CHAPTER 5: Family Violence & Protection Orders

Introduction

Phase 2 of the Family Law Act Modernization Project includes a review of the provisions in the FLA related to family violence and protection orders. In the 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 the ownership of companion animals (pets) when spouses separate.

Did you know?

Since 2020, employees affected by domestic or sexual violence can access to up to 5 days of paid leave and 5 days of unpaid leave per calendar year. This leave also applies to parents or guardians of a child or of a dependent adult affected by this kind of violence.

This chapter summarizes feedback the Ministry received in response to a detailed discussion paper, surveys, and dialogue on this topic. Some of the larger issues that people provided feedback on included how family member is defined for the purpose of determining whether a protection order can be applied for under the FLA; the definition of family violence; risk factors; protective terms and conditions; duration and enforcement of protection orders; and accounting for family violence when determining parenting arrangements.

Definitions

"family member"

"Family member" is defined in the FLA and includes someone you are or were married to or lived with in a marriage-like relationship, your child's other parent or guardian, and others listed in Section 1 of the act. When an application for a protection order is made this definition needs to be read together with the definition for an "at-risk family member." Under these definitions, anyone who meets the definition of "family member" in Section 1 of the FLA is eligible for a protection order if their safety and security is or is likely at risk from violence carried out by another "family member."

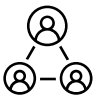
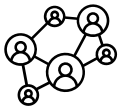
"**family member**", with respect to a person, means
(a) the person's spouse or former spouse,
(b) a person with whom the person is living, or has lived, in a marriage-like relationship,
(c) a parent or guardian of the person's child,
(d) a person who lives with, and is related to,
    (i) the person, or
    (ii) a person referred to in any of paragraphs (a) to (c), or
(e) the person's child, and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

"**at-risk family member**" means a person whose safety and security is or is likely at risk from family violence carried out by a family member

Although the definition of family member is quite broad and includes relatives who are living in the same household, we asked whether the definition should be expanded to include any additional categories of relationships. The responses are summarized below. An additional comment was that there are currently some inconsistencies from one case to another in how "family member" and "at-risk family member" are interpreted.

Table 5-1 Suggestions for relationships that should be included in "family member"

Proposed category	Feedback suggesting changes
Dating relationships	Feedback was mixed. Those who supported making FLA protection orders available in dating relationships cited the difficulty of obtaining protective orders through peace bonds or criminal justice orders. There was a suggestion that the dating relationship should have some significance, i.e. more than just a few dates. Others felt there should be stand-alone protection order legislation for dating relationships rather than including them in the FLA.
Care-giving relationships	Feedback was mixed. There is some feedback that care-giving relationships should be included. Persons living with disabilities describe how these relationships can take on a type of intimacy and dependency. Those opposed to including these relationships within

		the FLA felt they should be addressed in separate legislation.
	Adult children who do not live in the same household	There was support for including adult children who do not live in the same household.
	Family members who do not live in the same household	There was support for including extended family members who do not live in the same household, including step-families.
	Expansive views of family members in Indigenous and other cultures	There was support for including people who are considered family within Indigenous and perhaps other cultural groups, even if they are not related by biology or marriage. Consultation is needed to ensure amendments appropriately capture this expansion.
	Chosen families	There was support for expanding the concept of family member to include people who may not be related by blood or marriage but are in a family-like relationship.
	Companion animals	There was feedback that companion animals should be included in the definition of an at-risk family member.
	"Other"	Although there was a comment that a general "other" category would give flexibility for a judge to consider whether the relationship was captured within the FLA on a case-by-case basis, there were more people who felt a catch-all category should not be added.

Survey respondents strongly supported expanding the types of relationships that are included within the definition of "family member" and therefore fall within the protection order provisions in the FLA. Over 70% of respondents felt the definition should be expanded to include all the categories above, excluding the companion animals and "other" categories.

"family violence"

The definition of family violence in the FLA is important because it describes what kind of behaviour constitutes family violence when decisions are being made about protection orders, the best interests of the child or ownership of a companion animal. The FLA introduced a broad definition when it came into force in 2013, and amendments in 2021

clarified there is no requirement to demonstrate an intention to harm a family member. The current definition in section 1 of the FLA is as follows:

> **"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;

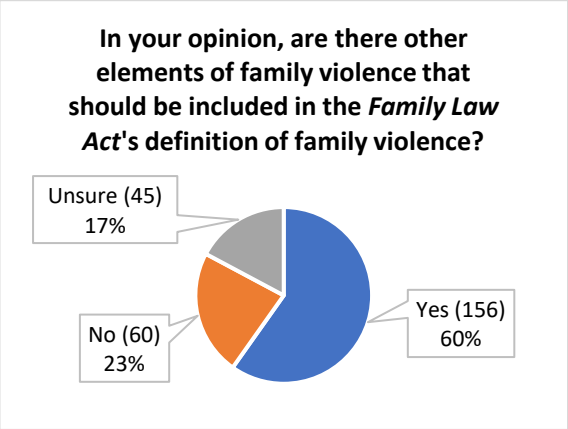
Did you know?

In 2021, the Legislature amended the FLA to clarify that survivors of family violence do not need to show that the person who harmed them *intended* to harm them to establish that family violence occurred.

