Improving Protection Orders: Consultation Paper for Family, Child Protection, and Civil Law

Executive Summary

December 2025

LCO CDO
LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

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The Law Commission of Ontario (LCO) is Ontario's leading law reform agency. The LCO provides independent, balanced, and authoritative advice on complex and important legal policy issues. Through this work, the LCO promotes access to justice, evidence-based law reform, and public debate.

The LCO's reports are practical and principled long-term resources for policymakers, interested parties, academics and the public. Our reports have led to legislative amendments and changes in policy and practice. Our work is frequently cited in judicial decisions, academic articles, government reports and the media.

A Board of Governors, representing a broad cross-section of leaders within Ontario's justice community, guides the LCO's work.

More information about the LCO and our projects is available at www.lco-cdo.org.

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Case Law Review & Survey Design

This Consultation Paper includes research findings from the LCO's family court case law review. Laura Snowdon, Lillianne Cadieux-Shaw, Vanshika Dhawan and our student researchers designed our data collection instrument from two templates: one developed by Dr. Rachel Birnbaum, and the second created by Professors Jennifer Koshan, Janet Mosher, and Wanda Wiegers for their study of coercive control. Dr. Salina Abji leads our related survey design and analysis.

Disclaimer

The opinions and points of view expressed in the LCO's research, findings, and recommendations do not necessarily represent the views of our Advisory Committee members, consultants, funders, or supporters.

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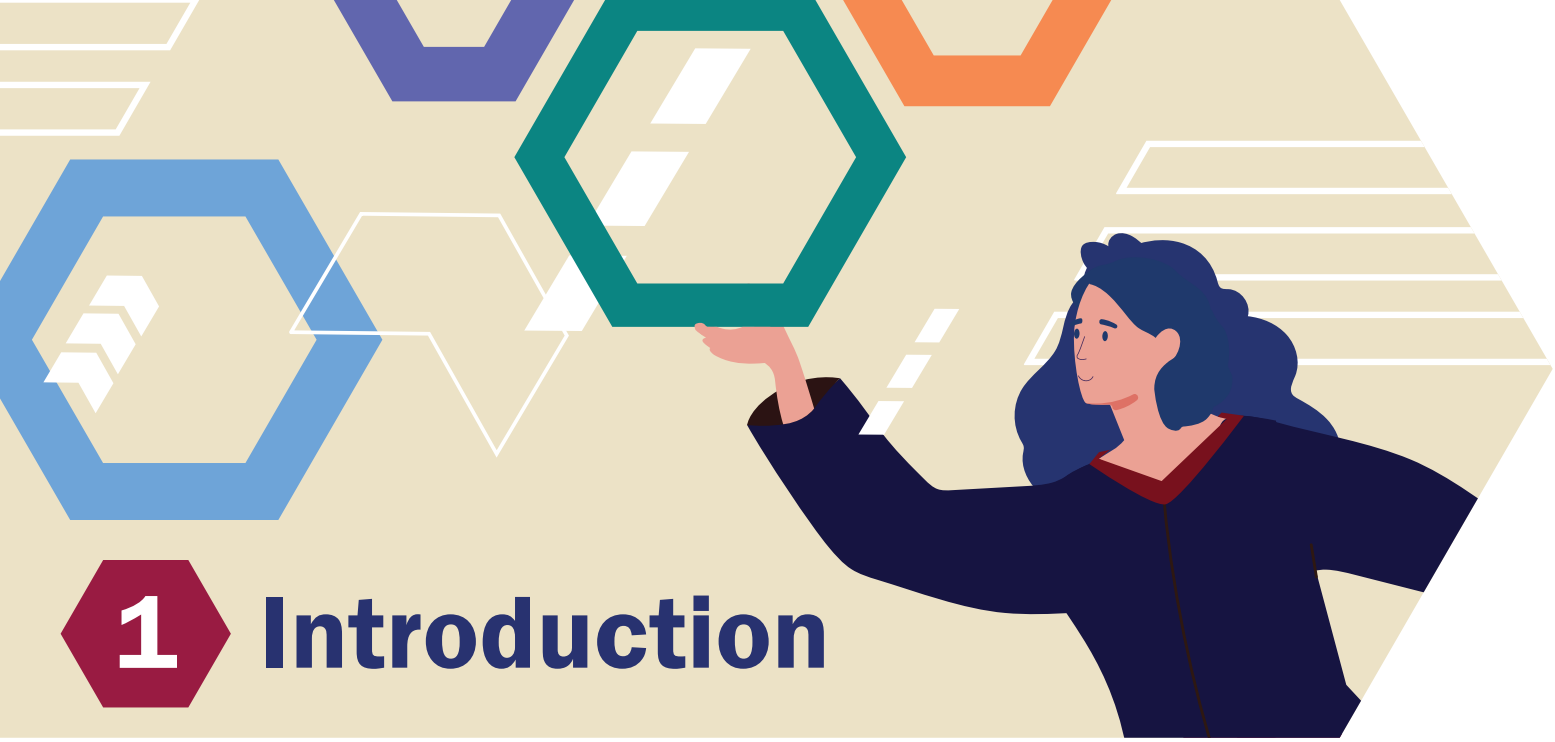

1 Introduction

The Law Commission of Ontario's Protection Order Consultation Paper

This is the Executive Summary of the Law Commission of Ontario's (LCO's) Consultation Paper on improving protection orders in Ontario in family, child protection, and civil law.

Protection orders are legal tools that are supposed to keep people safe from violence by placing specific conditions on a person causing harm. For example, a protection order might limit where that person can go, what they can do, and who they can contact.

Many different protection orders are used in cases of intimate partner and family violence in Ontario. Protection orders can include restraining orders, peace bonds, bail release orders or undertakings, exclusive possession orders, and criminal sentences with protective conditions.[1] Some First Nations also have their own protection orders.

When protection orders work well, they can save lives. Unfortunately, Ontario's protection orders urgently need reform. Protection order laws are confusing, disconnected, and outdated. Protection orders themselves are often hard to get and ineffective, because they are frequently breached and underenforced. As a result, protection orders are failing to provide meaningful safety to the predominantly women who seek protection from intimate partner and family violence.

The LCO's project is examining how to improve all aspects of protection orders, including access, legal processes, evidentiary requirements, conditions, duration, enforcement, and coordination. We are also considering whether Ontario should adopt dedicated civil protection order legislation like other Canadian jurisdictions. This Consultation Paper asks questions about these topics, and we invite Ontarians from across the province to share their views by responding to our questions. A list of consultation questions is included as Appendix A.

This project will produce an independent, evidence-based, and comprehensive analysis of protection orders in Ontario. The LCO's final report will recommend reforms to laws, policies, and practices where appropriate. We will also publish user-friendly online materials explaining our work and recommendations, including the results of our province-wide surveys about improving protection orders. The LCO heard from over 300 individuals affected by protection orders and professionals who work in Ontario's protection order landscape about their experiences and ideas for change.

The full Consultation Paper and all project materials are available on the LCO's project webpage: https://www.lco-cdo.org/en/our-current-projects/improving-protection-orders/.

About the Law Commission of Ontario (LCO)

The LCO is Ontario's leading law reform agency. The LCO provides independent, balanced, and authoritative advice on complex legal policy issues. We evaluate laws impartially and transparently, in consultation with a wide range of affected individuals, organizations, and experts. We produce evidence-based recommendations that are tested through inclusive and comprehensive public engagement processes. More information about the LCO is available at www.lco-cdo.org.

Catalysts for Reforming Protection Orders

The Epidemic of Gender-Based Violence

Ontario is facing an epidemic of intimate partner and family violence. According to Ontario's Domestic Violence Death Review Committee, at least 434 people were murdered in acts of intimate partner violence across the province between 2003 and 2021.[2] Most victims were women and children. The overwhelming majority of these murders were preceded by a history of violence – and in a quarter of cases, the perpetrator had already breached an existing protection order or other court order.[3]

In 2023, the Mass Casualty Commission investigating the 2020 Nova Scotia mass casualty called on all levels of government in Canada to declare an epidemic of gender-based, intimate partner, and family violence warranting a sustained, society-wide response.[4]

Confusing, Disconnected, and Outdated Protection Order Laws

Ontario's protection order laws and processes are fragmented and complicated. The laws that govern protection orders in Ontario include provincial laws (such as family and child protection laws) and federal laws (including the *Criminal Code of Canada*), but there are also many police procedures, court rules, and other policies and processes survivors may encounter.

Many people in need of protection cannot navigate Ontario's patchwork of protection order laws, which often have different eligibility criteria, procedural requirements, evidentiary standards, conditions, durations, and enforcement mechanisms. This complexity is exacerbated by survivors' urgent safety needs, the shortage of affordable legal representation, the involvement of multiple courts in protection order matters, and the lack of coordination between siloed legal systems.

Inaccessible and Ineffective Protection Orders

The LCO's review of 76 reported Ontario family court decisions from 2021 to 2023 revealed that many women who seek restraining orders are not believed. Women's applications were dismissed more than half the time.[5]

Other barriers preventing access to protection orders include:

- Lack of awareness that protection orders exist
- The risk of retaliation
- Limited access to legal information and representation
- Onerous procedural requirements
- High evidentiary thresholds
- Pervasive doubt about the effectiveness of protection orders

Even when protection orders are issued, they often fail to keep people safe. Orders may lack appropriate conditions or go unenforced. As a result, protection orders have been described as "a piece of paper [that] does not stop a knife or a bullet",[6] "a joke",[7] and "not worth the paper they're written on."[8]

More Advanced Protection Orders in Other Jurisdictions

Ontario is one of the few Canadian jurisdictions without a civil protection order law allowing survivors to pursue protection orders through dedicated legislation rather than family, child protection, or criminal statutes. Civil protection order statutes offer many potential benefits, and the LCO believes lessons from these jurisdictions may make protection orders more accessible, responsive, and effective in Ontario.

Recent Provincial Initiatives

Finally, this project builds on provincial reforms in Ontario. Ontario's 2025 *Protect Ontario Through Safer Streets and Stronger Communities Act* takes steps to improve protection orders by allowing additional persons to apply for restraining orders in family court on behalf of people in need of protection.[9] The Government is also considering new legislation to streamline the enforcement of restraining orders made in other provinces and territories in Ontario,[10] as well as other avenues to address gender-based violence in the province.[11] These proposals are consistent with earlier LCO recommendations to the Government.[12]

Project Organization, Contributors, and Funding

This Consultation Paper is the first in a two-part series. It focuses on protection orders in family, child protection, and civil law, while a second paper will address criminal protection orders. The LCO has also launched province-wide surveys, analyzed court decisions, planned focus groups, and commissioned a study on protection orders in Indigenous and Aboriginal law.

This paper is the product of in-depth research and informal consultations with more than 100 individuals and organizations, including community service providers, legal professionals, academics, and survivors.

The LCO also benefited from the support of an expert Advisory Committee, specialized consultants, and student researchers to prepare this paper. A list of Advisory Committee members is available on our project webpage: https://www.lco-cdo.org/en/our-current-projects/improving-protection-orders/.

Dedicated funding for this project is provided by the Law Foundation of Ontario and the Rt. Hon. Beverley McLachlin Access to Justice Fund.

Public Participation and Consultation Process

This Consultation Paper asks questions about a wide range of protection order topics and invites people across the province to participate. Participants may address all questions or focus on areas of particular concern.

Given the sensitive nature of many issues involved, the LCO encourages readers to engage at their own pace and connect with mental health and wellness supports if needed:

- **Assaulted Women's Helpline:** 1-866-863-0511 and TTY 1-866-863-7868
- **Fem'aide for French-speaking women:** 1-877-336-2433 and TTY 1-866-860-7082
- **Talk4Healing for Indigenous Women:** 1-888-200-9997
- **Kids Help Phone:** 1-800-668-6868
- **Canada Suicide Crisis Helpline:** Call or text 9-8-8

The LCO welcomes written submissions via email at LawCommission@lco-cdo.org. We will publish responses on our website, subject to exceptions. **The deadline for written submissions is Friday March 13, 2026.**

The LCO will also organize meetings, forums, and workshops to gather feedback.

