

Court of Queen's Bench of Alberta

Citation: Andres v. Andres, 2009 ABQB 26

Date: 20090119
Docket: FL03 15158, 4803 146810
Registry: Edmonton

Between:

Naomi Dawn Andres

Applicant

- and -

Kenneth Brian Andres

Respondent

**Memorandum of Decision
of the
Honourable Madam Justice J.B. Veit**

Summary

[1] Ms. Andres asks for confirmation of the Emergency Protection Order issued by the Provincial Court in August 2008. In the alternative, she asks for a Queen's Bench protection order under s. 4 of the *Protection Against Family Violence Act*, or a Queen's Bench restraining order.

[2] The EPO is revoked. *Ex parte* relief is extraordinary: ordinarily, both sides should be heard to ensure justice. When a party requests *ex parte* relief, that party must strictly comply with the statutory pre-requisites for that relief. Here, Ms. Andres did not satisfy both of the Legislature's tests for obtaining *ex parte* relief. In August 2008, Ms. Andres did not prove that an EPO was required for her immediate protection: Ms. Andres and the parties' children were living in a location that was unknown to Mr. Andres; there had been no incident between the parties since a recognizance forbidding contact between the parties had been issued by a criminal court in July 2008 (other than an incident which Ms. Andres herself had arranged); and, both parties were represented by lawyers and Ms. Andres would therefore have no legitimate concern regarding service of process for a hearing on notice. In the circumstances here, the existence of

Mr. Andres' recognizance did not preclude the issuing of an EPO to Ms. Andres - as established by s. 2(2.1) of the Act - but the recognizance was a factor which a court was required to assess in determining whether the issuance of an EPO was warranted.

[3] The court concludes that it is not appropriate to issue a Queen's Bench order under the *Protection Against Family Violence Act*: Ms. Andres has not established an objective basis for her subjective fear of her husband. Nor is it clear that Ms. Andres would have more control over the enforcement of an EPO than she does over the enforcement of a recognizance: Rule 703(2) may require the criminal enforcement of EPOs. Also, there is evidence from each of the parties of assaults from the other; therefore, it is inappropriately stigmatizing to issue an order under a statute dealing with family violence dealing with only one of the parties.

[4] Relying on its inherent jurisdiction, and noting that the parties have each had effective notice of the relief requested in a restraining order, the court issues a mutual restraining order, as proposed by Mr. Andres. The parties will not contact one another directly or indirectly, except through their lawyers and the parties' parents with a view to arranging access. Because the parties live in the Camrose area, and because of a potential for actual violence has not been established, the no-contact area will be 10 meters except for an area surrounding Ms. Andres' residence, where the no-go zone will include all residential streets in the residential area where she lives, such area to be identified by a red line on a Camrose street map which will be attached to the formal order.

1. Background

[5] The parties are married and the parents of two children. The matrimonial home is on a lot that was carved out of a quarter owned by Ms. Andres' parents and where they reside. Mr. Andres believes that the distance between the two homes is approximately 200 meters; the two residences are on the outskirts of Camrose, which Ms. Andres states has a population of 15,000.

[6] On July 8, 2008, an incident occurred between the parties at the matrimonial home. Mr. Andres' mother had arrived the evening before to pick up one of the parties' children; this was the usual pattern which occurred when Ms. Andres had to travel on business and each of the sets of grandparents picked up one of the children to care for them during the mother's absence since the father worked in Nisku, a community some distance from Camrose. The evidence of the paternal grandmother is that, exceptionally, on July 7, Ms. Andres refused to allow one of the boys to go with his grandmother. Later in the evening, the parties were arguing about money. Ms. Andres' version is that her husband got mad at her for no reason, told her she had to leave, and threatened her with death and with never seeing her children again; he then put his hands around her neck - he having very big hands and being very strong - and strangled her as hard as he could. She stated that she felt that she was on the verge of a black-out and that she was going to die. Mr. Andres' version is that he found, in his wife's handbag, a withdrawal of \$2,800.00 from what he believed was the family's bank account, that he demanded an explanation from his wife, and that she tried to get the withdrawal slip from him in the process kicking him in the groin and scratching him in the shoulder. Mr. Andres' mother testified that she took photographs of the bruises and scratches on July 8 and a few days later when the bruising had come up. Ms. Andres left the home, and reported an assault to the RCMP. Charges of assault