A definition of family violence introduced in the *Divorce Act* for the purpose of deciding what parenting arrangements are in a child's best interests is similar but not identical to the definition in the FLA. In the consultation, people were asked whether there were elements of family violence that were not adequately captured in the definition and whether the differences between the FLA and the *Divorce Act* created problems.

The feedback from some family law lawyers stated that it would be helpful if the definitions of family violence in the *Divorce Act* and the FLA mirrored or were more directly aligned with each other, to minimize confusion and reduce forum shopping or people making

Figure 5-1: Other Elements of Family Violence



applications based on which act will give them an advantage. As to whether the definition of family violence should include any different or additional elements of family violence, feedback was somewhat mixed.

Some respondents felt no changes to the definition of family violence are needed and others were unsure. However, many respondents indicated there are elements of family violence that could be added to the definition (Figure 5-1). These are summarized in Table 5-2 and described in more detail below.

Table 5-2 Suggestions for new elements that should be captured within "family violence"

Elements / types of behaviour	Feedback suggesting changes
Coercive and controlling behaviour	Although some respondents did not see benefit in expanding the reference to coercive and controlling behaviour in the definition, there were many more responses that did. Some felt it was important to make it clear what coercive and controlling behaviour is within the FLA while others felt this was the role of education.
Technology-based violence	Although some respondents did not see benefit in making a specific reference to technology-based violence in the definition, there were more many responses that did. Some suggested examples of technology-based violence would be helpful, although it was noted that technology changes rapidly.
Sexual coercion and sexual exploitation	Although the definition currently includes "sexual abuse" or attempts to sexually abuse a family member, there was feedback that the definition should specifically include sexual coercion and sexual exploitation.
Identity abuse	A few respondents suggested the FLA should clarify that psychological and emotional abuse includes "identity abuse" (e.g. intentional misgendering, threats to or "outing" another person's gender identity or sexual orientation).

Violence towards companion animals	There was feedback suggesting the definition should go beyond recognizing abuse of an animal or a threat towards a pet as psychological or emotional abuse and state that family violence also includes direct or indirect exposure of a companion animal to violence.
Litigation abuse	Many survey respondents recommended the definition be expanded to include "litigation abuse" (e.g., misusing/abusing legal processes to control and intimidate another person). This is often linked with financial abuse.
Financial abuse	Although the definition already includes "unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy" the current language didn't resonate with some respondents; there was feedback that financial abuse in all its forms needs to be more directly included.

There were some comments about the definition generally. Although there were a couple of comments that the current definition is too broad and easily manipulated by people falsely characterizing a relationship as violence, most respondents felt the legislation could go further to address family violence. Some felt language in the definition was "vague" or "too loose" which made some forms of family violence hard to prove. There were suggestions that more detailed lists or descriptions of the types of behaviours that are included within the different forms of family violence would make it easier to recognize and prove. There were also comments that forms of violence other than physical violence continue not to be taken seriously. There were numerous comments that emotional, verbal and psychological abuse are not properly addressed or taken seriously in the current legal system, even though the damage to victims is often higher than from physical abuse.

What Was Said:

> *"The Family Law Act does not go far enough to define family violence in its various forms with clear examples of what constitutes family violence within the broad categories listed resulting in analytical gaps and an inconsistent application of the law. It needs to be updated to better define actions or conduct that constitutes family violence to ensure that certain forms of non-physical violence are not minimized, disregarded, or overlooked, and that the impact of such family violence is recognized as being deeply harmful to persons' physical, emotional, psychological, and financial well-being, which in turn, impacts the children, either directly or indirectly."*

Coercive and controlling behaviour

Coercive and controlling behaviour was one of the forms of abuse respondents commented on the most. 93% of survey respondents felt coercive and controlling behaviour should be included in the FLA definition. There was feedback this form of abuse is underestimated, poorly understood and difficult to prove. People commented the FLA needs to clearly describe and respond to coercive control tactics such as gaslighting, threats of suicide or self-harm, threats to or actually making false reports about the victim to police or child protection officials, and depriving the victim or children of medical or developmental supports. Involving children as part of the strategy of coercion and control was another tactic that came up in the feedback, including restricting or threatening to restrict time with a child, trying to alienate or damage the child's relationship with the other parent, or falsely accusing the other parent of parental alienation, often as a strategy to shift the focus away from violence in the relationship.

Did you know?

The BC Legislature passed the 2023 *Intimate Images Protection Act* to respond to some of the unique harms caused by technology-based violence. This Act provides new protections and fast-tracked processes to better protect people from the harmful effects of having their intimate images shared without their consent.

Technology-based violence

92% of survey respondents supported updating the definition of family violence to respond more directly to technology-based violence. There were comments that the ways technology can be used to facilitate violence against a family member can be frightening and unfamiliar for a lot of people living in or trying to leave a relationship. Respondents described some of the technology-based violence that needs to be captured within the definition:

- Stalking the victim's activities and interactions online, hacking email and other accounts
- Tracking mobile phones or otherwise monitoring the victim's physical location,
- Harassment by text or email or posts on social media accounts, including posting slanderous or inaccurate information
- Harassment using random telephone numbers and email addresses,
- Making derogatory statements about the victim or other people connected to the victim online, publishing personal information about the victim online ("doxxing"),
- Filming, sharing or publishing compromising or intimate images or videos of the victim without consent ("revenge porn").