Individuals and organizations wishing to provide a written submission or discuss consultations are encouraged to contact the LCO.

The LCO's project lead is **Laura Snowdon**, who can be contacted directly at LSnowdon@lco-cdo.org.

2 Background

What are Protection Orders?

Protection orders are legal tools designed to reduce the risk of future violence by one person who has been found to pose a threat to another. They are commonly used in cases of intimate partner and family violence across Ontario.

Protection orders have been called tools of "preventive justice" because they aim to prevent future violence, instead of punishing past conduct.[13] Protection orders try to prevent violence by imposing restrictions or conditions on another person, including what they can do, who they can contact, and where they can go. "No-contact" and "no-go/non-attendance" are the most common conditions in protection orders.

Accessible and effective protection orders can deter violence or reduce the severity and frequency of violence; encourage safety planning; and allow for increased monitoring and quick intervention by authorities.[14]

It is clear, however, that protection orders are not fulfilling their potential. In Ontario, we have a patchwork of protection order laws and processes that developed in different areas of law and do not operate together as a coherent system of protection. Carol Barkwell, former Executive Director of Luke's Place, has described the challenges of Ontario's legal landscape:

> *The current protection order system in Ontario is a maze, with some kinds of orders available to women involved in family law cases, others for those with whom child protection services have become involved and still others available through the criminal court, in the form of bail or probation orders or peace bonds. Each requires a different process, provides different kinds of protection and involves different approaches to enforcement.*[15]

The following tables summarize the variety and legislative sources of protection orders in Ontario:

Family Law	**Restraining orders**	Restraining orders under s. 46 of Ontario's *Family Law Act*
		Restraining orders under s. 35 of Ontario's *Children's Law Reform Act*
	Exclusive possession orders	Orders for the exclusive possession of the matrimonial home under s. 24 of Ontario's *Family Law Act*

Child Protection Law	**Restraining orders**	Restraining orders under s. 137 of Ontario's *Child, Youth and Family Services Act*
		Restraining orders under s. 102(3) of Ontario's *Child, Youth and Family Services Act* that are deemed to be restraining orders made under s. 35 of Ontario's *Children's Law Reform Act*

Criminal Law	**Peace bonds**	Peace bonds under s. 810 of the *Criminal Code*
		Common law peace bonds
	Bail release orders and undertakings	Bail release orders under s. 515 of the *Criminal Code* and releases by police on an undertaking
	Sentencing orders	Probation orders attached to a conditional discharge, a suspended sentence, or an intermittent sentence
		Conditional sentences
		Parole orders

3 Accessing Protection Orders

There are many legislative restrictions and other barriers to applying for protection orders in Ontario. Potential law reform initiatives to make protection orders more accessible include creating emergency orders, extending statutory eligibility to more types of intimate and family relationships, defining violence broadly, allowing applications on behalf of survivors and on the court's own motion, and strengthening legal aid, legal information, and protection order advocates.

Emergency Orders

Most protection orders in Ontario are not available on an emergency basis. Current wait times can be months to years.[16] This situation is concerning given the lesson repeatedly learned from lived experiences, research, death reviews, and inquests into femicide: women and children are at heightened risk of intimate partner and family violence at separation.[17] Outside Ontario, many Canadian jurisdictions have emergency protection order provisions to expedite applications and address safety risks more quickly (sometimes within 24 hours).[18]

Statutory Eligibility

In Ontario, *Family Law Act* (*FLA*) restraining orders are only available to spouses, former spouses, or people who have cohabitated with each other.[19]

These criteria exclude many types of relationships in which intimate partner and family violence can arise. For example, people in dating relationships and extended family relationships are not eligible for *FLA* restraining orders. Eligibility for *FLA* exclusive possession orders, *Children's Law Reform Act* (*CLRA*) restraining orders, and *Child, Youth and Family Services Act* (*CYFSA*) restraining orders is also restricted.

In other provinces, protection order legislation has broader eligibility criteria. For example:

- In Manitoba, people can apply for protection orders if they are a current or former cohabitant in a spousal, conjugal or intimate relationship as well as if they have a child together or were in a family or dating relationship, regardless of whether they have lived together.[20]
- In Saskatchewan, protection orders are available to victims of "interpersonal violence", including people who have lived together or are living together in a family relationship, spousal relationship, or intimate relationship; people who have a child together; and people who are in "an ongoing caregiving relationship", regardless of whether they have lived together.[21]
- In British Columbia, protection orders are available to "at-risk" family members.[22]

Definition of Violence

Ontario's *FLA*, *CLRA* and *CYFSA* do not specify the forms of violence that make someone eligible for a restraining order.[23] In contrast, civil protection order legislation in other Canadian jurisdictions often has broad definitions of violence to account for the complexity, nuance, and diversity of people's experiences. Many statutes define "violence" to include physical, sexual, psychological, and emotional abuse, and some also include:

- Stalking
- Sexual exploitation
- Coercive control
- Depriving necessities of life
- Financial abuse
- Harm to children
- Vicarious responsibility for indirect abuse
- Threats about pets
- Forced confinement
- Tech-facilitated violence

Third-Party Applications and Court's Own Motion

Ontario's 2025 *Protect Ontario Through Safer Streets and Stronger Communities Act* will allow additional persons to apply for restraining orders in family court on behalf of people in need of protection.[24]

Since Ontario's regulations are not yet written, there is a question of *who* should be authorized to apply for a restraining order on a survivor's behalf. Across Canada, examples include law enforcement officers and intimate partner and family violence service providers. In some cases, the survivor's family member or friend may be authorized to apply on their behalf, with their consent.[25]

British Columbia also authorizes courts to consider whether a protection order should be granted on the court's own initiative (meaning without an application from a person in need of protection).[26] A similar strategy already exists in Ontario's child protection legislation, where a court can evaluate the need for a restraining order on its own motion.[27]

Legal Aid and Public Legal Information

The high cost of legal representation is a particular barrier to accessing protection orders, which are substantively and procedurally very complex legal instruments. The LCO continues to hear reports that people in need of protection cannot find legal aid lawyers to assist them, or do not qualify for legal aid. Sometimes, the amount of legal aid hours a survivor qualifies for is not enough to complete a protection order process.

While free public legal information resources are available to help applicants, these are not a substitute for legal representation.

Protection Order Advocates

Ontario currently funds a Family Court Support Worker program which can assist people pursuing protection orders in family court.[28] The Law Society of Ontario has also approved a Family Legal Services Provider authorization for specially trained paralegals to provide certain legal services in family law matters.[29] The LCO is exploring whether continued training and investment into these programs could enable family court workers and qualified paralegals to apply for protection orders on behalf of applicants, once the changes in Ontario's 2025 *Protect Ontario Through Safer Streets and Stronger Communities Act* take effect.

Consultation Questions about Accessing Protection Orders

1. Should Ontario establish emergency access to protection orders?
    a. Should Ontario require protection order applications to be heard and decided within a specific timeframe?
2. Should the types of intimate and family relationships eligible for protection orders be expanded in the FLA, CLRA, and/or CYFSA?
3. Should Ontario define violence in the FLA, CLRA, and/or CYFSA for restraining order eligibility? If yes, what forms of violence should be included?
4. Who should be able to apply for protection orders on behalf of people in need of protection, with their consent (and/or by leave of the court)?
    a. Should courts be able to consider granting a protection order without an application?
5. Do you support increased funding for legal aid to access protection orders? What additional changes, such as strengthening protection order advocates, would you recommend?

4 Protection Order Processes

Many standard court processes are unsafe in the context of intimate partner and family violence. Certain procedures are too slow and too confusing, and many leave survivors vulnerable to retaliatory violence and re-traumatization. Potential law reform initiatives to improve protection order processes include modifying procedures for emergency orders, streamlining urgent and *ex parte* motions, protecting survivors' information and safety, adopting trauma-informed court procedures and interim protective measures, avoiding litigation abuse, keeping protection orders up-to-date, and amending procedures to modify protection orders.

Procedures for Emergency Protection Orders

If protection orders in Ontario are made available on an emergency basis, existing procedures will need to be modified. In other Canadian jurisdictions, emergency protection orders can be granted quickly, over the phone, on an *ex parte* basis and a limited evidentiary record, and before a justice of the peace instead of a judge (sometimes outside of regular court hours).[30]

Review Procedures

Emergency protection order procedures can benefit applicants but may have serious consequences for respondents. As a result, streamlined applications for emergency orders in many jurisdictions are coupled with strict timelines and review procedures to protect respondents' rights.[31]

Urgent and *Ex Parte* Motions

The question of notice to the respondent is a significant issue, even in jurisdictions that specifically allow *ex parte* applications for protection orders. The risk of cost consequences, the unpredictability of judicial assessment, and the fact that motions are not necessarily a "fast" route to protection orders make urgent and *ex parte* motions risky for people in need of protection in Ontario. In contrast, many protection order statutes in Canada explicitly contemplate *ex parte* applications to encourage their use.[32]

Protecting Sensitive Information

A critical component of many survivors' safety plans is hiding from their abusers to escape violence. However, protection order court forms in Ontario may require applicants to disclose their address, their allegations of violence, and other sensitive personal information that could endanger them when provided to the person causing harm. Legislation in some other Canadian jurisdictions requires or permits a protection order applicant's address and other personal information to be kept confidential.[33]

Document Service

In most cases, protection order applicants must arrange for the delivery of notice of court proceedings, documents, and orders to respondents. These obligations can increase risk and can be costly, hard to understand, and onerous. Survivors may be unaware of their responsibilities and options.

Some provinces proactively address document service issues. For example, in 2016 the Government of British Columbia contracted professional process servers to deliver protection orders across the province at no cost to applicants.[34]

Trauma-Informed Court Procedures

Some civil protection order statutes across Canada allow for flexible procedures to increase access to protection orders for people experiencing violence. For example, Manitoba authorizes courts to adopt any procedures that might help put the applicant at ease and assist them in understanding the process, including having a support person at the hearing.[35]

Giving survivors in Ontario more options to apply for protection orders (such as in person or virtually) is another trauma-informed practice that can make protection orders more accessible. So too is leniency when assessing protection order materials submitted by unrepresented applicants.[36]

Interim Protective Measures

When people experiencing intimate partner and family violence are forced to wait for protection orders, their safety is at risk. The LCO is considering whether interim protective measures, such as an undertaking from the respondent, may help bridge the gap between survivors' immediate safety needs and the realities of complex protection order processes and lengthy court delays.[37]

Litigation Abuse

"Litigation abuse" describes the co-opting of legal systems by people using violence to maintain contact and continue coercing, monitoring, controlling, and harassing their victims.[38] The LCO found several examples of litigation abuse in restraining order case law in Ontario.[39] Strategies to avoid litigation abuse could include:

- Analyzing patterns of coercion and control to identify the person controlling the violence
- Encouraging cross-court and cross-sector communication to ensure decision-makers are aware of the pattern of violence and any litigation abuse in related proceedings
- Requesting explicit findings in court decisions relating to the misuse of litigation
- Judicial education to enable decision-makers to identify litigation abuse tactics
- Considering cost consequences to address litigation abuse[40]

Claims for Mutual Protection Orders

Mutual protection orders occur when courts grant one protection order preventing the respondent from contacting the applicant, and a separate protection order preventing the applicant from contacting the respondent. The use of mutual protection orders in Canada is increasing.[41]

Genuine mutual violence is rare, but resistance violence and self-defence often complicate courts' determination of who is in need of protection and can lead to mutual protection orders.[42] Mutual orders pose many challenges for people experiencing intimate partner and family violence.[43] Experts have expressed concern that courts may be inappropriately granting mutual protection orders against women due to system-wide pressure[44] and in the face of little or no evidence of violence on their part.[45]

Ontario's legislation does not directly address mutual protection orders. British Columbia's legislation, however, provides that if family members are seeking protection orders against each other, the court must consider whether the order should be made against one person only in light of the history of violence between the parties, their respective vulnerability, and other factors.[46]

Maintaining Up-to-Date Copies of Protection Orders

The LCO has heard concerns about the completeness and reliability of restraining order copies on file at courts and with the police. In particular, when a protection order is repeatedly modified by the courts, it can become impossible to know the terms of the order.[47] The LCO is also aware of instances where applicants reported breaches of their protection order to the police, and the police refused to enforce the court order because they could not determine it was the most recent version.

