

Protection Orders under the *Family Law Act*

History behind protection orders

There are a variety of mechanisms available under criminal and family law that help protect people experiencing or at risk of family violence. The protection order available under the *Family Law Act* (FLA) was developed in response to frustrations with restraining orders that were made under the previous *Family Relations Act* (FRA).

Restraining orders were only available in limited circumstances, and the enforcement mechanisms were confusing and sometimes ineffective. Enforcement was further compromised because the duration of the orders was often unclear and the terms of the orders were not always directly related to safety.

Protection orders now available under the FLA:

- are available to a broader range of family members;
- may be applied for at any time, including on a stand-alone basis;
- only include safety-related terms to emphasize the seriousness of the order and improve enforcement;
- expire one year after being made unless the court orders otherwise; and
- are enforced under the *Criminal Code* as a criminal offence, which underscores the seriousness of family violence and is intended to deter breaches of protection orders.

Who should apply for an FLA protection order?

Individuals need to evaluate which of the following options is the best response in their family situation: an FLA protection order, an application for a peace bond under the *Criminal Code*, or reporting the situation to police for possible criminal investigation and prosecution. More information about peace bonds and FLA protection orders is available in *For Your Protection: Peace Bonds and Family Law Protection Orders* at <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/bc-criminal-justice-system/if-victim/publications/peace-bonds-english.pdf>.

The first two years of FLA protection order data

Protection orders have been available since the FLA was implemented on March 18, 2013. The first two

years of data concerning FLA protection orders is now available. Similar to FRA restraining orders, the overall number of FLA protection orders remains relatively small compared to the total number of orders with protective conditions sent to the Protection Order Registry (POR) from the family, child protection, and criminal justice systems combined.

FRA restraining orders made prior to the FLA continue to be enforceable and information about breaches of these orders is reported below. However, caution should be used when comparing FRA restraining orders with FLA protection orders as the two types of orders are not directly equivalent. The characteristics and the enforcement mechanisms for each differ. It should also be noted that there was a transition period following implementation of the FLA.

Number of general family orders sent to the POR¹

	2011/12	2012/13	2013/14	2014/15
Provincial Court	1,928	1,858	1,437	1,343
Supreme Court	815	770	526	429
Total	2,743	2,628	1,963	1,772

Before the FLA was implemented, a wider array of orders was sent to the POR and not all orders were directly related to safety. The larger decrease between 2012/13 and 2013/14 is expected because under the FLA protection orders are only made and sent to the POR if there is a risk of family violence.

Number of Reports to Crown Counsel (RCCs) sent from police to Crown Counsel for alleged breaches of FLA protection orders

	2013/14	2014/15
FLA order	70	135
FRA order	35	23

The number of RCCs submitted by police to Crown Counsel for breaches of FLA protection orders increased by 93%, and correspondingly declined for

¹ These figures count all new, varied and cancelled general family orders that contain at least one protective term granted under the FLA or FRA, and sometimes other family Acts like the Family Maintenance Enforcement Act (FMEA). General family orders exclude orders granted under the Child, Family and Community Services Act (CFCSA).

FRA orders. This was anticipated as the system transitions into using FLA mechanisms to resolve family safety concerns.

Number of RCCs where charges were approved by Crown Counsel for alleged breaches of protection orders²

FLA RCCs	Received	Approved for charge	Returned to police	Not approved
2013/14	70	49 (70%)	8 (11%)	12(17%)
2014/15	135	82 (61%)	8 (6%)	39(29%)

The percentage of RCCs where charges were approved for breaches of FLA protection orders has remained relatively stable. There are a number of systemic and case specific factors that contribute to a charge not proceeding for breach of a protection order. The Ministry’s ongoing work described below is intended to facilitate the charge assessment of some breaches of these orders.

CFCSA orders³

	Sent to POR	RCCs received	Charge approved
2013/14	213	18	11 (61%)
2014/15	249	12	10 (84%)

There was an increase in 2014/15 in CFCSA orders sent to the POR. Although there was a decrease in the number of RCCs received by Crown Counsel for breaches of CFCSA protection orders, there was an increase in the percentage of RCCs where charges were approved.

Other orders

FLA protection orders are only one means for providing protection in family violence cases. Other mechanisms available within the criminal justice system include peace bonds and bail conditions, probation orders and conditional sentences with no-contact conditions. In fiscal 2014/15, there were 16,066 orders made in spousal violence cases (“K” file cases) in Adult and Youth criminal court where the Protection Order Registry was notified.

Outcomes of spousal violence related offences

The Criminal Justice Branch’s 2014/2015 Annual Report provides data about findings of concluded spousal violence related offences (see page 16 of the report at <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/reports-publications/cjb-annual-report-2014-2015.pdf>). Although it is not broken down by the specific type of offence, this data includes offences for breaches of FLA protection orders and FRA restraining orders that meet the classification of “K” file.⁴

Overall trends

The number of new family files generally has been decreasing:

2011/12	2012/13	2013/14	2014/15
23,827	21,855	20,234	20,589

The total number of all RCCs sent to the B.C. Ministry of Justice Criminal Justice Branch increased in the last year.⁵ There was an increase in the number of spousal violence related RCCs (designated as “K” files) and of these, a decrease in the RCCs received for applications for s.810 *Criminal Code* peace bonds.

	All RCCs	“K” RCCs	s.810 “K” RCCs
2013/14	64,254	14,462	1,089
2014/15	65,666	14,586	1,021

Ongoing work

The Ministry of Justice is working to implement recommendations resulting from a review of FLA protection orders based on interviews with justice system stakeholders. Court rules have been amended to reduce delay in preparing and filing protection orders, and to ensure the terms are clear and easier to enforce. An initiative is also underway to ensure service of protection orders on respondents who are not present in court when the order is made, to enhance safety and facilitate successful prosecution if the order is breached.

² Charge assessment decisions are made by Crown Counsel in accordance with Criminal Justice Branch’s charge assessment guidelines policy, which requires both a substantial likelihood of conviction and that the public interest requires a prosecution.

³ These figures count all new, varied and cancelled child protection orders made in Provincial Court under the CFCSA that contain at least one protective term.

⁴ The Criminal Justice Branch’s Spousal Violence – SPO 1 policy broadly defines spousal violence and the Branch classifies all spousal violence related cases as “K” files, including breaches of FLA protection orders and FRA restraining orders, <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/spo-1-spousal-violence.pdf>.

⁵ Reports to Crown Counsel submitted to the Public Prosecution Service of Canada for drug related and other offences are not included within these figures.