aunties). Amendments to the FLA that emphasize the need to consider what arrangements ensure the safety of the child and their family members, in a culturally appropriate way that acknowledges the unique circumstances of the family and the traditional practices and protocols of their Indigenous heritage will help to address the family's safety needs, including cultural safety.