Without reliable court processes for updating and recording protection orders with their most recent terms, applicants will be unable to confirm their protection, respondents will not know the conditions they must comply with, and police cannot enforce the order.

Procedures for Changing, Extending, or Terminating Protection Orders

Procedures to vary, extend, and terminate protection orders can be complicated, costly, and time-consuming. Applicants generally bear a heavy procedural and evidentiary onus. This is especially concerning when there are conflicting court orders, such as when a family court restraining order must be changed to align with the respondent's criminal bail conditions.[48] The LCO has learned about the need for streamlined procedures to change protection orders in these situations.

Consultation Questions about Protection Order Processes

6. What procedural reforms, such as implementing review procedures, would make emergency protection orders effective? How can applicants' need for emergency orders be balanced with respondents' rights?

7. How can Ontario improve urgent and *ex parte* motions in protection order proceedings?

8. How can Ontario protect sensitive information and improve document service in protection order processes?

9. What trauma-informed court procedures could improve protection order proceedings?

10. What interim protective measures might reduce the risk of retaliation and other violence between the date of the protection order application and the court's decision?

11. Are procedural reforms needed to address litigation abuse in protection order proceedings and claims for mutual protection orders?

12. Should courts be responsible for updating protection orders to reflect modifications? What do you recommend about how to maintain up-to-date and accessible copies of protection orders?

13. How can the procedures for changing, extending, or terminating protection orders be easier, safer, and/or faster?

5 Evidence

In Ontario, restraining orders made under s. 46 of the *FLA*, s. 35 of the *CLRA*, and s. 102(3) of the *CYFSA* are available to applicants who have "reasonable grounds" to fear for their safety or the safety of their child(ren). Restraining orders under s. 137 of the *CYFSA* can be granted when it is in the child's best interests.

The LCO has identified significant inconsistencies in courts' application of the reasonable fear test, with the result that many women are not believed.[49] Potential reforms to improve the evaluation of evidence in protection order hearings include replacing the reasonable fear standard with a new evidentiary standard, legislatively prohibiting reliance on myths and stereotypes, increasing the use of risk assessments, statutory risk factors, and expert evidence, appointing *amicus curiae* for cross-examination of unrepresented parties, and addressing issues arising from related proceedings.

Many Women Seeking Protection Orders are not Believed

In the LCO's review of reported Ontario family court decisions, women's restraining order applications were dismissed more than half the time.[50] In some cases, judges declined to grant restraining orders despite clear evidence and findings of intimate partner and family violence.[51] Judges dismissed restraining order applications or terminated existing restraining orders because they thought the applicant did not have reasonable fear in 41% of cases in the LCO's study.[52]

The Reasonable Fear Standard

Courts can grant restraining orders under Ontario's *FLA*, *CLRA*, and s. 102(3) of the *CYFSA* when the applicant has "reasonable grounds" to fear for their safety.[53] The LCO's review of restraining order decisions in Ontario revealed that courts are inconsistent about how to determine whether an applicant has reasonable fear. For example, some judges look for subjective fear only,[54] while others have held that the applicant's subjective fear must be objectively reasonable.[55] There are many other areas of disagreement in the case law, including whether the reasonable fear test should be evaluated on the balance of probabilities,[56] or if it is a lower standard of proof.[57]

Inconsistent decisions make the reasonable fear test confusing for judges, lawyers, and litigants. It can also make the question of whether a survivor's request for a restraining order will be granted or not uncertain (or dependent on which judge is hearing the application).

Alternatives to the Reasonable Fear Standard

Some Canadian jurisdictions use an evidentiary standard similar to Ontario's reasonable fear test for their emergency protection orders.[58] Others have a two-part test: the applicant must show that violence has occurred (or is likely to occur), and that the order should be made to ensure their immediate protection because the situation is serious or urgent.[59]

The Northwest Territories' test for non-emergency protection orders is novel because it does not require the court to objectively assess the risk of future harm. There, a court can make a non-emergency protection order if it is satisfied on a balance of probabilities that family violence has occurred.[60]

Another alternative to explore is the test for civil injunctions, which requires courts to consider which party will suffer the greater harm if an injunction is granted or refused.[61]

Limited Evidence of Violence

As recently as 2022, the Supreme Court of Canada recognized that many cases of intimate partner and family violence are hard to prove, in part because these forms of violence often take place in private without corroborating evidence.[62]

Civil protection order statutes in other jurisdictions allow applicants to apply for emergency protection orders on a limited evidentiary record. For example, applicants in Nova Scotia can provide evidence over the phone that intimate partner violence has occurred and the order should be made immediately.[63]

The Question of False Allegations

False allegations of intimate partner and family violence can occur. However, claims that someone is lying about intimate partner and family violence must be carefully scrutinized to guard against the influence of pervasive and gendered myths and stereotypes. Among these myths is a belief that women commonly raise allegations of violence in family court for strategic reasons.[64] A thorough, evidence-based approach is required to resolve disputed claims.[65]

Professor Jennifer Koshan challenges us to acknowledge that "many legal actors have yet to start from a point of *not disbelieving women* about domestic violence."[66]

Legislatively Prohibiting Myths and Stereotypes

Reliance on gendered myths and stereotypes about intimate partner and family violence is well-documented in protection orders decisions.[67] Myths and stereotypes can impair the truth-seeking function of courts and result in harm to women and children.[68]

As noted above, a common myth in protection order decision-making is "the fabrication myth", which suggests that women falsely allege intimate partner and family violence for various personal reasons. There is a growing trend among Canadian courts recognizing and repudiating the fabrication myth.[69]

However, the LCO reviewed several restraining order decisions in which Ontario courts drew negative inferences about women's credibility and the truthfulness of their allegations for inappropriate reasons, such as when the applicant had called the police to report intimate partner violence and the police did not lay charges against the respondent.[70] Other courts found that women applicants were less believable when their actions did not align with the court's expectations of how a victim of violence would behave.[71]

One approach to reducing judicial reliance on myths and stereotypes in protection order proceedings is to legislatively prohibit certain reasoning. In 2024, Québec introduced legislation to prevent judges from relying on irrelevant facts in intimate partner and sexual violence cases, including facts relating to the victim's reputation as well as whether they filed a complaint about the violence, delayed reporting the violence, or maintained a relationship with the alleged perpetrator.[72]

Intimate partner violence advocates recommended adding a similar list of prohibited reasoning to the federal *Divorce Act* in 2018, though the Government did not accept this proposal.[73]

Children's Experiences, Wishes, and Safety Needs

There is little empirical research documenting children's experiences with protection orders in Ontario. The LCO has heard that the current approach to protection orders overlooks the fact that children are not just observers of intimate partner and family violence – they also experience it.

The LCO's review of restraining order decisions in Ontario revealed that judges sometimes prioritize the respondent's parenting role over the applicant and children's need for protection, including by carving out restraining order protections to allow the respondent time with the children, or by issuing parenting orders instead of restraining orders.[74]

Protection order decision-makers in other Canadian jurisdictions are often explicitly directed to consider the best interests of children in protection order hearings.[75] Children's advocates have also advised the LCO that routinely appointing counsel for children in protection order proceedings could better ensure that children's evidence reaches decision-makers and is appropriately weighed.

Risk Assessments

Since protection orders are meant to reduce the risk of future violence, accurately predicting that risk is fundamental to ensuring that protection orders are granted when needed. Though risk assessment tools have well-studied limitations and low scores should not be considered determinative, they may be a useful supplement to judicial decision-making in protection order proceedings.[76]

In the United Kingdom, a new pilot project tries to ensure expert risk assessments are provided directly to family courts.[77] In Canada, the LCO has heard that survivors in Alberta have sought to achieve this goal by attaching risk assessments to their protection order applications.

Legislated Risk Factors

There are no enumerated risk factors for courts to consider before granting or denying restraining orders under Ontario's *FLA* or *CLRA*, nor is there any other guidance to protection order decision-makers.[78]

Civil protection order statutes in some other Canadian jurisdictions specify risk factors decision-makers must consider when evaluating protection order applications. Risk factors that can justify making an order include circumstances of the respondent that may increase the risk to the applicant (such as mental health, substance abuse, employment or financial difficulties, access to weapons and release from incarceration),[79] circumstances of the applicant that may increase their risk (such as pregnancy, age, family circumstances, disability, health or economic dependence),[80] recent separation or intent to separate,[81] the presence of coercive control,[82] and violence against animals.[83]

Expert Evidence

Expert evidence can help guide judicial assessments of women's behaviour, credibility, fear, and safety risks in protection order proceedings and reduce reliance on myths and stereotypes.[84]

However, the LCO has heard and observed that the use of expert evidence in protection order proceedings is rare. Survivors have suggested that having a panel of experts to contact, or a virtual library of social science research and expert evidence to rely on, would encourage the use of such evidence.

Another option is to increase reliance on participant experts like therapists, physicians, social workers, and teachers to assist judges in intimate partner and family violence cases. Participant experts can provide opinion evidence to family courts based on their professional involvement with the parties outside of litigation.[85]

Cross-Examination

In the LCO's review of 76 restraining order decisions in Ontario from 2021 to 2023, we were concerned to see that self-represented respondents personally cross-examined applicants in 11 cases.[86] Unrepresented applicants cross-examined respondents in 12 cases.[87] In all but two of these cases, courts did not make alternative trauma-informed accommodations.[88] Judges did not comment on whether it was appropriate for an alleged abuser to cross-examine a survivor (or vice versa), and did not appoint *amicus curiae* for this purpose.[89]

Not only is cross-examination by an abuser an incredibly traumatic experience for a survivor, but it is also a highly flawed manner of gathering evidence and assessing credibility. In other Canadian and international contexts, courts and administrative bodies routinely appoint *amicus* or forgo cross-examination to prevent alleged abusers from cross-examining survivors.[90]

Weighing the Impact on the Respondent

Several courts in the LCO's case law review weighed the necessity of a restraining order with the deprivation of the respondent's liberty if a restraining order were to be imposed or breached.[91] Some judges sought to avoid granting restraining orders where they perceived that the risk of violence could be cured by alternative orders, such as orders regarding conduct and parenting orders with non-communication provisions.[92] These alternatives carry less stigma and less serious consequences for respondents in the event of a breach. In other cases, judges assumed that the "triggers" for intimate partner and family violence were no longer in play, such that a restraining order was not warranted.[93]

At the same time, intimate partner violence advocates have expressed concern about family courts' emphasis on preserving respondents' liberty interests, which they argue often comes at the expense of leaving women and children insufficiently protected from violence. The question of how to balance the applicant's need for protection against the respondent's liberty and procedural rights is complex and consequential.

Communicating and Integrating Evidence from Related Proceedings

The LCO reviewed many restraining order decisions where family courts lacked important information about criminal legal processes.[94] In most cases, there seemed to be no way for family judges to access the missing information, even though it was highly relevant to evaluating the need for a protection order. Family courts unaware of the resolution of criminal charges, the existence of a peace bond, or the conditions imposed in a bail release order, for example, could issue orders which place applicants and children at risk.[95]

In Ontario and other Canadian jurisdictions, court forms requiring litigants to disclose information about related orders and proceedings do not seem to be working effectively, and they do not address the issue of sharing evidence safely where appropriate.