were laid against Mr. Andres, who testified that the police would not examine his body for bruising and scratching. When Mr. Andres was released on bail and returned to his home, he found that his children were not in the home and many of his wife's personal items were taken. The bail provisions included a term that Mr. Andres have no contact direct or indirect with Ms. Andres. Ms. Andres had taken the children to live in Sherwood Park at the residence of her boss' sister. Mr. Andres assumed that the children were with Ms. Andres, but he did not know where they were living.

[7] The recognizance also included a term allowing the police to seize the firearms in the Andres home. While Mr. Andres was in custody, the police attended at his residence and removed his firearms. Mr. Andres has not been charged with any firearms offence, such as improper storage of firearms, not having the requisite FAC, unsafe handling of a firearm, etc.

[8] Mr. Andres testified that he contacted his sister and one of Ms. Andres' friends to see if he could get access with his younger son on his son's birthday, and if both his sons could have access with him on his birthday. Those initiatives were unsuccessful. Ms. Andres considered those initiatives to be breaches of the recognizance.

[9] Mr. and Ms. Andres both retained lawyers to deal with the family law issues. The lawyers made an arrangement whereby Mr. Andres would have access to his children. That arrangement was confirmed by court order on August 12, 2008 which established August 20, 2008 as the access date at Mr. Andres' parents' home or at some other location that the parties mutually agreed on. Ms. Andres insisted that the access exchange take place in the parking lot of the police station. The children were delivered to Mr. Andres at the parking lot; they had arrived there in a Cadillac with heavily tinted windows. When Mr. Andres returned the children at the appointed hour, he walked over to the Cadillac because he did not know either of the two men who were sitting in its front seat, and he could not see if anyone was sitting in the back seat. The driver of the Cadillac was in fact the man with whom Ms. Andres had been living after she left the matrimonial home and the passenger was that man's 21 year old son. Mr. Andres testified that he did not want to turn his children over to strangers. When he realized that a blonde woman was sitting in the back seat, he assumed that the person was Ms. Andres, and told his mother to bring the children over to the Cadillac. Ms. Andres immediately reported to the police that Mr. Andres had been in contact with her and asked for him to be charged. Instead, the police just spoke with Mr. Andres and let him go on his way.

[10] Being of the view that the recognizance and provisions of the Criminal Code were not offering her sufficient protection because they were not being enforced, Ms. Andres attended, *ex parte*, before a Provincial Court on August 22, 2008 to obtain an EPO. During the course of the hearing, Ms. Andres told the Provincial Court judge that Mr. Andres had opened her car door in breach of the Criminal Code recognizance, but she did not give the context to that allegation. As to the July 8 incident, Ms. Andres gave her version of the incident.

[11] On August 22, 2008, the Provincial Court issued an EPO, stating that Mr. Andres could not be within 200 meters of Ms. Andres. That court made no order with respect to the children, and no order with respect to the individual who was then described as the "new common-law".

[12] Ms. Andres alleges that her husband breached the EPO and the recognizance on September 26, 2008, by swerving towards her vehicle while he was driving a blue Tempo which passed her on a road in Camrose. Mr. Andres swears that his Tempo is black and that his Tempo was up on a hoist on that date. Mr. Andres has been charged with dangerous driving and which breach of the no-contact provision in relation to that incident. Those charges are being tried on April 27, 2009.

[13] Ms. Andres alleges that, on October 15, 2008, she was driving her younger son to her parents' home. She testified that she had seen a vehicle parked at the former matrimonial home, and, when she left her parents' home, that vehicle, driven by her husband, followed her out onto the road and into Camrose. She testified that, in Camrose, the vehicle behind her went to the right at an intersection and that, at the next intersection, Ms. Andres also went to the right and went to the right again and, at the next corner, came across Mr. Andres' car. She reported this incident, but the police would not lay charges.