Identity abuse

There was feedback that the definition of family violence should recognize "identity abuse" as a form of psychological and emotional abuse to address harmful behaviour against a family member based on their gender identity or sexual orientation. This may include a parent refusing to accept or actively punishing a child's expression of non-conforming gender identity. Intimate partners and other family members may also be subject to family violence based on their gender identity or sexual orientation.

Violence towards companion animals

Respondents commented on the ways that animals are used in a campaign of violence against family members. This was usually described as threatening to or actually harming an animal either during the relationship or when a victim attempted to leave the relationship. One survivor described the abusive partner refusing to let her take her dog's kennel when she left the relationship and returned with police to gather her belongings.

Litigation abuse

Survey respondents also spoke at length about litigation abuse, where the abusive behaviour included:

- Mis-using the court process to repeatedly file applications and set appearance dates, or not attending court appearances which delays resolution and adds expense to the other party
- Using the court system to force survivors to face their abusers over and over;
- Refusing to disclose information or follow court orders, including parenting and support orders
- Using the family court system and a survivor's mental health history to further abuse or discriminate against them, often drawing out legal proceedings to frustrate resolution and terrorize the survivor
- Being uncooperative, making false claims, refusing to participate in out of court resolution processes (e.g. mediation) to drive up legal costs for the survivor
- Posting court documents to shame or otherwise harass the survivor.

Financial abuse

Some of the financial abuse that respondents commented on was related to litigation abuse (e.g. driving up legal costs, refusing to follow child and spousal support orders, refusing to file taxes or disclose accurate financial information in order to avoid appropriate support payments, using the court to freeze the survivor's access to financial assets and lines of credit). However other forms of financial abuse were also mentioned, including controlling all the money in a relationship, withholding agreement on parenting arrangements until financial demands are met, threatening not to provide for the basic

needs of the survivor or the children, and draining joint bank accounts and children's registered education savings plans (RESPs).

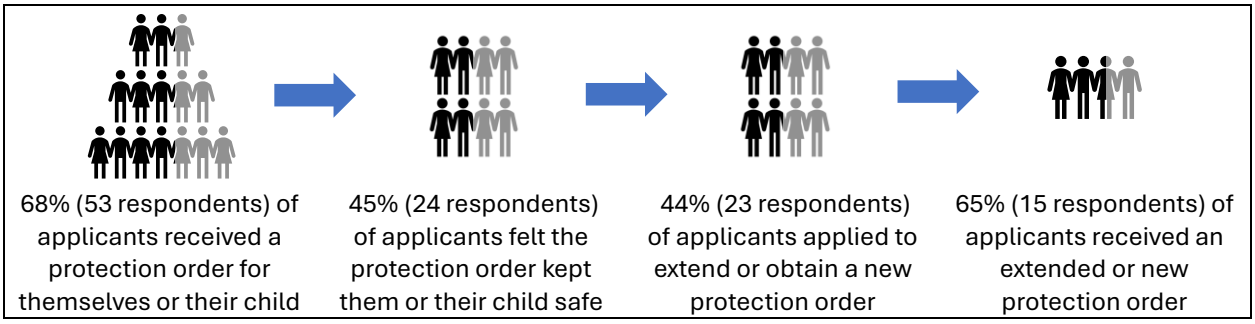
Unlike the different opinions on amending the definition of family violence, most respondents agreed on the importance and need for more education on family violence, including the prevalence and impacts of family violence and what behaviours constitute coercive control and other forms of family violence. It was also suggested that continuous education and training in screening for family violence be made mandatory for family dispute resolution professionals and judges. There were comments that the existing definition often isn't understood or followed; that judges and lawyers don't seem to understand what different forms of psychological and emotional abuse look like in practice or the impact this violence has on all family members.

Issues Related to Protection Orders

Respondents' experience with protection order applications

One hundred and fifty people who completed the Family Violence Survey responded to a question asking whether they had ever applied for an FLA protection order for themselves or their child. Fifty-two percent (78) had applied. Of those who applied, 68% (53) received a protection order, and 44% (23) later applied to extend their protection order or obtain a new one. Sixty-five percent (15) of respondents who applied for subsequent orders were successful. Forty-five percent (24) of respondents who received a protection order said they felt it had helped to keep them and/or their children safe. These same questions were asked of respondents who had supported a person (e.g. partner, friend, client) applying for a protection order. Although the number of respondents was smaller, the percentage of applications granted and the perception that the protection order had helped to keep the protected person safe was almost identical.

Figure 5-2: Protection Order Applications and Perception of Safety



Feedback from those people who felt the protection order had helped to keep them safe sometimes said the other party followed the order because they didn't want to be involved

with the police, and often described the order as relieving some of the fear and stress and anxiety that they and their children had been living with daily.