Ensuring that Related Proceedings are not a Bar to Protection

The LCO reviewed cases where judges declined to grant a restraining order because there was already a criminal protection order in place.[96] To guard against this risk, other civil protection order statutes make clear that a criminal protection order is not a bar to obtaining a civil protection order.[97]

Consultation Questions about Evidence in Protection Order Proceedings

14. Should the reasonable fear standard for evaluating a restraining order application be replaced by a different standard of proof?
    a. Should the evidentiary standards for emergency and non-emergency protection orders be different?
    b. Is it a problem that the two different types of restraining orders in the *CYFSA* rely on different evidentiary standards (best interests vs. reasonable fear)?
15. Do courts have enough information about applicants' safety needs, the history of violence, the risk to children, etc., when evaluating the need for a protection order?
    a. If not, what might safe, appropriate, and effective pathways to collect and communicate this information look like, and who should be responsible?
16. Should Ontario legislatively prohibit a list of myths and stereotypes that courts must not rely on?
17. How can children's experiences, wishes and safety needs be better ascertained, integrated into the evidentiary record, and weighed by the court in protection order proceedings?
18. Who should conduct risk assessments, how often, and using what tool(s)? How should risk assessments be introduced as evidence and relied on by courts?
19. Should Ontario legislate a list of risk factors to consider when evaluating a protection order application?
20. Should the use of expert evidence in protection order cases be expanded? If so, how?
21. How should courts address the issue of cross-examination by unrepresented parties?
22. Should courts weigh the impact of granting a protection order on respondents? If so, to what extent?
23. How should evidence and/or orders from related court proceedings be communicated and integrated into the family court record (and vice versa), if at all?
24. How should Ontario ensure related proceedings are not a bar to protection?

6 Protection Order Conditions

Ontario's *FLA*, *CLRA*, and *CYFSA* authorize judges to order "appropriate" conditions in restraining orders, which could be tailored to the safety needs of the person they are trying to protect.[98] In practice, however, the LCO found that many restraining orders are limited to conditions preventing respondents from contacting or going near the protected person.

One option to encourage protection order conditions that are more responsive to applicants' unique safety needs is to create a statutory list of conditions for decision-makers to consider. The list could include conditions relating to children, weapons, property and finances, tech-facilitated violence, animals, counselling, and more.

Statutory Lists of Conditions for Decision-Makers to Consider

Protection order statutes in other Canadian jurisdictions provide lists of conditions for decision-makers to choose from, some of which restrain respondents from certain conduct and others which require respondents to take specific actions.[99] British Columbia has also developed a standardized "picklist" of conditions that judges can include or modify when drafting protection orders.[100]

Responsive Conditions

The LCO's consultations have underscored the need for judges to turn their minds to drafting stronger, more responsive conditions that are tailored to the violence at issue and the applicant's safety needs. For example, women whose partners have access to firearms may need a weapons restriction in their protection order, while people with disabilities may need conditions to prevent the destruction or withholding of their assistive equipment.

Outside Ontario, courts in other Canadian jurisdictions must consider applicants' individual risk factors and vulnerabilities in protection order proceedings.[101] Judges may also have explicit statutory authority to craft tailored protections, such as suspending a respondent's driver's licence.[102]

Conditions Relating to Children

Many restraining order decisions the LCO reviewed did not fully extend protections beyond the applicant. In families with children, judges often issued orders specifically allowing for contact between the respondent and the children. Some courts granted parenting orders instead of restraining orders, while others crafted parenting carve-outs to restraining order conditions.[103]

There is no requirement for judges to consider children's best interests in making restraining orders under Ontario's *FLA* or *CLRA*. In contrast, other Canadian jurisdictions explicitly direct protection order decision-makers to consider the best interests of children.[104] Many courts also have statutory authority to make interim parenting orders in protection orders until a family court can decide on the matter.[105] Most of these jurisdictions provide that parenting conditions in emergency protection orders take priority over other pre-existing parenting orders.[106]

Weapons Conditions

Weapons, especially firearms, are a major concern in intimate partner and family violence cases. In 2021, nearly half of intimate partner violence-related murders in Ontario involved guns.[107]

Ontario's family and child protection laws do not give judges explicit statutory authority to restrict access to weapons or regulate their use.[108] As a result, courts seem reluctant to restrict respondents' weapons.[109] Outside Ontario, civil protection order statutes in other provinces and territories expressly allow courts to seize and prohibit access to weapons.[110] A new federal law also aims to restrict firearms access for people bound by a protection order.[111]

Property and Financial Conditions

Apart from exclusive possession orders, Ontario's protection order legislation does not explicitly instruct judges to consider or grant conditions relating to property, payments, or financial abuse.

Protection orders in other Canadian jurisdictions can include more extensive property and financial conditions. For example, courts in British Columbia can require respondents to pay rent, utilities, taxes, and other expenses related to a residence.[112] Other courts can order the temporary possession of personal property,[113] and some can require respondents to compensate survivors for monetary losses due to the violence,[114] or pay for expenses like counselling and security measures.[115]

Conditions to Prevent Tech-Facilitated Violence

The LCO has been advised that protection orders need to effectively respond to tech-facilitated violence like cyber-stalking, the non-consensual sharing of intimate images, and other digital harassment.

Statutory language relating to tech-facilitated violence in civil protection order legislation is rare in Canada. However, Nova Scotia has adopted separate legislation allowing courts to grant cyber-protection orders to stop cyber-bullying or the sharing of intimate images.[116] A cyber-protection order can forbid someone from sharing an intimate image or make them disable access to it, prevent cyber-bullying, prohibit contact with the protected person, and more.[117]

Conditions to Protect Animals

Violence towards animals is common in intimate partner and family violence cases.[118] Outside Ontario, some Canadian jurisdictions authorize judges to include protections for pets in protection orders, usually as a form of property.[119]

Counselling Conditions

The LCO has heard that conditions requiring respondents to attend counselling or education programs, or to seek mental health and addictions care, can improve compliance with protection orders and enhance safety. However, case law across Canada is conflicting about whether and when courts can mandate counselling for people using violence against their intimate partners and children.

In Ontario, mandatory counselling conditions are most common in criminal court, and in family cases where the counselling order is intended to improve the respondent's parenting relationship with their children (as opposed to reducing the respondent's violence towards their partner).[120] Conditions requiring counselling for intimate partner violence in family court restraining orders are uncommon. Outside Ontario, some Canadian jurisdictions explicitly authorize judges to recommend or require intimate partner violence counselling or therapy.[121]

Conditions to Monitor Compliance

Criminal courts in Ontario sometimes use electronic monitoring to oversee compliance with protection orders, but family courts do not. As a result, survivors must detect and report breaches of restraining orders and exclusive possession orders themselves. In contrast, family courts in some other countries can recommend respondents wear an electronic bracelet as part of a protection order, which can alert survivors when the respondent is nearby.[122] This provides survivors and police with more information about compliance and risk.

Conditions That May Be Impossible to Comply with or Inadvertently Perpetuate Violence

Some protection order conditions are more likely to be breached than others because they are difficult or impossible to comply with. Examples include conditions that are unclear or conflicting, and those that do not account for the family's interdependency or location. In particular, in the absence of safe and affordable housing, conditions requiring respondents to leave the family home may render them unhoused and can inadvertently perpetuate violence by worsening respondents' well-being.

Consultation Questions about Protection Order Conditions

25. Should Ontario legislate a statutory list of conditions for protection order decision-makers to consider? What should be on the list?

    a. In what areas are conditions missing, being overlooked, or falling short of what is needed to provide protection?

    b. How can we encourage courts to identify and draft conditions that are responsive to applicants' unique safety needs?

26. What do you recommend about how to improve conditions relating to children, weapons, property and finances, tech-facilitated violence, and animals?

    a. Should courts be authorized to mandate counselling and electronic monitoring in protection order conditions?

27. Some conditions may be impossible to comply with or perpetuate violence (such as those that remove the respondent from the family home and render them unhoused). How can courts evaluate potential conditions more effectively? What supports and services should be activated when protection order conditions are imposed, and by whom?

7 Protection Order Duration

The duration of protection orders in Ontario can vary widely. Ontario's *FLA* and *CLRA* authorize judges to grant interim or final restraining orders, but give no guidance about the length of orders.[123] In contrast, the *CYFSA* states that a s. 137 restraining order shall continue in force for as long as the court considers is in the best interests of the child.[124]

Experts caution that short-term orders may not deter recurring violence[125] or give survivors enough time to escape violent situations.[126] Short-term orders may also compel survivors to return to court multiple times to seek extensions.[127] Law reform options to improve protection order durations include legislating default durations or factors to consider, and making the length of protection orders conditional on demonstrated improvements in safety.

Legislating Default Minimum and Maximum Durations

Many civil protection order statutes in Canada set maximum durations for emergency protection orders, ranging from 30 days to indefinite durations.[128] In most cases, these limits can be extended on application. The LCO is exploring whether legislating default minimum durations or providing other statutory guidance to decision-makers could improve protection order durations.

Making Duration Contingent on Safety Developments

Professor Linda Neilson has suggested that the length of protection orders could be made conditional on a specific event, behavioural change, or a revised risk assessment. For example, the order could be set to terminate after the respondent completes an intervention or counselling program, followed by a positive risk assessment.[129]

Consultation Questions about Protection Order Duration

28. Should Ontario legislate minimum and/or maximum durations of protection orders?

    a. What factors should guide judicial discretion to determine the appropriate duration of emergency and non-emergency protection orders?

29. Should courts consider making the duration of protection orders conditional on voluntary completion of counselling or an intervention program, followed by a positive risk assessment?

8 Enforcing Protection Orders

Most protection orders in Ontario are enforced by the police. Once judges grant protection orders, court staff are usually responsible for sharing protection orders with law enforcement. It is then left to survivors to report breaches of protection orders to the police. However, the LCO has been informed of many cases where the police did not enforce protection orders in Ontario.

Options to improve the enforcement of protection orders include reconsidering the penalties for breaches, addressing indirect non-compliance, ensuring that the content of protection orders and the consequences of breaches are effectively communicated to all parties, maintaining a protection order database, pro-actively monitoring compliance, and providing for interjurisdictional enforcement.

Inadequate Enforcement

Advocates have persistently raised concerns about inadequate police enforcement of protection orders. The LCO has heard that:

- Police responding to breaches may not be specialized in intimate partner and family violence
- Police may not be able to access protection order conditions for the purposes of enforcement
- Police may not enforce an order if they perceive the breach to be minor or non-threatening
- Police may be unable to enforce mutual protection orders, conflicting orders, unclear orders, and orders that appear out of date
- Indigenous, racialized, migrant, and other survivors may be deterred from calling the police

Provincial Offence Provisions or *Criminal Code* Enforcement

Across Canada, there are two approaches to prosecuting protection order breaches: using s. 127 of the *Criminal Code* or provincial offence provisions. In Ontario, breaches of most restraining orders are prosecuted under s. 127 of the *Criminal Code*, which creates an offence for disobeying a court order.[130] In contrast, Ontario's *FLA* contains provincial offence provisions for breaches of exclusive possession orders.[131] Some experts caution that treating breaches as provincial offences means police may take them less seriously,[132] while others note that linking breaches to s. 127 of the *Criminal Code* means police and courts may be reluctant to criminalize what they view as more trivial misconduct, and survivors and their families may not want criminalization.[133]

Deterring Breaches with Appropriate Consequences

In Ontario, the maximum penalties for a person convicted of breaching a protection order are up to two years imprisonment (if prosecuted as an indictable offence via s. 127 of the *Criminal Code*) or a fine of $5,000 and/or imprisonment of no more than two years (if prosecuted as a summary offence).[134] Judges appear reluctant to grant restraining orders to avoid subjecting respondents to these criminal charges and penalties.

Other provinces have adopted more structured sanctions. For example, penalties in Alberta's provincial offence provisions increase in severity with repeated breaches:

- For a first offence: a fine of up to $5,000 or up to 90 days in jail, or both
- For a second offence: 14 days to 18 months of imprisonment
- For a third or subsequent offence: 30 days to 24 months of imprisonment[135]

Nova Scotia and Prince Edward Island raise the fine to $10,000 for second and subsequent breaches of protection orders.[136] In New Brunswick, fines can be as high as $500,000.[137] Courts in some jurisdictions can also require respondents to post any bond the court considers appropriate for securing compliance with the protection order.[138]

Indirect Non-Compliance

Protection orders are especially difficult to enforce when respondents breach conditions indirectly. For instance, respondents may circumvent no-contact conditions by using anonymous digital accounts or enlisting their friends and family to contact or harass survivors on their behalf.