[14] On a further occasion, she states that she was, exceptionally, dropping the younger child off at school and that Mr. Andres was, exceptionally and coincidentally, dropping the older child off at the same school (by arrangement between the parents, each of them has primary parenting responsibilities with one child). Ms. Andres states that, as Mr. Andres was driving past her, he made shooting gestures with one of his hands. She reported this incident to the police; Mr. Andres was charged with uttering threats and criminal harassment and breaching the no contact provisions in relation to that incident. Those charges will be tried on February 12, 2009.

[15] On October 22, the assault charge was tried; Mr. Andres was acquitted. The evidence at that trial included evidence that there were no marks of any kind and no bruising on Ms. Andres when she attended at the police station on July 8.

[16] On one occasion, the date of which she could not remember, Ms. Andres reported to the police that she saw a bright orange Mustang in the area where she currently resides; she believes that this is Mr. Andres' vehicle and that he was driving it. She believes that the location where she saw the vehicle was within 200 meters of the place where she was. She reported the incident to the police, but no charges were laid.

[17] At the confirmation hearing, a long-time friend of Ms. Andres, who has seen the parties' frequently during the last 8 years, testified that nothing she has personally seen over that period of time gives her any concern for Ms. Andres' safety, but that Ms. Andres has told her things that concern her.

[18] Mr. Andres does not have a police record.

[19] Although the confirmation hearing for the EPO was only heard on January 13, 2009, the issue of confirmation had been adjourned from time to time since September 2008 to allow Mr. Andres to obtain legal representation and for similar reasons. On one such application, on September 12, 2008, Mr. Andres was prevented from having contact with Ms. Andres' parents;

no evidence was ever led to the effect that the latter individuals either lived with Ms. Andres or that they had an independent basis for an EPO.

2. Should the EPO be confirmed?

[20] *The EPO should not be confirmed; it is revoked.*

a) In determining whether the EPO should be confirmed, is the court entitled to consider evidence relating to events subsequent to the issuance of the EPO?

[21] The structure of the statute suggests that the court is entitled to hear not only evidence about the basis for the issuance of the EPO, but also evidence about any relevant interaction between the parties after that date: by giving to the confirmation court the express right to revoke or vary the EPO or to issue its own protection order, the Legislature obviously intended the confirmation court to hear all relevant evidence.

b) Was there a basis for issuing an EPO on August 22, 2008?

[22] On August 22, 2008, Ms. Andres did not meet the two-pronged test for obtaining an EPO.

(i) Had there been family violence?

[23] The evidence at the EPO hearing established that family violence had occurred.

[24] As in virtually every *ex parte* situation, the only evidence that the Provincial Court heard was the evidence, untested, of one party, Ms. Andres. It will be extremely rare, in such situations, for a court to be in a position to say that what the only witness had sworn to did not occur.

[25] One of the *ex parte* situations where the court may hear something of the other side is one in which the applicant is represented by a lawyer who has some knowledge of the background situation rather than a duty counsel who is only in a position to deal with the specific application before the court. Because of the exceptional circumstance of asking for relief when their own position cannot be tested and when the court cannot hear about the position of the party opposite, a lawyer who appears *ex parte* before a court has a professional and ethical obligation to inform the court of everything that is known that is against the applicant's position. In commercial and ordinary civil matters, but not in family matters, a party who obtains *ex parte* relief which is not confirmed at the hearing on notice may be liable to pay not only costs, but damages, to the respondent party. Although Ms. Andres had a lawyer who was dealing with the family law issues on August 22, 2008, Ms. Andres chose to request an EPO without legal assistance.

[26] At the EPO hearing, Ms. Andres recounted a serious choking incident which occurred on July 8, 2008. Obviously, that testimony is evidence that family violence occurred.