What Was Said:

> *"It took a lot of anxiety out of our daily lives knowing he cannot approach us or communicate with us."*
>
> *"It provided safety as the other party did not want to have the cops called on him so he complied."*
>
> *"It helped take away fear and stress from my kids and I during this difficult time."*

People who felt the order had not helped to keep them safe mostly complained that police would not enforce the order and so the violence continued, with the abusive family member knowing there were few consequences for their behaviour. Some respondents described the type of family violence they were subjected to shifting after the protection order was made, occurring as financial violence or litigation abuse which is harder to prove and often easier to get away with.

What Was Said:

> *"He just got other people to harass us, and the police didn't enforce it. He laughed at me when I brought it up."*
>
> *"RCMP basically wouldn't enforce the order"*
>
> *"Regardless of the order he continued to behave abusively towards my sibling, mother, and myself. There were no consequences for his actions and he therefore knew he was able to get away with his behaviour."*

We asked the remaining 48% who had experienced family violence but didn't apply for an FLA protection order why they hadn't applied, and here's what they said (keep in mind they may have replied with more than one reason):

44.6%	"Didn't think I would be successful" (29 respondents)
41.5%	"Protection order would make co-parenting with the other person difficult" (27 respondents)
36.9%	"Didn't think a protection order would be helpful" (24 respondents)
26.2%	"Lack of access to legal services or representation" (17 respondents)
24.6%	Didn't know I could apply" (16 respondents)
24.6%	"Process would be too difficult" (16 respondents)
23.1%	"Didn't know how to apply" (15 respondents)
20%	"Lawyer advised me not to" (13 respondents)
13.8%	"Not eligible for protection order" (9 respondents)

Additional reasons included not having enough time, not wanting others to know about the violence, not being able to access a courthouse, and not wanting to get their abuser in trouble. Several respondents explained they had not sought a protection order because violence other than physical violence is often not acknowledged by the justice system. They said they didn't know how to prove the danger they were in and commented that emotional and psychological abuse are hard to quantify and explain, especially when judges, police or lawyers are not sufficiently educated about family violence.

Interestingly, the top reason for not applying for a protection order in the first place was also the most common reason (42%) for not applying to extend or obtain a new protection order even after the initial application was successful. Other frequent reasons were "the protection order wasn't helpful" (25%) and "fear of the other person" (25%). Only 12% of respondents said they didn't need a protection order anymore and 4% had reconciled with the other person.

Although most of the feedback about protection orders was from survivors of family violence or people that have supported survivors in the family justice system, there was some feedback from the perspective of a person restrained by a protection order.

Risk Factors

When a judge is deciding an application about a protection order, they must consider a list of risk factors set out in section 184. It is a non-exhaustive list, meaning the judge may 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.

We asked whether any additional risk factors should be added to the FLA, and whether any risk factors should be flagged as being higher risk. Although there was some support for flagging those factors that are known to indicate higher risk for serious harm or death (e.g. strangulation, violence during pregnancy), more people were opposed to what might be seen as ranking or creating a hierarchy of risk factors. The concern is that this may negatively impact survivors, making it more difficult to obtain a protection order if the court does not find evidence of any high-risk factors. One of the common threads that came up in feedback about weighting risk of violence was that many risk factors aren't being given enough weight currently. Some respondents felt that a history of physical or sexual violence was the only risk factor being seriously considered and advocated for more training and awareness in the family justice system:

What Was Said:

> *"I don't necessarily feel any other risk factors should be included, but currently I do not feel the court adequately considers or weighs these above risk factors as they stand. The court needs more education."*
>
> *"I just want the existing legislation to actually be followed by lawyers and justices. Legislation does NOTHING when it is IGNORED by the family court players."*

There was feedback that cautioned against becoming too specific when describing risk factors. People had mixed views as to whether more risk factors should be added to the FLA – 49% of survey respondents said yes and 28% were unsure. One concern is that creating a very specific list may suggest the list is intended to be exhaustive and factors that are not included are not indicative of a risk of violence. On the other hand, there were several suggestions on additional risk factors to consider adding to section 184. These included:

- A history of condoning, inciting or committing violence of any kind
- A history of marked sexist attitudes, remarks and/or behaviour
- A history of perpetrating sexual coercion
- A history of strangulation or suffocation
- Survivor experiencing isolation and/or difficulty accessing services due to barriers such as language, disability or neurodiversity
- Living in a rural or remote location
- A history of involvement with gangs, participating in criminal activity or associating with others involved in crime
- A history of not following or breaching court orders
- A history of denying violence has occurred or retaliatory behaviour
- A history of suicidal ideation or attempted suicide

- A history of withholding access to children, using violence against or in front of a child, subjecting a child to coercion and control

Although living in a rural or remote location may be a factor that increases risk of violence, there was further feedback that adding it to the list of factors in the FLA is not sufficient to address this issue. Another respondent felt it was not necessarily a risk factor but should be considered as a reason for delay in applying for a protection order. Similarly, it may limit a respondent's ability to apply to change or set aside a protection order. It was emphasized that more needs to be done to increase safety to survivors living in these areas, including developing mechanisms to remotely support survivors applying for protection orders and to have their applications heard easily and in a timely manner.