Though not specific to enforcement, civil protection order legislation in some other jurisdictions contemplates vicarious responsibility for intimate partner violence.[139] Courts in Alberta can also make enforceable no-contact conditions prohibiting indirect communication with the protected person.[140]

Communicating Terms, Significance, and Consequences

The LCO has heard that respondents and protected persons often do not fully understand the terms, significance, or consequences of protection orders. Misunderstandings are common when conditions are poorly communicated, orders are written in complex legal language, and parties are unrepresented or have barriers to comprehension.

Plain-language terms and court communication policies could help ensure the content of protection orders is shared with, and understood by, all affected parties. Information to be relayed could include:

- Who is protected by the order
- Who is restricted by the order
- The duration of the order
- How to change the conditions of the order
- How the order will be enforced
- The choices available to the protected person if the order is breached
- The consequences of failing to comply with the order

Record-Keeping

An Ontario court form indicates that family and child protection restraining orders should be sent to appropriate law enforcement agencies and be registered on the national Canadian Police Information Centre (CPIC) database.[141] However, the LCO has heard that this process is unreliable, and family court orders are not always uploaded to CPIC or revised as intended.[142] The LCO is also aware of cases where the police declined to enforce breaches of protection orders because they could not confirm the terms of the order on CPIC.

As a result, many lawyers and organizations advise the protected person to carry a copy of the protection order with them to show the police in the event of a breach. The Ontario Government gives similar advice.[143] This approach places a greater burden on survivors and results in inconsistent and unsafe enforcement practices.

Protection Order Databases

To improve record-keeping and enforcement, British Columbia has developed a confidential, province-wide Protection Order Registry, which police can access 24/7 to view current, terminated, or modified protection orders.[144]

The LCO has heard that Ontario should have a similar protection order database accessible to courts, law enforcement, and gender-based violence service providers. On-demand, up-to-date access to protection orders could help to ensure rapid and appropriate enforcement, increase information-sharing, and reduce conflicting orders. However, accurate and timely record-keeping is essential, in part because the information in such a database could have legal consequences for respondents.

Monitoring Compliance

There is no standardized monitoring of compliance with protection orders in Ontario. In most cases, protected persons are responsible for reporting breaches of protection orders to the police, because no one else is monitoring or ensuring compliance on an ongoing basis on their behalf. Advocates have recommended a structured oversight mechanism to improve safety and enforcement.

Interjurisdictional Enforcement

Protection orders in Canada are typically not enforceable outside the issuing jurisdiction. For example, a protection order from Saskatchewan may not be valid in Ontario, leaving survivors unprotected if they move around the country. Ontario does not currently have a procedure in place to recognize, register, and enforce protection orders from other jurisdictions to ensure continued protection for survivors. However, the Government is considering a proposal to streamline the enforcement of restraining orders made in other provinces and territories in Ontario.[145]

Consultation Questions about Enforcing Protection Orders

30. How can we improve police enforcement of protection orders?

31. If Ontario creates standalone civil protection order legislation, should breaches of emergency protection orders be prosecuted through provincial arrest and offence provisions or via s. 127 of the *Criminal Code*? What about non-emergency orders?

    a. Should restraining orders in ss. 102(3) and 137 of Ontario's *CYFSA* have the same enforcement mechanism and consequences for breaches?

32. Are the consequences of breaching a protection order an appropriate and effective deterrent? If not, what other responses should be considered?

    a. What do you recommend about how to address a respondent's indirect non-compliance with a protection order?

33. Who should inform protected persons and respondents about the content of a protection order, the consequences of breaching the order, and how to report a breach?

34. Should Ontario create a protection order database? If so, how can we improve record-keeping to ensure a protection order database is accurate and up to date? Who should have access to the database?

35. Should protection order compliance be monitored on an ongoing basis? If yes, how?

36. Should Ontario provide for the recognition, registration, and interjurisdictional enforcement of protection orders from other jurisdictions?

9 Coordination

Cases of intimate partner and family violence often give rise to related proceedings in the family, child protection, and criminal legal systems, as well as other proceedings such as those before the Immigration and Refugee Board. These courts and administrative bodies have different structures, objectives, processes, evidentiary standards, and timelines. They may use different case management systems and other technology. Families may be required to attend multiple hearings on different days, in different locations, and to repeat their experiences and produce their evidence many times.[146]

The result is that the various courts and administrative bodies involved in intimate partner and family violence cases often operate independently with little communication or coordination, even when they are considering violence within the same family. This creates a fragmentation of legal system responses to intimate partner and family violence, which can lead to conflicting or inconsistent orders and gaps in protection when information about risk is not shared.

The LCO has heard that protection orders could be improved by strengthening coordination between Ontario's legal systems, but also across the gender-based violence sector. Currently, safety risks associated with a lack of coordination in the legal sector are amplified by ineffective communication with the extended network of gender-based violence service providers, including those in the government, healthcare, education, and social and community services sectors.

Legal System Coordination

Many coroner's inquests, inquiries, and death reviews in Canada have identified poor coordination between criminal and family legal systems as a contributing factor in family homicides.[147] A landmark report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence in 2013 explained that "[t]he proceedings and orders made in one court can have significant impacts on parallel or subsequent matters involving the same family in another court."[148]

Family and criminal courts making decisions without information from related proceedings may make inconsistent or contradictory orders, and orders that put family members at risk.[149] For example, family courts have mistakenly allowed communication between the parties for the purposes of parenting because the judge was unaware of the respondent's no-contact bail conditions.[150] Similarly, a criminal court may find an accused's history of breaching family court restraining orders relevant to the likelihood the accused will obey the terms of a release order.

Conflicting orders can increase risk, be impossible to enforce, and place family members in a situation where they are inadvertently in breach of one of the conflicting court orders.

At the same time, many challenges must be overcome to improve legal system coordination. These include the fact that there are different rules relating to disclosure, privilege, privacy and confidentiality in different legal contexts, as well as different legal onuses, timelines, and evidentiary standards.[151] This situation raises urgent and consequential questions about how Ontario's various legal systems can be coordinated more effectively.

Cross-Sector Coordination

Coordination must extend beyond courts to include individuals, organizations, and institutions in the government, justice, healthcare, education, policing, and social and community services sectors whose work involves intimate partner and family violence. Since families affected by violence often interact with many different service providers and other actors, if these sectors operate independently they may miss opportunities to share information about risk and help keep family members safer.[152]

Promising Practices to Improve Coordination

Improving coordination within and between Ontario's legal system and other sectors will be difficult. People affected by intimate partner and family violence have complex needs, and the systems that serve them are often over-burdened, under-funded, and decentralized.

The LCO's research and consultations have identified several potential legal, policy, and practical reforms that could improve coordination within the legal system and across the gender-based violence sector, including on the following topics:

- Identifying and linking proceedings, for example by using standard clauses, consistent file designation, and court coordinators
- Improving information sharing, which could occur through high-risk case coordination protocols and judicial communications
- Avoiding conflicts, for example by enacting statutory provisions to resolve conflicting orders
- Using technological solutions, such as a court order database
- Expanding specialized courts, like Toronto's Integrated Domestic Violence Court[153]

Consultation Question about Improving Coordination

37. How can we improve legal system and cross-sector coordination for protection orders, including on the topics of identifying and linking proceedings; sharing information, evidence, and orders; avoiding conflicting court orders and expectations; using technological solutions; and through specialized courts?

    a. Should Ontario legislate a hierarchy of court orders to determine precedence in the event of a conflict?

    b. Is expanding the Integrated Domestic Violence Court (IDVC) a viable strategy for better protection order coordination? If so, how should cases that do not meet the IDVC's criteria be addressed?

10 Civil Protection Order Legislation

This Consultation Paper has contrasted Ontario's protection order laws with civil protection order statutes across Canada. This comparison raises a question about the best legislative vehicle for protection order reforms in Ontario: Should changes be made by amending existing family and child protection legislation, introducing standalone civil protection order legislation, or some combination of the two?

New civil protection order legislation provides an opportunity to create dedicated, comprehensive protection order rules and procedures. Standalone legislation could allow applicants to seek protection orders outside of protracted family disputes about property, support, and parenting, and to avoid the criminal legal system altogether. On the other hand, protection order laws and processes in Ontario are already confusing and disconnected. Adding new legislation could amplify existing problems.

Consultation Question about Civil Protection Order Legislation

38. Should Ontario reform protection orders through new standalone civil protection order legislation, amendments to the *FLA*, *CLRA*, and *CYFSA*, or some combination?

11 Supplementary Strategies

Protection orders are one part of a much broader, whole-of-society response to reducing intimate partner and family violence. The LCO is exploring other supports, services, and strategies that could make protection orders more effective, including:

- **Strengthening education and training.** Protection order accessibility and effectiveness could be improved if courts and police had more training about intimate partner and family violence and the types, purposes, and limitations of protection orders. Public legal education is also crucial.
- **Improving data collection.** Better court data collection and analysis could help improve legal remedies for intimate partner and family violence, including protection orders.
- **Adopting Clare's Law in Ontario.** Clare's Law, sometimes called a Domestic Violence Disclosure Scheme, was first created in England and Wales to authorize police disclosure of risk-related information to current or former intimate partners.[154] Versions of Clare's Law have been enacted in some provinces, but the legislation was not passed in Ontario.[155]
- **Considering a specialized tribunal.** British Columbia has created a Civil Resolution Tribunal (CRT) to help people resolve certain types of disputes quickly, without a lawyer and without attending court.[156] The CRT has a specialized pathway for applicants to apply for an "intimate image protection order", which can make someone delete an image or stop them from sharing it.[157] Applicants can also make claims for damages, and non-compliance can be sanctioned through administrative penalties.[158]
- **Expanding restorative justice and transformative justice options.** Restorative justice processes seek to centre survivors' voices and agency in order to understand, acknowledge, and address harms, identify needs, and repair relationships and trust for affected individuals and communities. Transformative justice targets broader changes.[159] Alberta's courts are leading a restorative justice pilot project,[160] and advocates have called on Ontario to similarly increase restorative and transformative justice options for survivors of gender-based violence.

- **Committing to ongoing and follow-up care.** Families affected by violence require longer-term investments and wraparound services that extend beyond what Ontario's legal system offers. In terms of post-court care and ongoing service referrals, the Pathfinder project model in the United Kingdom directs judges and agencies to follow up with families affected by violence three months to a year after a court order is issued, to check if the court's decision is working well for the family, whether it is being complied with, and whether additional supports are needed.[161] The LCO has heard that ongoing and follow-up care for individuals and families experiencing intimate partner and family violence could significantly improve safety outcomes after protection orders are granted in Ontario.

Consultation Questions about Supplementary Strategies

39. Should Ontario:
    a. Strengthen education, training, and data collection relating to protection orders?
    b. Enact a version of Clare's Law?
    c. Create a Civil Resolution Tribunal to hear some types of protection order applications?
    d. Introduce restorative and transformative justice options for people in need of protection?
    e. Invest in ongoing and follow-up care for families affected by violence?
40. What other strategies should Ontario adopt to improve the accessibility and effectiveness of protection orders?

12 Endnotes

1 We define the different types of protection orders and other project terms in our Project Glossary, which is available online: <lco-cdo.org>.

2 Ontario, Domestic Violence Death Review Committee, *2021 Annual Report*, (Ontario: Office of the Chief Coroner, 2024), online: <ontario.ca> [DVDRC, *2021 Annual Report*], pp 13-14.