[27] Moreover, Ms. Andres also recounted an incident which had occurred some twenty years previously when she alleged that Mr. Andres dragged her by the hair off school property; Mr. Andres contends at the confirmation hearing that the incident never occurred. However, at the EPO hearing, Ms. Andres offered the hair pulling incident as evidence of long standing anger problems which made her fearful of her husband.

(ii) Were Ms. Andres' parents properly mentioned in the EPO?

[28] Ms. Andres' parents were not properly mentioned in the EPO.

[29] Because of their exceptional nature, the Legislature has carefully circumscribed the ambit of *ex parte* orders; before issuing an order which can have grave repercussions against an individual, persons who are given the benefit of such orders must show that the respondent has been violent to them and the persons living with them or that they have reason to fear the respondent's violence. Here, no evidence whatever was led in relation to Ms. Andres' parents, either in relation to the first or to the second of the statutory pre-requisites to an EPO, or with respect to their residence. While one understands the wish of the parties to make the recognizance in the criminal justice system and the EPO in the civil justice system as similar as possible to avoid misunderstandings and to facilitate enforcement, one cannot breach statutory requirements. Indeed, Ms. Andres' wish to protect her parents in the EPO when they were already mentioned in the recognizance, is a factor which the court will consider in determining whether an order under this statute should be issued.

(iii) Was there the required urgency?

[30] Ms. Andres has not described any urgent need for an *ex parte* EPO; rather, both her evidence and her position are that the criminal recognizance which was in place, and which contained more protection than could an EPO, was insufficient to protect her because that recognizance was not being enforced.

[31] With respect, that type of argument does not address the issues identified by the Legislature. The legislation requires that the applicant prove

(b) that, by reason of seriousness or urgency, the order should be granted to provide for the immediate protection of the claimant and other family members who reside with the claimant.

[32] When she applied for an EPO on August 22, Ms. Andres was not facing any serious or urgent need for her immediate protection: she was living with her children at a location unknown to Mr. Andres; she was protected by the terms of a recognizance which had been issued in the criminal court when Mr. Andres was charged with assault for the choking incident; and, between July 8 and August 22, the only time Mr. Andres had been within 200 meters of Ms. Andres was the incident which occurred on August 20 at the access exchange in the parking lot of the police

station and that incident arose as a result of Ms. Andres' insistence on not following a court order which her lawyer had approved and in which she put herself within 200 meters of Mr. Andres in circumstances where Mr. Andres could not easily see that she was within that limit. The recognizance which regulated Mr. Andres' conduct:

- prevented Mr. Andres from having any contact, direct or indirect with her except through a third party to arrange contact with the parties' children, and
- prevented him from having any contact with Ms. Andres' parents, and
- which prevented him from possessing any firearms, and
- which prevented him from attending at the matrimonial home until Ms. Andres had vacated it, and
- from consuming alcohol or non-prescription drugs.

[33] Moreover, because both she and her husband were represented by lawyers, on August 22, 2008, Ms. Andres could not have had any legitimate concern about serving Mr. Andres with process relating to a hearing on notice.

[34] In all of those circumstances, on August 22, Ms. Andres had not satisfied the second part of the Legislature's two-part test for obtaining an *ex parte* protection order.

c) How should the criminal recognizance be treated in this context?

[35] Section 2(2.1) of the Act states, in part:

(2.1) Without excluding any other circumstance, in determining whether an order under this section should be granted, by a provincial court judge or a designated justice of the peace, the following circumstances should not preclude the granting of an order:

(a) that an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant has been granted previously;

[36] That section means that the existence of a recognizance, being an order of the Provincial Court preventing Mr. Andres from contacting Ms. Andres, does not automatically preclude the issuance of an EPO. Equally, however, the existence of a parallel order does not preclude the denial of an order. The latter conclusion is obvious: in some situations, the fact that family violence has occurred again, even though an EPO had been previously granted, might mean only that the respondent has not learned from the past experience and that the claimant urgently requires renewed protection.