Although many of the comments suggested that a history or pattern of certain behaviours created risk factors that need to be considered in deciding whether to grant a protection order, there were a few comments that cautioned against using the words "patterns" or "history" in legislation. The concern is that a behaviour that indicates a risk for family violence may only need to have happened once; the at-risk family member should not have to prove it has happened repeatedly before they need a protection order.

Terms Used in Protection Orders

Protection orders are stand-alone orders that may only contain terms and conditions needed for the safety of the protected person. Section 183 of the FLA lists the terms that may be included in the order, including a catch-all term allowing the judge to order any term necessary to protect the at-risk family member or implement the protection order. Early feedback suggested that section 183 of the FLA is already flexible enough to permit judges to include any terms that may be needed in a protection order, and the more pressing issues are related to accessing and enforcing protection orders.

The public engagement materials asked whether section 183 should include any different or additional terms. Much of the feedback to this question came from people with lived experience of protection orders who completed the family violence and protection orders survey. Many respondents discussed the need for a term that would support very specific restraints against behaviours that used technology to perpetrate family violence. Feedback suggested there is a need for protection orders to include detailed terms restricting the use of social media, online stalking or communication, tracking technologies, and "smart home" technologies. There was also feedback that suggested protection orders may not be doing a good job of preventing communication, harassment, threats or spying. The list below summarizes the additional categories of protective terms respondents felt should be added to section 183:

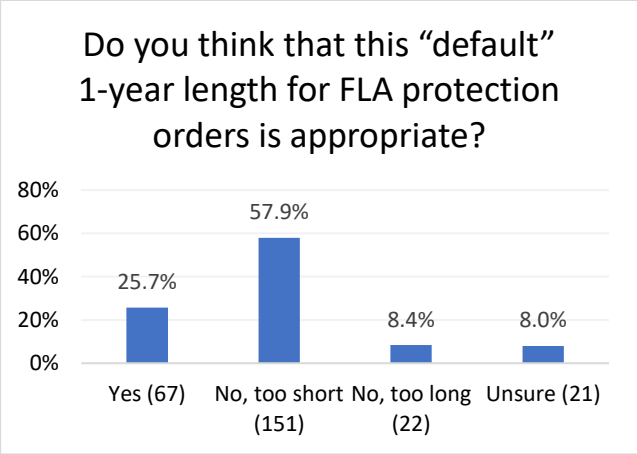
- A provision that would support restraining technology-based violence, including orders against third-party technology/internet service providers
- A provision that could be used to conceal the applicant's home and/or work addresses (a family member may learn where the applicant lives/works through the protection order process) and protect the confidentiality of other personal information
- A provision that would restrain the family member from harassing the applicant's family members, friends, co-workers and other people close to the applicant
- A provision enabling a "restorative justice" process between the applicant and family member (under the current regime, the applicant has no means of knowing whether the family member is still a threat, or if they are getting help)
- A provision restraining the family member from seeing the parties' children, or requiring the family member's parenting time to be supervised or include a supervised exchange in all situations where a protection order is granted even if there was no specific finding that the child had been subjected to family violence
- A provision requiring the family member to stay a specific distance from the applicant or requiring them to leave a location where the applicant is already located (i.e., requiring the family member to avoid being proximate to the applicant, rather than simply requiring them to avoid specific locations)
- A provision restraining the family member from removing or hiding a companion animal

Some of the feedback focused more on making existing terms more effective, rather than suggesting new terms that need to be added. For example, there were comments from some respondents that there should be a term in protection orders stating that it is enforceable by police, or that a breach of a protection order is enforceable as a criminal offense. Under the FLA, breaches of a protection order are already enforceable as a criminal offence, however people experienced police refusing to enforce the orders or advising that the order specifically needed to state that it was enforceable by police.

Another example concerned terms that direct police officers to accompany a family member to remove their belongings from the family residence. There were comments this cannot be accomplished in a single visit, rather the person remaining in the residence should have to leave the home for enough time to allow the other family member to pack all their belongings. Similarly, orders need to consider how the protected family member will access bank/credit cards, medical information and devices, passports, children's documents, keys and vehicles, as well as preventing the restrained party from cutting off the at-risk family member's utilities, lease or mortgage payments, financial access and other accounts.

How Long a Protection Order Lasts & What Happens When It Expires

Figure 5-3: Length of Protection Orders



Protection orders made under the FLA are in effect for 1 year from the date the order is made, unless the judge specifies another time period. Although this was not clear to all respondents, the judge always has the option of specifying whatever length they feel is best in each application. When a protection order expires, the onus is on the protected person to apply for another order, demonstrating they continue to be at risk of family violence.

As seen in Figure 5-3, about 58% of survey respondents felt the 1-year default period is too short, while about 26% feel the length is appropriate. Early feedback suggested many feel the current provisions place too high a burden on survivors, requiring them to repeatedly demonstrate a continuing risk. Moreover, it can be difficult to prove the risk remains if the protection order operated to deter violence while it was in place; in other words, just because the protection order worked and prevented violence while it was in place doesn't mean the risk won't recur once the order has expired.

