



Protection and Prevention Orders by Jodi L. Wyman

The Domestic Violence and Stalking Prevention Act has been in effect for more than eight years. Like many laws, it continues to be a work in progress.

The original goal of the Act was to provide faster and far more effective protection to spouses at risk of being stalked and/or facing domestic violence from a present or former partner. Prior to the Act, the court could offer only simple “non-molestation” orders in these types of cases where someone might be at risk but no criminal activity had yet occurred. The orders were easy to get, but the enforcement of them was inefficient and insufficient.

The new Act was supposed to (and in most ways did) improve things. Individuals can get a Protection Order quickly, easily and without cost. They can see a magistrate at most provincial court houses and explain that they are being stalked or are the victim of domestic violence, and that the matter is urgent. This process can also be done by phone if necessary. If the magistrate is satisfied, the court will issue a Protection Order that takes effect immediately and without notice to the other party.

The Order can cover the couple’s children as well. Weapons can be seized at the same time.

As a safeguard or balance to those Orders being pronounced, the spouse who was the subject of the Order can then bring the matter back to court, tell his or her side of the story and show that a Protection Order was not warranted. This is not an easy thing to do. There is a deadline of only a matter of days and a lawyer is usually necessary to prepare the paperwork and appear in court, so the process can be expensive.

There is a second type of Order, called a Prevention Order. In circumstances which are less urgent, a person can also hire a lawyer to file an application for a Prevention Order. The application is served on the other party and they can attend court and oppose the order before it is granted.

Both types of Orders are very powerful in that they are immediately registered on CPIC, the police computer system. There are substantial penalties for breach of the Orders including fines, jail and even the seizing of vehicles.

The Act and its implications are imperfect and there are sometimes unfortunate results. Domestic situations involving any sort of violence or abuse are complex and often change rapidly. There is unfortunately also room to abuse these sort of protections offered by the legal system. No system could ever be perfect.

Over the last eight years, courts have tinkered with the law in different ways. For example, Judges have gone back and forth on who has the burden of proof during an application to set aside a Protection Order.

One big change is that the Orders now automatically expire after three years, instead of being in place forever. Judges are also increasingly concerned about spouses who want to set aside the Orders they got only a few weeks or months earlier. The applicant is usually asked to testify in court about why they have changed their mind, and often also asked to speak with a Victim Services worker. Above all, courts want to ensure spouses, and families, are safe.