3 DVDRC, *2021 Annual Report*, pp 13-14, 16-17, and 26, showing that in 392 cases involving 434 murders, 76% of cases had a history of intimate partner violence and 27% of cases had a "failure to comply with authority", which was defined as breaching a protection order or other court order.

4 Mass Casualty Commission, *Turning the Tide Together, Final Report of the Mass Casualty Commission*, *Volume 3: Violence*, (Truro: Mass Casualty Commission, 2023), online: <masscasualtycommission.ca>, pp 429-430.

5 In applications for restraining orders, 89% of applicants were women (68 of 76 cases) and 57% of their applications were dismissed (39 of 68 cases).

6 Katie Dangerfield, "'A piece of paper that did nothing': Advocates say protection orders are failing women in Canada", *Global News*, 6 June 2019, online: <globalnews.ca>.

7 Guy Leblanc, "Court orders to prevent domestic violence 'a joke' to abusers", *CBC News*, 29 January 2021, online: <cbc.ca>.

8 LCO Consultation with a non-profit working on issues of gender-based violence.

9 Legislative Assembly of Ontario, *Bill 10, Protect Ontario Through Safer Streets and Stronger Communities Act, 2025*, (Royal Assent received 5 June 2025), online: <ola.org> [Ontario, *Bill 10*].

10 Ontario Regulatory Registry, "Consultation on Proposals to Make Restraining Orders More Accessible and to Streamline Enforcement of Restraining Orders made Outside Ontario", (24 October 2025), online: <regulatoryregistry.gov.on.ca> [Ontario, "Consultation on Restraining Orders"].

11 Ontario Ministry of the Attorney General, Backgrounder, "The Protect Ontario Through Safer Streets and Stronger Communities Act", (1 May 2025), online: <news.ontario.ca>.

12 Legislative Assembly of Ontario, Official Report of Debates (Hansard), JP-46, *Standing Committee on Justice Policy, Committee business, Intimate partner violence*, 1st Sess, 43 Parl, (15 August 2024), online: <ola.org> [Hansard, Intimate partner violence], JP-1029-1030.

13 *R v Penunsi*, 2019 SCC 39, paras 12-14 and 61.

14 Linda C Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases*, 2nd ed, (Ottawa: Canadian Legal Information Institute, 2020), online: <canlii.org> [Neilson, *Responding to Domestic Violence*], ch 9.2.1 and notes 593-595.

15 Carol Barkwell, *Letter of Support for the LCO's Improving Protection Orders project*, (10 May 2024). On file at the LCO.

16 In *Bakker v Bakker*, 2023 ONSC 3025, three years passed between the applicant requesting and receiving a restraining order. The process took two years in *Blaskavitch v Smith*, 2023 ONSC 2133.

17 For example, from 2003 to 2019, Ontario's Domestic Violence Death Review Committee reviewed 364 cases of intimate partner violence-related homicides in Ontario, involving 515 deaths. They found that 66% of those cases involved an actual or pending separation, indicating that separation is a crucial risk factor in predicting lethal outcomes. See Ontario, Domestic Violence Death Review Committee, *2019-2020 Annual Report, Chapter 2: Statistical Overview*, (Toronto: Domestic Violence Death Review Committee, 2020), online: <ontario.ca>, Summary of Chart 3 and Summary of Graph 3.

18 Nova Scotia and Saskatchewan require judicial officers to conduct emergency protection order hearings within 24 hours after an application is made. New Brunswick and Newfoundland and Labrador require decisions within that timeframe. See Nova Scotia, *Domestic Violence Intervention Regulations*, NS Reg 75/2003 [Nova Scotia *Regulations*], s 5(2); Saskatchewan, *Victims of Interpersonal Violence Regulations*, RRS c V-6.02 Reg 1, s 6; New Brunswick, *General Regulation – Intimate Partner Violence Intervention Act*, NB Reg 2018-34, s 4(2); and Newfoundland and Labrador, *Provincial Court Family Violence Protection Rules*, NLR 52/06, s 11.

19 Ontario, *Family Law Act*, RSO 1990 c F.3, s 46(2) [Ontario *FLA*].

20 Manitoba, *The Domestic Violence and Stalking Act*, CCSM c D93 [Manitoba *DVSA*], s 2(1).

21 Saskatchewan, *The Victims of Interpersonal Violence Act*, SS 1994 c V-6.02 [Saskatchewan *VIVA*], ss 2(a), (e.1), (i), and 3(1).

22 British Columbia, *Family Law Act*, SBC 2011, c 25 [British Columbia *FLA*], ss 1 "family member", 182, and 183(1) and (2). Rise Women's Legal Centre and West Coast LEAF recommend this definition be expanded to include "persons in dating relationships, adult children who do not live with the parent, people in care-giving relationships, and other relatives who do not live with the person." See Hayley Hrymak, *Protection Orders in BC and the Urgent Need for a Specialized Process and Coordinated Reform*, (British Columbia: Rise Women's Legal Centre, 2024), online: <static1.squarespace.com> [Hrymak, *Protection Orders in BC*], p 38 and note 85.

23 Though note that the *CLRA* does define "family violence" for the purposes of other orders, and there is a list of criteria for judges to consider for exclusive possession orders under the *FLA*, which includes violence. See for example Ontario, *Children's Law Reform Act*, RSO 1990, c C.12 [Ontario *CLRA*], ss 24(3)(j) and (4), and Ontario *FLA*, s 24(3).

24 Ontario, *Bill 10*.

25 See respectively Nunavut, *Family Abuse Intervention Act*, SNu 2006, c 18 [Nunavut *FAIA*], s 26(1) and Nova Scotia, *Domestic Violence Intervention Act*, SNS 2001, c 29 [Nova Scotia *DVIA*], s 7(c).

26 British Columbia *FLA*, s 183(1)(a).

27 Ontario, *Child, Youth and Family Services Act, 2017*, SO 2017, c 14, Sch 1 [Ontario *CYFSA*], ss 102(3) and 137(1). For s. 102(3) *CYFSA* restraining orders see the statutory language: "the court may, without a separate application, make a restraining order in accordance with section 35 of the *Children's Law Reform Act*." For s. 137 *CYFSA* restraining orders, see the statutory language and the following examples: *Children's Aid Society of Toronto v RB*, 2023 ONCJ 582, paras 34 and 45; *Nogdawindamin Family and Community Services v AW*, 2018 ONCJ 833, para 21; and *The Children's Aid Society v SB and CG*, 2018 ONSC 5301, paras 15-16.

28 A Family Court Support Worker can provide information about the family court process; help survivors prepare for family court proceedings; refer survivors to other specialized services and supports in the community; help with safety planning, such as getting to and from court safely; and accompany survivors to court proceedings. Ontario, "Family court support workers", (updated 2 January 2024), online: <ontario.ca>.

29 Though their scop is limited. See Law Society of Ontario, "Family Legal Services Provider", (last accessed 9 September 2025), online: <lso.ca>.

30 See for example Alberta, *Protection Against Family Violence Act*, RSA 2000, c P-27 [Alberta *PAFVA*], ss 2(1) and 6(2), and Government of Alberta, "Get an Emergency Protection Order", (last accessed 2 September 2025), online: <alberta.ca>.

31 See for example the review procedures in Nova Scotia's legislation. Nova Scotia *DVIA*, ss 11(2) and 12(1), and Nova Scotia *Regulations*, s 15.

32 See for example British Columbia *FLA*, s 186(1). However, Rise Women's Legal Centre found that courts in British Columbia were resistant to hearing protection order applications without notice to the other party, despite British Columbia's legislation permitting *ex parte* applications. Rise found that courts inappropriately dismissed *ex parte* applications, and that some judges seemed to be driven by concerns about procedural fairness for the respondent rather than safety assessments of the risk to the applicant. Rise considered this to be a significant process failure in British Columbia's protection order regime, finding that "[t]he unpredictability of *ex parte* applications, including the uncertainty about whether a survivor will be able to proceed with the application at all, may act as a deterrent to seeking a protection order in the first place." See Hrymak, *Protection Orders in BC*, pp 31-33.

33 See for example Yukon, *Family Violence Prevention Act*, SY 1997, c 12 [Yukon *FVPA*], s 3; Saskatchewan *VIVA*, s 9; Nova Scotia *DVIA*, s 13; Northwest Territories, *Protection Against Family Violence Act*, SNWT 2003, c 24 [Northwest Territories *PAFVA*], s 3(1); and Nunavut *FAIA*, s 34.

34 See British Columbia Attorney General, "B.C. offers increased protection for those at risk of family violence", (5 December 2016), online: <news.gov.bc.ca>.

35 Manitoba *DVSA*, s 4(2.1) and (5).

36 In a recent Ontario case, the court refused to consider allegations of violence the applicant had mistakenly included in her notice of motion instead of her affidavit (on the basis that her expression of allegations in the notice of motion was not evidence.) The court ultimately denied the restraining order. See *Noriega v Litke*, 2020 ONSC 2970, paras 7-8.

37 There is precedent in Ontario supporting the use of undertakings in family court restraining order cases to help influence the respondent's behaviour during the period between when an applicant applies for a protection order and when the protection order is actually granted. See *Falconer v Mistretta*, 2018 ONSC 6756, para 14.

38 See generally Neilson, *Responding to Domestic Violence*, chs 7.4 and 9.2.2.3.

39 See for example *Children's Aid Society of Toronto v LS*, 2017 ONCJ 506, para 49 ("It is abundantly clear that father, with absolutely no evidence to support his claims, is using this litigation to engage the mother again. It may be considered frivolous but it is also certainly harassment in this case.") See also *MAL v RHM*, 2018 ONSC 1597, paras 66 and 114-116.

40 See Neilson, *Responding to Domestic Violence*, ch 7.4.1.

41 Jennifer Koshan, "Preventive Justice? Domestic Violence Protection Orders and their Intersections with Family and Other Laws and Legal Systems" (2023) 35:1 Can J Fam L 241, online: <commons.allard.ubc.ca> [Koshan, "Preventive Justice?"], p 264 and note 76.

42 Neilson, *Responding to Domestic Violence*, note 506.

43 See for example Neilson, *Responding to Domestic Violence*, Supplementary Reference 4 (Mutual Restraining Orders).

44 Koshan, "Preventive Justice?", pp 245-246.

45 Neilson, *Responding to Domestic Violence*, Supplementary Reference 4 (Mutual Restraining Orders) and note 1943, and Koshan, "Preventive Justice?", pp 272-273 and notes 103-105.

46 British Columbia's legislation also reminds courts that the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made. British Columbia *FLA*, s 184(2) and (3).

47 See for example *Armstrong v Coupland*, 2023 ONSC 5451, where a restraining order granted by Justice Bale varied a previous restraining order granted by Justice Chappel, which further varied a restraining order granted by Justice MacLeod. Our research lawyers could not reliably unpack the nesting orders in this case to decipher the most current restraining order terms.

48 See for example *Osmak-Bonk v Bonk*, 2004 ONCJ 167, paras 23-33, where the family court mistakenly allowed contact between the mother and father without knowing about a bail release order that prevented the father from contacting the mother. It took the family court almost eight months to change the restraining order to bring it into alignment with the father's bail conditions. This delay could have caused serious safety risks if the mother had reported a breach, because the police had no way to know whether the family or criminal court order took precedence. The process to change the order also required a court appearance and accumulated lawyers' fees.

49 In the LCO's study of 76 reported restraining order decisions from 2021 to 2023, Ontario judges denied or terminated restraining orders because they thought the applicant's subjectively held fears of future violence were not objectively reasonable in 30% of cases (23 of 76 cases). Judges also denied restraining orders in 8 additional cases after finding there was no subjective or objective fear. Some judges did not apply the statutory reasonable fear test at all; this resulted in 10 further denials of restraining orders. Two other judges dismissed women's restraining order applications despite finding they had both subjective and objective fear.

50 In applications for restraining orders, 89% of applicants were women (68 of 76 cases) and 57% of their applications were dismissed (39 of 68 cases).