Subsequent feedback further explained the frustration with protection order timelines. There were several comments about without notice protection orders (sometimes called "*ex parte*" protection orders). These orders are applied for without the applicant notifying the person they are seeking protection from, although if a protection order is granted it must be served on the restrained party. Sometimes a without notice order is set to expire within a few weeks or on the exact date that both parties are supposed to return to court to further speak to the application. This may leave the at-risk family member without protection if the hearing does not go ahead as planned. Short-term orders were also described as disadvantageous for both parties because they traumatized the survivor, often leave insufficient time for the respondent to obtain legal services and prepare a response and may waste court resources. It was proposed that without notice protection orders should not be short or time-limited to an adjourned date. Instead, they should be made subject to the respondent's right to give notice to the protected person and apply to have the order changed or set aside. There was also feedback that the 1-year default period is not a good approach, and several options were suggested to replace it:

- Change the 1-year default period to 2-3 years, on the basis that it often takes that long for family matters to proceed through the courts.
- Instead of basing the default period on length of time, base it on an event occurring. For example, the default period could be based on a date associated with the family law matters being resolved (e.g. a certain number of days after final reasons for judgment are pronounced)
- The initial default period could be one year, however if another protection order is made at the end of year one, the new order would continue until there was a successful application to terminate it.

There was an overall theme in the feedback expressing dissatisfaction with the current regime. Many respondents felt that once a survivor has demonstrated family violence and need for protection, the responsibility for changing, setting aside or terminating a protection order should shift to the respondent. The survivor should not have to prove over and over that they continue to be at risk; instead the respondent should have to demonstrate their behaviour is not a threat and it is appropriate to change or terminate the protection order. If the respondent chooses to return the matter to court to prove the protection order is not required or the terms should be changed, sufficient notice needs to be given to the protected family member. Taking a trauma-informed approach, the survivor should not have to prove their case from the beginning, as they demonstrated they needed protection in the initial application. There were also comments that survivors should not have to deal with the challenge of documenting breaches and bear the expense or trauma of going back to court for another order. Many survey respondents commented that protection orders should be indefinite, or not expire unless there is a court application to terminate the order.

What Was Said:

> *"They should not have to go through the stress, time suckage, and danger of having to apply to renew the order. Someone who is a risk to someone should be considered a continued risk - and if that ever changes in the victim's mind, they could then apply to end the order. The system needs to stop re-victimizing the victim by making them prove something over and over. If Bill hasn't threatened me or stalked me for a year because there's a protection order in place, I will not be able to 'prove' he's still a threat to me - but he most likely is. Look at the statistics. We know the recidivism rates for abusers. Let's stop pretending abusers magically stop being abusers."*
>
> *"...all I know in this moment is that I am fearful everyday once my protective conditions end. I am also afraid to extend because I am afraid it would make the other party upset."*

On the other hand, there were respondents who would leave the default period and requirement to reapply for a new protection order as is. There were comments that it is reasonable for the protected family member to have to reapply to extend or obtain a new order with different terms, providing evidence to show the order is necessary. They suggested short durations for without notice orders (e.g. 30 days) are appropriate because the respondent has not had an opportunity to present their side when the without notice order is made. There was also feedback that protection orders, especially without notice orders, should be easier to set aside or terminate. There was a recognition that there are sometimes delays in obtaining a hearing date and that can create safety concerns if an order has expired, so there was a recommendation that applications for protection orders should receive priority in both levels of court, following a simple, streamlined application process. There were several comments about the need for an automatic review process that would alert the parties and ensure the court considered whether the protected person continues to need a protection order before it expired. Some felt this may require a qualified neutral third party to assess this question and report to the court or specialized supports to assist with a renewal application.

Enforcing an FLA Protection Order

From the moment a judge grants a protection order, a person identified in a protection order is required to follow its conditions. If the person breaches its conditions, police officers can respond and have access to the Protection Order Registry (POR). The POR is a confidential database that contains all family law and criminal protective orders issued in

the province to help police respond to allegations that person has breached a protection order's conditions. A breach of a protection order is an offence that can be prosecuted under Canada's *Criminal Code*.

When contacting the police to report breaches of a protection order's conditions, some respondents reported receiving help from the police, while others reported difficulties obtaining help from the police. Respondents who reported these difficulties shared experiences of police officers telling them that that they could not enforce the order because it did not specify that it was "police enforceable" or include a "police enforcement clause". Other respondents described incidents of police officers declining to act based on a belief that the alleged breach was not "serious" or that the breach did not pose a risk of harm because it related to a "family matter or civil matter." Feedback indicates that these challenges negatively impacted respondents' feelings about protection orders and the ability of protection orders to keep them and/or the child safe from family violence.

What Was Said:

> *"…every (protection) order should be police enforceable. Too many officers refuse to assist and say it's a family matter or civil matter."*
>
> *"more police enforcement or 'contempt' (jail?) consequences for breaches. Make the orders mean something."*
>
> *"…With over 2 dozen documents occurrences of legitimate breach, the RCMP would not take action on any of the breaches because as the last police office put it "this is a waste of my time." Why have a PO if the RCMP won't do anything about it?"*

Enforcing a Civil Protection Order from Another Province or Territory

Section 191 of the FLA says that a civil protection order made in another Canadian province or territory that is similar to a protection order made under Part 9 of the FLA can be enforced in BC, without having to register the order or appear in court in BC. Service providers reported that it is stressful and re-traumatizing to have to deal with court processes and register the out-of-province order when police refuse to enforce it and this may be enough of a barrier to prevent a survivor from advocating for their safety. There was feedback that there needs to be more information about this issue for the protected family members. Judges and lawyers also need training and education, including on how to draft terms in protection orders so they can be enforced in another jurisdiction. For example, if the protection order only restrains the abusive person from going within one kilometre of the protected party's specific home address in Maple Ridge, police will not be able to enforce that term to protect the party in her new home in Lethbridge.