[37] In the circumstances here, however, the existence of the EPO may well have resulted in the failure of Mr. Andres to go near Ms. Andres, even though he did not see his children for approximately 6 weeks, during which time he had a birthday, and one of his children also had a birthday. Ms. Andres had not established the need for an EPO.

d) Conclusion

[38] *Ex parte* relief is exceptional. In order to obtain such relief, a claimant must satisfy the statutory standards for its issue. The statutory requirements were not met in this case.

3. Should this court issue a protection order?

[39] At an oral confirmation hearing, a Queen's Bench court might revoke the EPO, but grant a Queen's Bench protection order: s. 3(4). At the conclusion of this hearing, for two reasons, the court concludes that it should not issue a protection order.

a) No objective basis for fear of Mr. Andres

[40] Ms. Andres has testified that she is in fear of her life relative to Mr. Andres. I accept that that is her subjective position. However, the evidence on this application does not support a basis for concluding that there is an objective basis for that fear: Mr. Andres does not have a criminal record, Mr. Andres was acquitted of the assault charge, and Mr. Andres contests the other alleged breaches of the no contact order. It would be inappropriate to meticulously analyze all of the evidence led at this hearing relating to the alleged breaches which are going to be tried in February and April 2009; the criminal court hearing those matters will fully review all of the relevant circumstances and the available evidence at those trials will include evidence which was not produced at this hearing, including, for example, independent evidence of the colour of the Tempo vehicle. It is, however, appropriate for this court to conclude that, at this hearing, Ms. Andres has described incidents which have upset her, but which arose out of chance encounters and which did not result in any physical contact.

[41] More importantly, Ms. Andres does not suggest that, at this point, there is a term which could be included in a Q.B. protection order that is not already contained in a recognizance or which could be included in a recognizance. When the last of the criminal trials is completed, Ms. Andres could, of course, renew her application for a Q.B. protection order if there is no continuing protection for her in the criminal justice system. Until then, it is counter-intuitive to assume that an individual who does not respect criminal law standards which place him in jeopardy of criminal sanctions will more highly respect a civil law standard, the long term implications of which, including, for example, tracking of conduct, are less onerous than the criminal ones.

[42] Finally, I observe that, despite the blizzard of activity which occurred immediately after the parties' separation, no incident has been reported by Ms. Andres since late October, 2008. This means, for example, that even the emotionally charged Christmas holiday period has presumably passed without incident. This leads to a reasonable conclusion that this is one of the vast majority of situations in which the breakdown of a marriage, and its attendant feelings of anger, betrayal, guilt, and anxiety, produces outbursts which gradually subside over time as the partners each adjust to their new situations.

[43] It is true that Ms. Andres would be in control of enforcement of a Q.B. protection order whereas she does not control the enforcement of a recognizance. Had she had an EPO prior to

August 22, she clearly would have brought civil contempt proceedings against Mr. Andres for his conduct in approaching Ms. Andres' girlfriend. That allegation would have had to be tried: at this hearing, Mr. Andres testified that he had spoken with that woman about getting access to his children, which, if true, was not a breach of the recognizance and would not have been a breach of a Q.B. protection order. However, Mr. Andres would have been put to the expense of a hearing. What happened in the circumstances here is that the police decided not to lay charges against Mr. Andres in relation to that particular allegation of Ms. Andres. Given the gravity of the criminal justice process, it is appropriate that decisions concerning the initiation of criminal charges be in the hands of independent persons - police and prosecutors - rather than the putative victim of the activity. Such persons not only have the independence and training required to determine when charges will be laid, but the appropriate discretion to deal with allegations. Obtaining an EPO might well not provide to Ms. Andres control over the enforcement of the no-contact order: the provisions of Rule 703(2) might require that all enforcement of EPOs be undertaken pursuant to the Criminal Code. If enforcement of an EPO cannot be taken civilly, then Ms. Andres would not be further ahead in terms of enforcement even if she obtained such an order.

[44] I conclude that Ms. Andres has not demonstrated a sufficient basis for the issuance of a Q.B. protection order.

b) in the circumstances here, a protection order is inappropriately stigmatizing

[45] The second reason why the court concludes that it should not issue a protection order in the circumstances here is that such an order is inappropriately stigmatizing.