51 See for example *GP v RP*, 2023 ONCJ 388, paras 52-55.

52 This occurred in 31 of 76 cases, including courts finding neither subjective nor objective fear (in 8 cases), and finding subjective fear that was not objectively reasonable (in 23 cases).

53 See Ontario *FLA*, s 46; Ontario *CLRA*, s 35; and Ontario *CYFSA*, s 102(3).

54 See for example *McCall v Res*, 2013 ONCJ 254, para 31; *Lawrence v Bassett*, 2015 ONSC 3707, paras 12 and 16; and *Tiveron v Collins*, 2017 ONCA 462, para 13.

55 See for example *RKK v JLM*, 2007 ONCJ 223, para 33 and *Noriega v Litke*, 2020 ONSC 2970, para 37.

56 See for example *Gauthier v Lewis*, 2021 ONSC 7554, para 36, and *Verma v Di Salvo*, 2020 ONSC 850, para 76.

57 See for example *LAB v JAS*, 2020 ONSC 3376, para 23, and *Sheldon v Seraphim*, 2024 ONSC 2678, para 53, citing *JK v RK*, 2021 ONSC 1136, paras 28-30.

58 Manitoba, for example, requires applicants to show on a balance of probabilities that the respondent has committed violence; the applicant believes the violence will continue or resume; the applicant requires protection because there is a reasonable likelihood the violence will continue or resume; and a protection order should be made without delay due to seriousness or urgency. People who would reasonably believe the respondent will continue or resume the violence, "but for mental incompetence or minority", are deemed to have that belief. Manitoba *DVSA*, s 6(1) and (2).

59 See for example New Brunswick, *Intimate Partner Violence Intervention Act*, SNB 2017, c 5 [New Brunswick *IPVIA*], s 4(1). In British Columbia, a court may make a protection order if the court determines that family violence is likely to occur, and that there is an "at-risk" family member whose safety and security is, or is likely, at risk. See British Columbia *FLA*, ss 182-183.

60 Northwest Territories *PAFVA*, ss 4(1) (emergency protection order) and 7(1) (protection order).

61 *Cycle Toronto et al v Attorney General of Ontario et al*, 2025 ONSC 2424, para 10, citing *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC).

62 *Barendregt v Grebliunas*, 2022 SCC 22, para 144.

63 Nova Scotia *DVIA*, s 6(1) and (3) and Nova Scotia *Regulations*, s 4(3).

64 *KMN v SZM*, 2024 BCCA 70, para 84.

65 *KMN v SZM*, 2024 BCCA 70, para 126 (citation omitted), referencing *Ahluwalia v Ahluwalia*, 2023 ONCA 476, para 120.

66 Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35:1 Can J Fam L 33, online: <commons.allard.ubc.ca> [Koshan, "Challenging Myths and Stereotypes"], p 40.

67 See for example Koshan, "Preventive Justice?", pp 274-275.

68 The Supreme Court of Canada has recognized that judicial reliance on myths and stereotypes in the context of sexual assault cases can lead to prejudicial reasoning, faulty assessments of credibility, false logic, and errors of law. See Koshan, "Challenging Myths and Stereotypes", pp 36 and 39-40, citing *R v ARJD*, 2018 SCC 6, para 2, and *R v Barton*, 2019 SCC 33, para 60.

69 See for example *KMN v SZM*, 2024 BCCA 70, paras 84 and 120-127, and the trial decision in *Ahluwalia v Ahluwalia*, 2022 ONSC 1303 (under appeal to the Supreme Court of Canada at the time of writing), para 74, where the court rejected the father's claim that the mother had fabricated intimate partner violence allegations because she was angry about the separation and sought financial gain.

70 See for example *LAB v JAS*, 2020 ONSC 3376, paras 41 and 48, and *IS v JW*, 2021 ONSC 1194, paras 56-57.

71 See for example *Ramezani v Najafi*, 2021 ONSC 7638, para 356; *R v ARJD*, 2018 SCC 6, para 2; *Noriega v Litke*, 2020 ONSC 2970, paras 55-56; and *HG v JRN*, 2022 ONSC 3436, para 123.

72 Assemblée nationale du Québec, *Bill 73, An Act to counter non-consensual sharing of intimate images and to improve protection and support in civil matters for persons who are victims of violence*, 1st Sess, 43rd Leg (2024), online: <assnat.qc.ca>.

73 Luke's Place Support and Resource Centre & National Association of Women and the Law, *Brief on Bill C-78: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, (November 2018), online: <lukesplace.ca>, p 6. The joint brief was endorsed by 30 organizations across Canada.

74 In 64 restraining order applications involving children and allegations of intimate partner and family violence, the LCO found that parenting carve-outs to restraining orders or parenting orders issued in place of restraining orders were common outcomes (occurring in 61% of cases), sometimes leaving children unprotected from violence.

75 See for example Alberta *PAFVA*, s 2(2)(d).

76 Neilson, *Responding to Domestic Violence*, ch 8.9.4 and notes 487-488, noting that risk assessment tools are known to improve on professional judgment alone.

77 United Kingdom, Press Release, "Pioneering approach in family courts to support domestic abuse victims better", (8 March 2022), online: <gov.uk> [United Kingdom, "Pioneering approach"].

78 This is contrasted with orders for the exclusive possession of the matrimonial home in Ontario's *FLA*, which specifies criteria a court must consider in determining whether to make an exclusive possession order. See Ontario *FLA*, s 24(3).

79 See for example New Brunswick *IPVIA*, s 4(3)(h) and (j), and Manitoba *DVSA*, s 6.1(1)(f) and (h).

80 See for example New Brunswick *IPVIA*, s 4(3)(k) and Manitoba *DVSA*, s 6.1(1)(i).

81 See for example New Brunswick *IPVIA*, s 4(3)(i) and Manitoba *DVSA*, s 6.1(1)(g).

82 See for example New Brunswick *IPVIA*, s 4(3)(d) and British Columbia *FLA*, s 184(1)(c).

83 See for example New Brunswick *IPVIA*, s 4(3)(g) and Manitoba *DVSA*, s 6.1(1)(e).

84 See *R v Lavallee*, [1990] 1 SCR 852, pp 873 and 889, and Neilson, *Responding to Domestic Violence*, ch 9.2.2.4, and the research cited in note 606.

85 For the distinction between "participant experts" and "litigation experts", see rule 20.2 of Ontario's *Family Law Rules*, O Reg 114/99, and *GSW v CS*, 2018 ONCJ 286, note 12. Participant experts can provide evidence where (1) their opinion is based on their observation of, or participation in, the events at issue, and (2) they formed their opinion as part of the ordinary exercise of their skill, knowledge, training and experience while observing or participating in such events. See *Westerhof v Gee Estate*, 2015 ONCA 206, paras 60-61.

86 See for example *Gill v Gill*, 2023 ONSC 5882, paras 43(b) and 47; *Al-Hadad v Al-Harash*, 2023 ONCJ 463, para 12; and *GP v RP*, 2023 ONCJ 388, para 3.

87 See for example *McArthur v Le*, 2023 ONSC 4897, para 58.

88 After the applicant said it was disturbing to see the respondent in *Riley Doyle v Doyle*, 2021 ONSC 4821, the court provided accommodations such as moving the respondent's chair out of the applicant's line of sight (para 361). In *Ramezani v Najafi*, 2021 ONSC 7638, an agent for the respondent cross-examined the applicant on her sexual assault allegations (para 23).

89 Despite family courts' ability to do so. For confirmation of this authority, see *Morwald-Benevides v Benevides*, 2019 ONCA 1023, paras 21-40.

90 For example, article 278 of Québec's Code of Civil Procedure allows courts to appoint legal representation for cross-examination in intimate partner and family violence cases to protect witnesses from intimidation tactics and abuse. Similarly, Australia has established the Commonwealth Family Violence and Cross-Examination of Parties Scheme as an amendment to their *Family Law Act* to protect survivors of family violence from being cross-examined by alleged abusers. The Scheme provides funding for lawyers to assist both parties in hearings where cross-examination is required. See Australia, *Family Law Act*, 1975 (Cth), s 102NA-NB. The United Kingdom also prohibits personal cross-examination in family proceedings in certain circumstances, such as when there is a criminal charge or conviction, and allows courts to appoint legal representation instead. See United Kingdom, *Domestic Abuse Act 2021*, c 17, s 65(31R)(1)-(2) and (31W)(6).

91 See for example *GP v RP*, 2023 ONCJ 388, paras 52-55, and *Al-Hadad v Al-Harash*, 2023 ONCJ 463, paras 169-170.

92 See for example *McArthur v Le*, para 119, and *GP v RP*, 2023 ONCJ 388, para 55. See also *Grundy v Dickie*, 2022 ONSC 3629, paras 46-55, where the judge did not find "legitimate fear" despite the applicant's allegations that the respondent was threatening to behead her. The judge determined a restraining order was not appropriate, but that "the parties could benefit from direction [. . . and] this can be accomplished in other ways, such as crafting parenting terms to ensure the applicant's concerns are addressed without imposing burdensome restrictions with criminal consequences."

93 Reasoning, for example, that since the parties had separated or sold the family home, or because the respondent had complied with other court orders, a restraining order was unnecessary. On the first point, see for example *McArthur v Le*, 2023 ONSC 4897, para 107; *MC v RK*, 2022 ONSC 3281, paras 24-25; and *Davidson v Davidson*, 2022 ONSC 4375, para 278. On the second point, see *GP v RP*, 2023 ONCJ 388, paras 53-55, and *Smith v Reynolds*, 2020 ONSC 4459, paras 112-113.

94 See for example *Lekic v Ismail*, 2023 ONSC 6753, where the court did not know the outcome of the respondent husband's criminal charges for harassing the wife (para 4), and *Simcoe Muskoka Child, Youth and Family Services v JMW*, 2023 ONSC 741, where the court was "in the dark" about the terms of the respondent father's criminal undertaking (which he refused to provide), and the court did not know whether the undertaking "adequately addresses the safety of [the child] and the Respondent Mother" (paras 5, 55, 57-58 and 60).

95 See for example *Osmak-Bonk v Bonk*, 2004 ONCJ 167, paras 23-33, where the family court mistakenly allowed contact between the mother and father without knowing about a bail release order that prevented the father from contacting the mother. It took the family court almost eight months to change the restraining order to bring it into alignment with the father's bail conditions. This delay could have caused serious safety risks if the mother had reported a breach, because the police had no way to know whether the family or criminal court order took precedence. The process to change the order also required a court appearance and accumulated lawyers' fees.

96 See for example *Akyuz v Sahin*, 2023 ONSC 1024, paras 101-105.

97 See for example Manitoba *DVSA*, s 6.1(3)(a).

98 Ontario's *FLA* and *CLRA* allow courts to include "any other provision the court considers appropriate" in a restraining order. Ontario *FLA*, s 46(3)(4), and Ontario *CLRA*, s 35(2)(4). Ontario's *CYFSA* similarly authorizes courts to "include in the order such directions as the court considers appropriate for implementing the order and protecting the child." Ontario *CYFSA*, s 137(1)(1).

99 See for example British Columbia *FLA*, s 183(3).

100 Provincial Court of British Columbia, "Family orders picklists", (last accessed 3 September 2025), online: <provincialcourt.bc.ca>.

101 New Brunswick's legislation, for example, specifically requires protection order decision-makers to consider whether an applicant is at increased risk due to pregnancy, age, family circumstances, disability, health, or economic dependence, though it is not clear whether this translates into protective conditions. Decision-makers must also consider "the applicant's need for a safe environment to arrange for longer-term protection from intimate partner violence." New Brunswick *IPVIA*, s 4(3)(k) and (l).

102 See Manitoba *DVSA*, s 15(1)(a).

103 In the LCO's review of restraining order decisions between 2021 to 2023, 64 cases involved non-adult children. Restraining orders were granted or extended in 27 of these cases, and 24 of those restraining orders contained parenting carve-outs to allow the respondent time with the children. Therefore, in the 64 cases involving non-adult children, there were only 3 cases in which children were fully protected by a restraining order. Note however that some restraining orders contained protective conditions for children even where there were also parenting carve-outs. See for example *Campbell v Heffern*, 2021 ONSC 5870, para 38(g) and (h).