Did you know?

In 2022, the federal government committed $869,861 over 4 years to the National Judicial Institute for judicial training on intimate partner violence and family violence in the family justice system through its Justice Partnership and Innovation Program.

Indigenous Perspectives: Protection Orders

In order to better understand the unique experiences and needs of Indigenous families, we conducted Indigenous dialogue sessions in May and June 2023 and prepared an Indigenous Perspectives survey, which was open from January through April 2024. The Indigenous Perspectives survey included questions about family violence and protection orders, and although the number of respondents was small (18), it provided additional insight on some of the feedback shared in the Indigenous dialogue sessions.

Feedback collected through the dialogue sessions and survey indicate that Indigenous communities face difficulties responding to family violence. In the survey, questions were asked to understand how often family violence is an issue in Indigenous families, and what is done to address the problem. Ten of the twelve people who answered this question said they or a family member had experienced family violence in their Indigenous community. Among those who identified that they or a member of their family had experienced family violence:

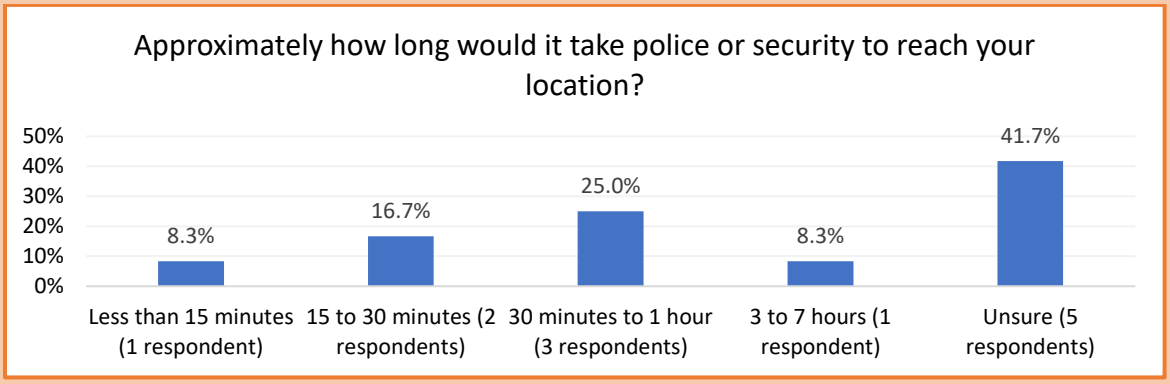
- 60% reported no action being taken,
- 30% reported contacting the police and no charges being laid,

- 30% reported applying for a protection order,
- 20% reported contacting the police and charges being laid, and
- 20% reported fleeing to a transition house.

This matched the responses to a question that asked how family violence was dealt with in Indigenous communities. Again, the most common response was "it is ignored or not dealt with". Other ways included band council resolutions, criminal charges, help from family members or community leaders, criminal charges and protection orders.

Feedback from the dialogue sessions and survey also highlighted challenges that survivors of family violence face getting and enforcing protection orders when one or both parties live on a reserve. When survey respondents who did not apply for a protection order were asked why they did not apply, they cited various reasons including: (a) fears about the other person's response to the order, (b) concern that the order would get the other person in trouble, (c) doubts about the helpfulness of an order, (d) difficulties obtaining the order (e.g., a lack of time or legal representation), and (e) police being too far away to enforce a protection order in the community. These reasons echoed feedback we heard during our dialogue sessions with Indigenous stakeholders and communities. Having heard in early feedback that people believe police will arrive too late if they are called to respond to a breach of a protection order or an incidence of family violence, the survey asked "How long would it take for police or security to reach your location?". 42% of respondents were unsure. As illustrated in Table 5-3, the rest indicated it can take anywhere from 15 minutes to 7 hours for police or security to respond to reports of family violence in their community.

Table 5-3: Time for police/security response



Survey feedback also indicated that many people do not know who is responsible for responding to family violence and enforcing protection orders in Indigenous communities. 43% of respondents were unsure and the rest of the responses were divided between municipal police or the RCMP (29%), Indigenous police (7%), and other Indigenous community members (14%).

Failing to properly address family violence within Indigenous communities was a theme throughout the feedback. Respondents commented that community members who report family violence may not be believed, or paid attention to, or are silenced.

What Was Said:

"In my community the predators are protected due to residential school experience"

"This is an area that has not been explored, examined, or considered in Metis communities in BC"

"It is largely not dealt with because we do not want police on the reservation"

"Nothing is taken seriously when the woman is the perpetrator."