[46] An order under this legislation is premised on the existence, or real fear, of family violence. In other words, the person against whom an order is made is legally characterized to have been the source of family violence.

[47] Where family violence has occurred, or is legitimately feared, the level of stigmatization implicit in such an order is warranted. Indeed, both the claimant and society have the right to expect that, in such situations, proceedings under the Criminal Code will be initiated as soon as practicable. Family violence is a crime; indeed, it is a crime in which a relationship of trust often aggravates family violence into an even more serious form of crime than exists between strangers.

[48] However, in a situation such as the one here, where Mr. Andres leads evidence that he himself has been physically assaulted by his wife, it would be inappropriate to stigmatize only Mr. Andres and not Ms. Andres.

4. Should the court issue a restraining order?

[49] On its own motion, the court issues a mutual restraining order between the parties which prevents direct contact between them, either in person or by telephone or internet or text, and prevents them from being within 10 meters of one another. The order prevents indirect contact between them, except contact arranged by third parties with respect to their children.

a) Does this court have the authority to issue a restraining order when the parties have not requested one?

[50] The Act does not identify the issuance of a restraining order as an option for a reviewing court. However, this court has the inherent capacity to issue such an order.

b) Should a restraining order issue here?

[51] The main reason for issuing a restraining order is to put the parties on a footing of equality. As indicated above, the existing recognizances are effective to protect against inappropriate contact by Mr. Andres with his wife. However, Ms. Andres should be as careful in her potential dealings with Mr. Andres as he must be with her. There should be a common obligation on both of them to avoid situations in which problems can arise.

[52] A secondary reason for the issuance of such an order is that the enforcement of a restraining order, being in the control of the parties and not subject to R. 703(2), will put on each of them some financial responsibility for making reasonable decisions with respect to enforcement. If one of them brings enforcement proceedings which are unsuccessful, that party will face the civil law discipline of costs. Criminal process does not include such discipline, essentially because enforcement in the criminal process is not solely in the hands of a private party but is in the hands of state agencies.

[53] Finally, a restraining order does not have the same stigmatizing import as a family violence protection order. It is appropriate where parties merely do not want to have contact with one another.

c) No go zone - 10 meters and the residential area where Ms. Andres now lives

[54] The mutual restraining order will prevent direct contact between the parties, either in person or by telephone or internet or text and prevents them from being within 10 meters of one another. The order will also prevent indirect contact between them, except contact arranged by third parties with respect to their children.

[55] Given the relatively small size of the community in which they live, and the nature of the harm which the order is intended to prevent, the physical “no go zone” that is the personal space around each party which the other must not invade is 10 meters except in relation to the residential area in which Ms. Andres is currently residing. Having been advised that there is no legitimate reason for Mr. Andres being physically present in the area in which Ms. Andres resides, is my intention that Mr. Andres should not go to that area; in order to assist with enforcement of the mutual restraining order, I would ask the parties to append to the order a street map of Camrose outlining in red the area surrounding Ms. Andres’ residence which will be a “no go” zone for Mr. Andres.

5. Costs

[56] If the parties are not agreed on costs, I can be spoken to within 30 days of the release of this decision.

[57]

Heard on the 13th day of January, 2009.

Dated at the City of Edmonton, Alberta this 19th day of January, 2009.

J.B. Veit
J.C.Q.B.A.

Appearances:

Mr. W. B. Hogle
for the Applicant

Mr. Martin West
for the Respondent

Extracts from the *Protection Against Family Violence Act* R.S.A. 2000, c. P-27

Emergency protection order

2(1) An order under this section may be granted by a provincial court judge or a designated justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines

(a) that family violence has occurred,

(a.1) that the claimant has reason to believe that the respondent will continue or resume carrying out family violence, and

(b) that, by reason of seriousness or urgency, the order should be granted to provide for the immediate protection of the claimant and other family members who reside with the claimant.