104 See for example Alberta *PAFVA*, s 2(2)(d).

105 For example, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and Nunavut require courts to consider the best interests of children in making protection orders, and allow courts to include conditions for the temporary care and custody of children in emergency protection orders. See Koshan, "Preventive Justice?", p 252 and note 31, citing New Brunswick *IPVIA*, s 4(3)(e) and (5)(h); Nova Scotia *DVIA*, ss 6(2)(d) and 8(1)(k); Newfoundland and Labrador, *Family Violence Protection Act*, SNL 2005, c. F-3.1 [Newfoundland and Labrador *FVPA*], ss 5(2)(d) and 6(n); Prince Edward Island, *Victims of Family Violence Act*, RSPEI 1988, c V-3.2 [Prince Edward Island *VFVA*], s 4(2)(d) and (3)(f); and Nunavut *FAIA*, ss 7(2)(h) and 35(d).

106 See Koshan, "Preventive Justice?", p 252 and note 31, citing New Brunswick *IPVIA*, s 12(1); Nova Scotia *DVIA*, s 8(4); Newfoundland and Labrador *FVPA*, s 13(1); and Nunavut *FAIA*, s 9.

107 DVDRC, *2021 Annual Report*, p 3.

108 Neilson, *Responding to Domestic Violence*, chs 9.2.2.23.4-9.2.2.23.5. Professor Neilson argues that the limited express statutory authority given to Canadian judges to protect people from weapons in family law cases is a serious concern, especially because many survivors may choose not to involve the police or participate in criminal proceedings and because "family law cases involving domestic violence are no less dangerous than criminal domestic violence cases".

109 The LCO reviewed several restraining order decisions where firearms restrictions may have been warranted but were not considered. For example, in *Khadra v Khadra*, 2021 ONSC 3599, the father threatened the mother's parents with a gun at their home. The court imposed a restraining order to protect the mother but did not restrict the father's access to firearms or otherwise refer to the gun.

110 For a comprehensive list of these provisions, see Neilson, *Responding to Domestic Violence*, ch 9.2.2.23.3. Firearms can also be a consideration when evaluating the need for a protection order. See for example New Brunswick *IPVIA*, s 4(3)(j)(iii).

111 Parliament of Canada, *Bill C-21, An Act to amend certain Acts and to make certain consequential amendments (firearms)*, (Royal Assent received 15 December 2023), ss 16 and 36. See also the exceptions in s. 70.3, if an individual can establish they need a firearm to hunt or trap to sustain themselves or their family.

112 British Columbia *FLA*, s 226(a).

113 See for example Newfoundland and Labrador *FVPA*, s 6(f) and (g).

114 Alberta *PAFVA*, s 4(2)(d). See also Northwest Territories *PAFVA*, s 7(2)(g) and Yukon *FVPA*, s 7(1)(f).

115 Manitoba *DVSA*, s 14(1)(j).

116 See Nova Scotia, *Intimate Images and Cyber-protection Act*, SNS 2017, c 7, s 6 and CyberScan, "Intimate images and cyber-protection: support for victims", (last accessed 10 September 2025), online: <novascotia.ca> [CyberScan, "Intimate images and cyber-protection"].

117 CyberScan, "Intimate images and cyber-protection".

118 See for example Haley Hrymak & Kim Hawkins, *Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger*, (British Columbia: Rise Women's Legal Centre, January 2021), online: <static1.squarespace.com>, p 29.

119 See for example New Brunswick *IPVIA*, ss 1 "property" (c) and 4(5). See also Newfoundland and Labrador *FVPA*, s 2(j) (defining property to include "companion animals").

120 See for example *Lekic v Ismail*, 2023 ONSC 6753, para 91(f), and *Blanchard v Walker*, 2012 ONCJ 798, para 110.

121 See for example Saskatchewan *VIVA*, s 7(1)(i); Yukon *FVPA*, s 7(1)(i); Nunavut *FAIA*, s 7(2)(k); Alberta *PAFVA*, s 4(2)(k); Manitoba *DVSA*, s 14(1)(m); and Northwest Territories *PAFVA*, s 7(2)(i).

122 This is the case in France. However, the person has a right to refuse to wear the bracelet if the protection order is issued by a family court. Advocates have critiqued this as a limitation of the proposal. See Sarah Leduc, "Domestic violence: 'Electronic bracelets are a first step, but we have to go further'", *France 24*, 26 September 2020, online: <france24.com>.

123 Ontario *FLA*, s 46(1) and Ontario *CLRA*, s 35(1).

124 Ontario *CYFSA*, s 137(3).

125 Neilson, *Responding to Domestic Violence*, ch 9.3.1.15 and note 695, noting research finding longer-term orders provide more effective protection, and George Philp, *One-size-fits-none: A report on modernizing Nova Scotia's Domestic Violence Intervention Act (DVIA)*, (Nova Scotia: Access to Justice and Law Reform Commission of Nova Scotia, 2023) [Philp, *One-size-fits-none*], pp 14-16. On file at the LCO.

126 See Linda C Neilson with Joanne Boucher, Justice Brigitte Robichaud & Judge Anne Dugas-Horsman, *Collaborative Design of a Research-Informed, Coordinated Provincial / Queen's Bench Family Violence Court Model*, (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research, 2022), p 17.

127 Hrymak, *Protection Orders in BC*, p 33, and Philp, *One-size-fits-none*, pp 14-15.

128 For more information on maximum emergency protection order durations across Canada, see the table in Section 7.2 of the Consultation Paper.

129 Neilson, *Responding to Domestic Violence*, chs 8.8.1 at note 458 and 9.2.2.13. Such orders could presumably fit within the statutory language of Ontario's *FLA* and *CLRA* allowing judges to grant restraining orders that include "[a] ny other provision that the court considers appropriate." But see Section 6.9 of the Consultation Paper for case law debating whether and when judges can order counselling in the absence of more explicit statutory authority.

130 See however Ontario *CYFSA*, s 142(1)(f), which creates a provincial offence for breaching a s. 137 *CYFSA* restraining order, with consequences of a fine up to $5,000 or imprisonment of no more than one year, or both.

131 Ontario *FLA*, s 24(5) and (6).

132 Koshan, "Preventive Justice?", p 258 and note 56, citing R A Malatest & Associates Ltd, *Evaluation of the Protection Against Family Violence Act (PAFVA): Final Report*, (Northwest Territories, 2011), p 45.

133 Koshan, "Preventive Justice?", p 258 (footnotes omitted).

134 See *Criminal Code of Canada*, RSC 1985, c C-46, ss 127(1) and 787(1).

135 Alberta *PAFVA*, s 13.1(2).

136 Nova Scotia *DVIA*, s 18, and Prince Edward Island *VFVA*, s 16.

137 New Brunswick *IPVIA*, s 17(a) (designating a protection order breach a "category J" offence), and New Brunswick, *Provincial Offences Procedure Act*, SNB 1987, c P-22.1, ss 56(10) and 57 (increasing the maximum penalty for a category J offence to $500,000 for repeated breaches).

138 Saskatchewan *VIVA*, s 7(1)(j); Yukon *FVPA*, s 7(1)(j); and Alberta *PAFVA*, s 4(2)(j).

139 For the purpose of granting a protection order, several statutes state that a respondent who encourages or solicits another person to do something that constitutes violence will be deemed to have done the act personally. See New Brunswick *IPVIA*, s 2(2); Nunavut *FAIA*, s 3(4); Prince Edward Island *VFVA*, s 2(3); and Newfoundland and Labrador *FVPA*, s 3(3).

140 Alberta *PAFVA*, s 2(3.1).

141 Superior Court of Justice & Ontario Court of Justice, *Canadian Police Information Centre (CPIC) Restraining Order Form – Family*, (May 2023), online: <ontariocourtforms.ca>.

142 See also Canada, Report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Volume I*, (Ottawa: Department of Justice, 2013), online: <justice.gc.ca>, [FPT Report, *Making the Links*], pp 69-71, noting that family court restraining orders can be registered on CPIC by the police, but "[t]he police are most concerned with criminal orders and there is an effective process in place for sending criminal orders from the court to the police for entry. There is less emphasis on civil orders and therefore CPIC is sometimes inaccurate in relation to these orders; police agencies may not be informed of changes to civil orders, particularly if they have had no involvement in the case."

143 Ontario, "Getting a restraining order", (updated 24 March 2025), online: <ontario.ca>.

144 British Columbia, "Protection Order Registry", (updated 17 March 2022), online: <gov.bc.ca>. For more information on how the registry is intended to work, see FPT Report, *Making the Links*, pp 71-72.

145 Ontario, "Consultation on Restraining Orders". This proposal follows the LCO's recommendation to the Government in August 2024 to provide for the interjurisdictional enforcement of protection orders. See Hansard, *Intimate partner violence*, JP-1030.

146 FPT Report, *Making the Links*, pp 11 and 85-87.

147 FPT Report, *Making the Links*, p 4.

148 FPT Report, *Making the Links*, p 155.

149 FPT Report, *Making the Links*, p 155.

150 See for example *Osmak-Bonk v Bonk*, 2004 ONCJ 167, paras 23-33, where the family court mistakenly allowed communications between the mother and father for parenting without knowing about a bail release order that prevented the father from contacting the mother. It took the family court almost eight months to change the restraining order to bring it into alignment with the father's bail conditions. This delay could have caused serious safety risks if the mother had reported a breach, because the police had no way to know whether the family or criminal court order took precedence. The process to change the order also required a court appearance and accumulated lawyers' fees. For other examples of cases in which family courts were missing information about criminal court proceedings, see *Lekic v Ismail*, 2023 ONSC 6753, where the court did not know the outcome of the respondent husband's criminal charges for harassing the wife (para 4), and *Simcoe Muskoka Child, Youth and Family Services v JMW*, 2023 ONSC 741, where the court was "in the dark" about the terms of the respondent father's criminal undertaking (which he refused to provide), and the court did not know whether the undertaking "adequately addresses the safety of [the child] and the Respondent Mother" (paras 5, 55, 57-58 and 60).

151 Linda C Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection)*, 2nd ed, (Ottawa: Department of Justice Canada, 2013) (modified 28 December 2022), online: <justice.gc.ca> [Neilson, *Enhancing Safety*], p 5.

152 FPT Report, *Making the Links*, pp 155-156.

153 For more information about these recommendations, see Section 9.4 of the Consultation Paper and the corresponding endnotes.

154 United Kingdom Home Office, Policy Paper, "Domestic Violence Disclosure Scheme factsheet", (updated 3 January 2024), online: <www.gov.uk>.

155 Only Saskatchewan and Alberta's laws have come into force. See University of New Brunswick, Muriel McQueen Fergusson Centre for Family Violence Research, Atlantic Community of Practice for Supporting the Health of Survivors of Family Violence in Family Law, "Legal Bulletin – Issue No. 6", (Alliance of Canadian Research Centres on Gender-Based Violence: March 2023), online: <allliancevaw.ca>.

156 British Columbia, Civil Resolution Tribunal, "The CRT Process", (last accessed 10 September 2025), online: <civilresolutionbc.ca>.

157 British Columbia, Civil Resolution Tribunal, "Intimate Images", (last accessed 10 September 2025), online: <civilresolutionbc.ca> [British Columbia, "Intimate Images"].

158 British Columbia, "Intimate Images".

159 The University of British Columbia, Faculty of Medicine, Office of Respectful Environments, Equity, Diversity & Inclusion, "Restorative Justice and Transformative Justice", (last accessed 10 September 2025), online: <redi.med.ubc.ca>.

160 Honourable Beverley Brown, Wîyasôw Iskweêw, "Restorative Justice Committee Pilot Project", (Alberta Court of Justice and Court of Queen's Bench of Alberta, 6 February 2024), online: <rjalbertacourts.ca>, p 3.

161 United Kingdom, "Pioneering approach".

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