

PROTECTION ORDERS

Relevant Sections: : [1](#), [182-191](#)

WHAT THE FAMILY LAW ACT SAYS:

Violence between family members can take many forms, and people may need to find ways to protect themselves and their children to ensure their safety. Family violence is broadly defined to include physical abuse, sexual abuse, psychological or emotional abuse including intimidation, harassment, coercion, threats, restricting personal or financial independence, stalking, intentional damage to property and exposing a child to family violence (for more information see **Backgrounder: Family Violence**). A “protection order” is available in either the Provincial or Supreme Court under the *Family Law Act* (FLA) in situations where a person is at risk of family violence from a family member.

A family member at risk of family violence or another person acting on the at-risk family member’s behalf may apply to the court for a protection order. The FLA sets out risk factors the court must consider when deciding whether to make a protection order:

- History of family violence
- Whether the violence is increasing or happening repeatedly
- Whether there is a pattern of coercive and controlling behaviour
- The relationship between the parties, including whether they’ve recently separated or plan to
- Things that increase risk of violence, including substance abuse, financial or work-related issues, weapons, mental health problems associated with violence, history of violence
- Circumstances that put the victim at greater risk, including pregnancy, age, health problems, family circumstances, relying on the abuser for financial support

A protection order will be in effect for one year, unless the judge specifically makes the order for another period of time. The FLA also suggests what terms might be included in the order to protect the at-risk family member:

- Restraining communication or contact
- Preventing the person from entering or going near a place the at-risk family member is regularly at, including their workplace, school, church, or home, even if the restrained person owns or leases that place
- No following the at-risk family member
- Preventing possession of a weapon, firearm or specified object
- Directing police to remove the person from a residence or supervise the removal of personal belongings from a residence
- Requiring the person to report to the court or a person named by the court
- Any other term needed to protect the at-risk family member’s safety or implement the order

When a protection order is made (or changed or terminated) the information, including the terms, is entered in the Protection Order Registry. All police in BC, including RCMP and municipal police, can see this information and enforce the protection order. Although a protection order is a civil order, a person who does not follow the terms of the order may be prosecuted under the Criminal Code.

SOME ISSUES WE KNOW ABOUT:

There are situations where people do not meet the definition of family member and are not eligible to apply for a protection order. These include people who are in a dating relationship but do not live with their dating partner, relatives who do not live together (for example, there may be an abusive relationship between an uncle and niece but an FLA protection order would not be available). It also may not capture people who live together and consider themselves family but the relationship is really a close friendship.

In some communities, for a variety of reasons, protection orders are difficult to apply for and obtain. Sometimes people are not aware protection orders are available under the FLA, sometimes there are few resources in a community to support people understanding and applying for protection orders, sometimes the victim isn’t believed, or the risk isn’t taken seriously.

People in some communities, including rural and remote communities, describe challenges enforcing FLA protection orders. Some people report difficulty getting police to enforce a term in a protection order that restrains a person from entering their home in order to protect a victim living in the home. Sometimes the victim is reluctant to involve police and doesn’t report a breach of the protection order.

Sometimes victims of family violence who have not been successful in getting a protective order through the criminal justice system feel there is no point in applying for an FLA protection order. Some victims may not know that an FLA protection order is still an option that is enforceable by the police, even if they were not given a peace bond or do not feel protected by the results of a criminal law trial or process. Although a person charged with an offence under the Criminal Code must be found guilty beyond a reasonable doubt, that standard of proof does not apply to applications under the FLA.

INDIGENOUS PERSPECTIVES:

- Based on your experiences in your family and your community, what can family violence look like? How has your family or community responded to incidents of family violence?
- What challenges do people, especially Indigenous (First Nations, Inuit, and Métis) women, two-spirit and LGBTQ people face when dealing with family violence? How can they protect themselves when they are at risk of family violence?
- How could the FLA offer better protection against family violence?
- Based on your experience, are protection orders a useful way to protect members of your family or your community from family violence?