There were also comments about what needs to change to better address family violence in Indigenous communities. Better prevention was one of the themes that emerged. There was a call out for prevention seminars and presentations, improved child wellness checks, and a recognition that *"they aren't bad people, just people normally under the influence of alcohol or other drugs doing bad things. Need to address the underlying mental health crisis, not punish individuals."* Others echoed concerns about the difficulty of "proving" family violence, especially when judges, police or lawyers are not sufficiently educated about family violence.

Family Violence and Parenting Arrangements

Decisions about guardianship, parenting arrangements and contact with a child must be made considering only what is in the child's best interests. To make this decision, all of the child's needs and circumstance, including a list of factors set out at section 37 of the FLA must be considered. Several of these factors are related to family violence:

> (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
>
> (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
>
> (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or wellbeing of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or wellbeing.

If there is family violence, a list of factors in section 38 guide the court in assessing the impact of the violence on the child's safety, security and well-being as well as whether the person responsible for the violence is impaired in their ability to care for the child and meet their needs.

Despite the guidance in sections 37 and 38, there are significant concerns about the way that family violence is being taken into account when decisions about children are made. Many feel it is a myth that a person responsible for violence directed at a family member other than the child can still be a good parent. They suggest the perspective that such a person could be a good parent fails to consider the trauma to children who witness family violence against their parent or other family members, and the way that a child is negatively impacted when their parent is living with the harmful effects of abuse. There was feedback that the FLA should be amended to require a more sophisticated analysis of the impact of the family violence on the perpetrator's ability to parent as well as the survivor's ability to parent and keep the child safe. It should be recognized that choosing to behave violently towards a family member reflects an attitude of self-interest and entitlement which conflicts with the ability to put a child's needs and interests first.

What Was Said:

> *"I believe the reality of family violence should play a larger role in the court's decision. I believe the willingness of one person to continue to engage in coercive ways towards their child's other parent clearly reflects they do not have the children's best interests at heart if they are willing to inflict that amount of suffering and abuse upon their child's other caregiver. The impact of that necessarily ends up trickling down to the child. As a child counselor, I deal with the immediate aftermath of these types of behaviours, and I see directly the harm it causes to the child. The courts need to recognize that abuse to your child's other parent is just as damaging to the child as abuse to the child themselves."*

Although there were many comments that parents responsible for family violence should not have any parental responsibilities or parenting time, there was other feedback that discussed how a child might safely spend time with an abusive parent. Supervised parenting time or contact is one mechanism that is sometimes used to maintain the parent/child relationship when there is a risk of family violence. There was feedback that the court should be required to consider whether supervision is needed whenever family violence is an issue. It is a concern that affordable supervision services are often not accessible, particularly in rural or remote communities. There was also feedback that the parent responsible for the violence should bear the full cost of supervision services rather than dividing it between the parties.

Feedback was also received about parental alienation allegations in family law proceedings involving family violence. Parental alienation generally refers to behaviours by one parent or caregiver that manipulate a child to reject the other parent, out of hatred, fear or disrespect. There are concerns 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. It was suggested that children in these situations need counselling and a child advocate, which would support them to maintain relationships with both parents, on terms that the child is comfortable with. There was also feedback that the FLA should bar parties from making parental alienation allegations because these claims are so often made against victims of family violence, leading to further abuse as well as harming the children involved.

The family violence and protection order survey asked respondents who had experienced family violence whether it was considered in the dispute involving the child. 31% said no.

What Was Said:

> *"I was told by the judge that what happened to me was about me and not about our children and therefore the violence would not be taken into consideration on parenting time for my ex-husband."*
>
> *"The acts of intimidation were not taken seriously or considered in JCC [judicial case conference] or other hearings. The lawyer suggested dropping it because it '[heightened] the conflict'."*

Although there was some feedback that family violence is considered appropriately when making decisions about the children, many parties and people supporting families said it is not. Survivors reported being told not to mention family violence because they would risk

losing their children, it would make the separation harder, or the courts were unlike to recognize it. Others commented that the courts put a higher priority on the abusive parent having a relationship with the child than the child's well-being and need for protection.

What Was Said:

> *"All parties including my lawyer and the [other party's] lawyer, and every justice before whom we have to date appeared, has been quick to dismiss family violence as an issue relevant to litigation. 'Judges won't consider it, unless the Ministry of Children and Family Development is currently involved,' my lawyer told me in quickly dismissing raising regular, repeated family violence as a factor relevant to parenting time. My ex is now using litigation *as* family violence, including financial control, to police my activities & review my purchases since the relationship start; he has unilaterally reduced child support 3 times since separation in 2020, and evicted my children and I from our family home to move in & apply for 50% parenting time (i.e., to reduce child support again)."*

Feedback from youth echoed these comments. Young people who completed the Youth Perspectives Survey shared feedback suggesting that they also feel family violence is poorly addressed in family law matters, with 75% of them reporting that they felt unsafe at home. They described feeling their physical safety, emotional safety and mental health were at risk due to violence within their family. Many described stress, fear, and anxiety, often because of being forced to spend time with a parent who had a history of violence and with whom they did not feel safe.

Respondents who were accused of committing family violence agreed it was not properly considered when deciding what was in the child's best interests, however it was their view that they were considered guilty of violence unless they could prove their innocence.