(2) In determining whether an order should be granted, the provincial court judge or designated justice of the peace must consider, but is not limited to considering, the following:

(a) repealed 2006 c8 s5;

(b) the history of family violence by the respondent toward the claimant and other family members;

(b.1) whether there is or has been controlling behaviour by the respondent towards the claimant or other family members;

(b.2) whether the family violence is repetitive or escalating;

(c) the existence of any immediate danger to persons or property;

(c.1) the vulnerability of elderly claimants;

(c.2) the effect of exposure to family violence on any child of the claimant or on any child who is in the care and custody of the claimant;

(d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant;

(e) the claimant's need for a safe environment to arrange for longer-term protection from family violence.

(2.1) Without excluding any other circumstance, in determining whether an order under this section should be granted, by a provincial court judge or a designated justice of the peace, the following circumstances should not preclude the granting of an order:

(a) that an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant has been granted previously;

(b) that the respondent has previously complied with an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant;

(c) that the respondent is temporarily absent from the residence at the time of application for an order;

(d) that the claimant is temporarily residing in an emergency shelter or other safe place;

(e) that criminal charges have been or may be laid against the respondent;

(f) that the claimant has a history of returning to the residence and of residing with the respondent after occurrences of family violence.

(3) An order under this section may include any or all of the following:

(a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;

(b) a provision restraining the respondent from communicating with or contacting the claimant and other specified persons;

(c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

(d) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;

(e) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;

(f) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;

(g) any other provision that the provincial court judge or designated justice of the peace considers necessary to provide for the immediate protection of the claimant.

(4) An order under this section may be subject to any terms and conditions that the provincial court judge or designated justice of the peace considers appropriate.

(5) Subject to section 5(1), an order under this section takes effect immediately on the granting of the order.

(6) An order under this section must indicate the date, time and place at which the order is scheduled for review at a hearing by a justice of the Court of Queen's Bench, which may not be later than 9 working days after the granting of the order.

RSA 2000 cP-27 s2;2006 c8 s5

Confirmation of emergency protection order

3(1) If a provincial court judge or a designated justice of the peace grants an emergency protection order, the judge or justice of the peace must, immediately after granting the order, forward to the Court of Queen's Bench a copy of the order and all supporting documentation, including any notes.

(2) A hearing referred to in section 2(6) must be based on affidavit evidence and any other sworn evidence.

(3) The evidence that was before the provincial court judge or designated justice of the peace may also be considered as evidence at the hearing.

(4) At the hearing, the justice of the Court of Queen's Bench may, whether or not the claimant or the respondent is in attendance,

(a) revoke the order,

(b) direct that an oral hearing be held,

(c) confirm the order, in which case the order becomes an order of the Court of Queen's Bench, or

(d) revoke the order and grant an order under section 4.

1998 cP-19.2 s3

Queen's Bench protection order

4(1) An order under this section may be granted by a justice of the Court of Queen's Bench on application if the justice determines that the claimant has been the subject of family violence.

(2) An order under this section may include any or all of the following:

(a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;

(b) a provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence;

(c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

(d) a provision requiring the respondent to reimburse the claimant for monetary losses suffered by the claimant and any child of the claimant or any child who is in the care and custody of the claimant as a direct result of the family violence, including loss of earnings or support, medical

and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under this Act;

(e) a provision granting either party temporary possession of specified personal property, including a vehicle, cheque-book, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;

(f) a provision restraining either party from taking, converting, damaging or otherwise dealing with property that the other party may have an interest in;

(g) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the claimant, including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, with the claimant and other family members or their employers, employees, co-workers or other specified persons;

(h) a provision directing a peace officer to remove the respondent from the residence within a specified time;

(i) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;

(j) a provision requiring the respondent to post any bond that the Court considers appropriate for securing the respondent's compliance with the terms of the order;

(k) a provision requiring the respondent to receive counselling;

(k.1) a provision authorizing counselling for a child referred to in section 1(1)(d)(iv) without the consent of the respondent;

(l) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;

(m) any other provision that the Court considers appropriate.