

Part 9 – Protection from Family Violence

Existing restraining orders, which prohibit harassment and contact in specified circumstances, are replaced with one type of order: a “protection order”. A protection order is a safety-related order. Breaches of a protection order will be a criminal offence and may be enforced under section 127 of the Criminal Code.

Use of the Criminal Code to enforce protection orders will promote timely, effective enforcement, which can save lives. It streamlines enforcement and limits it to the criminal justice system, where the police and Crown counsel are familiar with the processes and tools. It sends the message that breaches of protection orders will be taken seriously.

As well, the new protection order scheme:

- broadens the range of family members who are eligible to apply for protection orders;
- clarifies the procedure to ensure protection orders are accessible, clear, and effective; and
- provides guidance on risk factors to promote the use of protection orders in appropriate and safety-related situations.

The new regime responds to recommendations made in numerous reports, including the *Keeping Women Safe* report and the Representative for Children and Youth’s *Honouring Christian Lee* report, which say consistent enforcement of protection orders is critical to increasing victim safety. The previous scheme, which was enforced through civil law, was identified as problematic on a number of levels. Inconsistent enforcement of civil restraining orders was identified as an issue that impacts families’ safety and confidence in the justice system.

Section 182 Definitions

- Section 182 creates definitions necessary to support interpretation of the other sections in this Part.

Section 183 Orders respecting protection

- Section 183 establishes the framework for the new protection order regime.
- It provides that a protection order may be made against a family member where there is a safety concern. The broadened range of eligible family members (as defined in section 1 of the Act) is consistent with domestic violence laws elsewhere in Canada.
- The section allows for an application for a protection order to be made by the at-risk family member or by another person on behalf of the at-risk family member. For example, the mother could also apply for a protection order on behalf of her child. It also allows for the court to make an order on its own initiative, where a risk is identified.
- The section clarifies that protection orders are available on a stand-alone basis; they may be made at any time and need not be connected to other family law proceedings.
- Section 183 limits the terms that may be included in protection orders to ensure they are safety-focused and appropriate for enforcement by police and the criminal justice system. This is intended to promote more consistent, timely and effective enforcement. Under the Family Relations Act, many restraining orders also included provisions that were not safety-related, which undermined the seriousness of the order and resulted in enforcement challenges. The new regime creates a division between orders for risky and non-risky

behaviours to promote more effective enforcement appropriate to the situation. If a person requires an order for non-safety-related issues, there are “conduct orders” available under Part 10 of the Family Law Act that are enforced through family law remedies, whereas the safety-related protection orders are enforced through the criminal law remedies.

- The section provides a default expiry date of one year unless the court specifies a different duration. Under the Family Relations Act, many orders had no end date which caused enforcement problems since police were unable to tell whether the order remained relevant. The default expiry date allows judges to tailor orders while providing greater clarity for the police in their enforcement role as compared to orders that do not provide an end-date. Peace bonds under the Criminal Code also expire after a year.
- Section 183 replaces sections 37, 38 and 126 of the Family Relations Act.

Section 184 Whether to make protection order

- Section 184 provides guidance to courts on when protection orders should be ordered.
- It lists risk factors courts must consider in determining whether family violence is likely to occur and whether it is appropriate to make a protection order. The risk factors are consistent with risk assessment research and tools used in British Columbia and across Canada by police and the justice system.
- The section also provides factors for a court to consider when determining whether the order should be made against only one person in cases where both parties are seeking protection orders against each other. Mutual orders may not be appropriate where one person is the primary aggressor and one is repeatedly a victim.
- Section 184 also provides examples of circumstances that should not preclude the making of a protection order, including whether the victim has previously returned to the home after incidents of family violence or whether criminal charges have been laid.

Section 185 If child a family member

- Section 185 adds additional factors to be considered when making a protection order where children are involved.
- It requires the court to consider whether a child family member specifically requires protection in any circumstance where family violence may occur including to protect them from exposure to family violence.
- This section responds to recommendations, such as those from the Representative for Children and Youth in the *Honouring Christian Lee* report, that challenge the assumption that the safety of a child is secured through the safety of the parent. It recognizes that children may specifically require protection as well.

Section 186 Orders without notice

- Section 186 clarifies that protection orders can be made without notice, and sets out how an order may be set aside, changed or terminated.
- It establishes that in cases where family violence is a risk, orders without notice may be appropriate to promote safety.

- Where an order is made without notice, the court may set aside or change the order if the order is not appropriate on consideration of the evidence of the party against whom the order was made. If the order is set aside, it is like the order never was and there is no prejudice to the party.

Section 187 Changing or terminating orders respecting protection

- Section 187 allows the court to shorten, lengthen, terminate or otherwise change a protection order after it is made to address changing circumstances or evolving risk.

Section 188 Enforcing orders respecting protection

- Restraining orders under the Family Relations Act were enforced through civil law. Enforcement of restraining orders under the Family Relations Act was identified as a critical justice system failure.
- Section 188 replaces section 128 of the Family Relations Act, which provides for civil enforcement through the Offence Act, with a section which states that neither the Offence Act nor the Family Law Act apply to the enforcement of a protection order.
- The Act deliberately remains silent on how protection orders are to be enforced. This is necessary to allow for enforcement through the Criminal Code. Section 127 of the Criminal Code is a default enforcement mechanism that, by its terms, applies only where there is no other remedy available under the statute. Section 127 of the Criminal Code is successfully being used to enforce civil protection orders in Manitoba, and recently Ontario amended its legislation to do the same.
- Police authority to act on a breach of a protection orders is also clearly provided for. This will avoid confusion and promote consistent police enforcement at the time of a breach.
- The protection order itself will be a civil order. When the order is breached, the breach triggers the use of the Criminal Code. If the restrained party never breaches the protection order, they are never brought into the criminal system.
- Using the Criminal Code to enforce protection orders will promote timely, effective enforcement, which can save lives. It streamlines enforcement and limits it to the criminal justice system, where the police and Crown counsel are familiar with the processes and tools, and it sends the message that breaches of protection orders will be taken seriously.

Section 189 Conflict between orders

- Section 189 gives priority to safety-related orders in cases where they conflict with another order relating to a family law dispute. These orders include: protection orders under the Family Law Act, orders under the Child, Family and Community Services Act and the Criminal Code, or safety related orders made under legislation from another province.
- For example, if a parent has parenting time but later bail conditions prohibit contact with the child, the safety-related bail conditions prevail and there is to be no contact with the child until the issue or inconsistency between the orders is resolved.
- This will promote safety, eliminate confusion and provide for a consistent approach.

Section 190 Rights not affected by Act

- Section 190 states that the making of a protection order does not affect any existing right of action of a person affected by family violence.
- It clarifies that a person affected by family violence may continue to pursue civil or criminal proceedings in tandem with obtaining a protection order.

Section 191 Extraprovincial orders

- As part of the new protection order regime, consequential amendments have been made to the Enforcement of Canadian Judgments and Decrees Act which adopt the Uniform Law Conference of Canada's recommendations. These amendments allow civil protection orders made by judges elsewhere in Canada to be enforced like protection orders from British Columbia without the need to register the out-of- province order. Manitoba, Saskatchewan and Nova Scotia have already enacted these amendments.
- This section is intended to promote greater safety and consistency across Canada.